

IN THE MATTER OF AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION

On 28 March 2023

BETWEEN Harlow Town FC (Appellant) (The Club)

and

The Southern Football League (Respondent) (The League)

1. APPEAL BOARD

- Roger Burden (Chair), Daniel Mole and Robert Purkiss
- Conrad Gibbons (Secretary to the Board)

2. PRESENT FOR THE APPELLANT

- The Appellant had informed the Board that it was content with its written submissions and did not wish to attend the Appeal.

3. PRESENT FOR THE RESPONDENT

- Jason Mills (Operations Manager)
- David Martin (Vice-Chair)

1. BACKGROUND

- On 18 November 2022, the League wrote to the Club, to inform it that, due to the condition of the Club's pitch, the League's Board had decided that the Club's next home fixture was to be postponed.
- On 2 December 2022, the Club withdrew its membership of the League due to problems with the Club's pitch.
- The League fined the Club the sum of £3000.
- The Club appealed on the grounds:
 - a. that the League misinterpreted or failed to comply with the rules or regulations relevant to its decision and
 - b. that the League imposed a penalty, award, order or sanction that was excessive.

2. PRE-MEETING DIRECTIONS

- The Appellant had requested that the matter be dealt with by way of the correspondence and did not wish to attend the Appeal and requested access to a recording or transcript of the Appeal.

- The Respondent stated that it wished to attend the Appeal.
- The Directions of the Appeal Board were:
 - a. No recording or transcript would be made but, once the Appeal Board had met and made its decisions, written reasons would be made available.
 - b. In accordance with the Non-Fast Track Appeal Regulations 12 and 16, the parties are entitled to make oral submissions. In addition, the Appeal Board is allowed to proceed in the absence of any party. Therefore, the Respondent may attend and the Appellant need not attend.

3. SUMMARY OF SUBMISSIONS

- The papers submitted to the Appeal Board amounted to over 300 pages. Needless to say, the following summaries do not refer to all the papers, many of which did not deal directly with matters relevant to this appeal, but the absence to any reference to any papers should not be assumed to mean that they were not considered.

4. RULES

- The Appeal Board agreed that the relevant League rule regarding the sanction was Rule 15.3. That rule states:

“If, after the commencement of a Playing Season, any Club either:

(i)Ceases to operate for any reason: or

(ii)Gives notice to the Company that it does not intend to continue competing in the Competition for any reason:

Then the Company may extinguish the playing record of that Club and any monies due to that Club from the Company shall be forfeited. The Company shall have the discretion to issue charges against that Club and to issue fines against that Club in accordance with the Fines Tariff.”

- The Appeal Board also agreed that the relevant League rule regarding the powers to postpone a match was Rule 23.8. That rule states:
“The Competition shall have the right to order the postponement of a match where the Football Turf Pitch fails to meet the requirements of the FIFA Quality Certificate or Quality Pro Certificate (as applicable).”

5. WRITTEN SUBMISSIONS OF THE APPELLANT CLUB

- The Appellant’s submissions included a reference to a site visit by League officials on 25 November. The Appellant claimed that, during that visit, the officials acknowledged that the Appellant was the victim of a failed pitch installation and that all present would be working towards no financial penalty.
- The Appellant then states that in the charge against it, it is stated that there was an absence of any correspondence ahead of the meeting in which the sanction was decided but the Appellant had emailed the Respondent in December to remind it of the 25 November conversations with its officials.

- The Appellant described the fine imposed as being towards the upper end of the fee scale and that this contradicts the conversations held on 25 November.
- The Appellant also submitted that the Respondent's cancellation of the Appellant's 22 November and 26 November fixtures, was in contravention of League Rule 23.8

6. WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT LEAGUE

- Responding to the Club's comment that the League had stated that there was a lack of correspondence. The League commented that, on 21 December 2022, the League sent a letter to the Club charging it with a breach of League Rule 15. That letter went on to state that, in accordance with League Rule 4.3, a response was required within 7 days stating whether or not the charge is admitted and, in default, the League will deal with the case on the evidence it has at the time of it being considered. The League stated that no response was received.
- The League's fines tariff for withdrawing from the League gives a range of fines between £1000 and £5000. The League fined the Club £3000 for the withdrawal. That decision was recorded in Minute 4857 in the League's January 2023 Board meeting. The minute was as follows:

"HARLOW TOWN – The Club tendered its resignation from the League by email on 7th December 2022. No correspondence was received regarding the charge which was found proven, and the Club fined the sum of £3,000."

- The Respondent's submission also stated that, due to concerns with the playing surface, the League was within its powers to order a postponement of a match under Standardised League Rule 23.8.

7. ORAL SUBMISSIONS ON BEHALF OF THE RESPONDENT LEAGUE

- Mr Martin asked us to disregard the Club's reference to Rule 23.8 as it was not relevant. He said that it was League Rule 15 that was being challenged as it was that rule that dealt with the withdrawal from the League.
- He said that the Board had given very careful consideration to the final penalty and was particularly concerned that the Club had no action plan that might have helped it to move forward, despite the fact that there were 2 Southern League Clubs within 10 miles of Harlow, either of which could have been considered for ground share.
- He added that the Board's policy is to apply a fine above the minimum when a club fails to respond to a charge, as had been the case here.
- Referring to the meeting at the Club's ground, Mr Martin said that the Club had been only concerned about the fines that would be applied for the postponed matches, as these are usually around £2000.

- Responding to questions from the Board-
- Mr Mills accepted that Rule 23.8 was very specific re the FIFA Quality Certificate and conceded that the League had not complied with it. However, he suggested that the Rule needed to be changed as the League had made the right decision in postponing the match.
- Both Mr Martin and Mr Mills felt that the Club had decided to resign from the League without giving the matter too much thought which is why the League gave them a little time to reconsider.
- It appeared to them that the Club was not interested in a ground sharing arrangement, which would have enabled it to stay in the League. The Club representatives had said that they did not have a good working relationship with Ware and had dismissed an arrangement with Hertford, saying that they did not want to discuss it.
- In explaining the impact of the withdrawal, they said that the club was well aware of the consequences, which included leaving other clubs no game on key, high-income dates such as Boxing Day and Easter, clubs having 1 less fixture and the impact of clubs having any points gained against the Appellant, removed.
- They said when considering the fine, they accepted that the problems with the pitch were of no fault of the club, but they had to take into account the impact on other clubs that the withdrawal would have and, in particular, the lack of effort by the club to stay in the League by not even considering ground sharing.
- They told us that they thought that the contractor might be liable for some part of the fine but, in any case, they felt that, in all the circumstances, a fine just above the middle of the tariff range was fair and reasonable.

8. THE BOARD'S DELIBERATIONS AND DECISIONS

- a. The Appeal Board considered the first ground of Appeal ie that the League misinterpreted or failed to comply with the rules or regulations relevant to its decision.
 - There was no doubt that the Respondent's decision to postpone a match, whilst proving to be sensible based on subsequent developments, did not comply with its Rule 23.8.
 - However, although the Appellant had claimed that the decision cost it revenue for the loss of the home fixture, together with extra cost for transport to Cirencester, the Appellant had not provided estimates or made a claim for any loss. In the circumstances, the Appeal Board could not consider any recompense.
 - That part of the Appeal is upheld.
- b. The Appeal Board then considered the second ground of Appeal ie that the League imposed a penalty, award, order or sanction that was excessive.
 - The failure of the pitch was clearly not the fault of the Appellant. The Appeal Board considered that some mitigation in assessing the fine would have been appropriate.
 - It was clear that the Appellant had made little, if any attempt to seek alternative ways of remaining in the League, notably opportunities to ground share.

- The Appellant's withdrawal from the league had a significant impact on the other clubs in the League.
 - The Appeal Board considered that both the above factors were aggravating factors when assessing the fine.
 - In light of all the above, we had to decide if the sanction was excessive, in the sense that it was materially more than was necessary or proportionate.
 - The fine fell within the range of the fines tariff and was not much above the middle of the range, making it likely that the Respondent had fairly applied the mitigating and aggravating circumstances.
 - We concluded that the fine could not be described as materially more than was necessary or proportionate.
- That part of the Appeal is dismissed.

9. COSTS, etc

- As part of the Appeal succeeded, any Appeal Fee will be returned to the Appellant.
- No order was to made as to costs.

10. The Appeal Board's decisions are final and binding on all parties.

Roger Burden
Chair
28 March 2023