

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

HILLTOP FC

Appellants

and

COMBINED COUNTIES FOOTBALL LEAGUE

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The appeal board (**‘the Appeal Board’**) was appointed under The Football Association’s (**‘The FA’**) Disciplinary Regulations – Appeals 2022/23 (**‘the Appeal Regulations’**) to determine an appeal brought by the Appellants against the decision of the Combined Counties Football League (**‘the Respondent’**) dated 23 January 2023.
2. The appeal was heard on 06 April 2023 by way of MS Teams.
3. The Appeal Board had before it the appeal bundle which had been read and considered by the Appeal Board.

The Appeal Board

4. The members of the Board were:
 - Yunus Lunat (Chair).
 - Keith Allen.
 - Royston Schafer
5. No objection was raised concerning the composition of the Appeal Board.

6. The Secretary of the Appeal Board was Conrad Gibbons, the Judicial Services Officer and whose assistance was greatly appreciated.

Attendees

7. The Appellants were represented at the hearing by its secretary Mahad Omar. Also in attendance as observer was the club Chair Abdullah Mohamed.
8. The Respondent was content to rely upon its written response to the Appeal and opted not to be in attendance.
9. The Appeal Board is grateful to all parties for their submissions and assistance both during the appeal hearing, and in the documents within the Appeal Bundle.

First Instance Decision

10. On 26 November 2022 the Appellants were scheduled to play Broadlands United at the home of the Appellants, the Middlesex Stadium. On 21 October the Appellants had initially requested to move the fixture due to the fixture coinciding with the wedding of a senior member of the Appellants' team. Broadlands made enquiries of the Respondent League and were informed that a wedding was not an acceptable reason for a postponement. An alternative date could not be agreed. On 23 November Broadlands followed up with the Appellants to query the arrangements and kick off time for the fixture scheduled for 26 November. They were informed of a kick off time of 2pm. On the day of the fixture the Appellants communicated with Broadlands at 11.45am to explain that a pitch inspection would be required. The fixture was ultimately postponed by the Appellants at 12.55pm due to apparent standing water on the pitch but the match officials did not carry out any pitch inspection. The Appellants relied upon photographic images provided by the groundsman and requested a local step 7 referee to carry out an inspection. The step 7 referee was not authorised to postpone the fixture. A member of the Respondent's management had been at the ground on 24 November and felt the pitch was playable and stated that there had not been any rain since then.
11. On 19 December 2022 the Respondent charged the Appellant club with a breach of League Rule 8.39 for failing to fulfil a fixture. This was found proven. The sanction imposed was that the points for the fixture were awarded to Broadlands. The outcome was communicated to the Appellant club on 23 January 2023.

12. On 4 February 2023 the Appellant club appealed the decision on the ground that the Respondent imposed a penalty.... or sanction that was excessive.
13. On 21 February 2023, the Judicial Panel Chair nominee allowed an application by the Appellant to appeal outside of the regulatory timeframes.

The Appeal Regulations

14. Regulation 2 of the Regulations, sets out the grounds upon which the Appellant may appeal the first instance decision(s) – they are:
*“... the body whose decision is appealed against:
2.1 failed to give that Participant a fair hearing; and/or
2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or
2.3 came to a decision to which no reasonable such body could have come; and/or
2.4 imposed a penalty, award, order or sanction that was excessive.”*
15. Regulation 12 states:
“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”

Submissions

16. The following is a summary of the principal submissions made to the Appeal Board. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that the Appeal Board did not take such point, or submission, into consideration when it considered the matter.
17. For the avoidance of doubt, the Appeal Board carefully considered all the materials provided, and submissions made, with regard to this case
18. At the commencement of the hearing it became apparent from the submissions by Mr Mahad that the Appellant club appeared to be arguing a ground of appeal which had not been relied upon in the appeal application, namely that the Respondent League came to a decision which no reasonable such body could have come. Mr Mahad was reminded that the ground stated and relied upon in the application was that the sanction was excessive. The Appeal Board therefore

requested Mr Mahad to clarify the ground of appeal the club was seeking to advance and rely upon, and if the ground was different to the one stated in the application? Mr Mahad confirmed that the club was appealing on the ground that the Respondent League came to a decision which no reasonable such body could have come. In the circumstances the Appeal Board invited Mr Mahad to make a formal application to amend the ground of appeal relied upon with an explanation of the reasons behind the error. The Appeal Board heard a submission on this from Mr Mahad to the effect that it was an error in the application.

19. The Appeal Board then retired to consider the amendment application.
20. The Appeal Board returned to inform the Appellant of its decision which was to refuse the amendment application in the interests of justice and fairness. The Respondent League was not present and would therefore be denied the opportunity to respond.
21. The appeal therefore proceeded on the ground relied upon in the application. Mr Mahad made his submissions, which were based on the fairness of the decision rather than sanction. The Respondent League had provided a written submission which the Appeal Board took into consideration.

The Legal Test

22. The Appeal Board reminded itself of Regulation 12, that the task of the Appeal Board is to conduct a review of the first instance decision, and not a de novo hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.
23. In accordance with the above the Appeal Board retired to consider the parties' oral and written submissions.
24. The Appeal Board considered the Regulations and the submissions made.

Conclusion

25. The Appeal Board unanimously rejected the Appeal.
26. The relevant rule states "*Any Club without just cause failing to fulfil an engagement to play a Competition match on the appointed date shall for each offence be liable to expulsion from the*

Competition and/or such other disciplinary action the Board may determine, including the deduction of up to a maximum of three points from the offending by their opponents, and a fine. In the event of a Club being in breach of the previous paragraph of this Rule then the Board may award points to the Club not at fault as if the match had been played and the League table shall reflect the position as if the match had been played with the result awarded by the Board.”

The sanction was therefore clearly within the Respondent’s rule and not in any way excessive.

27. The Appeal Board also made an order that the Appellant club pay wasted costs in the sum of £100 on the ground that the appeal was frivolous and without merit. The Rule relied upon by the Respondent was clear and easy to understand. The Appeal Board was of the view that there was no reasonable prospect of a successful appeal even allowing for the mistaken ground relied upon. There simply was no reasonable prospect in this appeal succeeding. The appeal fee is also to be forfeited.

28. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge, save as to the order for costs.

17 April 2022

Yunus Lunat (Appeal Board Chair)

Keith Allen

Royston Schafer