

**IN THE MATTER OF THE APPEAL BOARD OF
THE FOOTBALL ASSOCIATION**

BETWEEN:

JAMIE HEXTALL

-and-

LEICESTERSHIRE & RUTLAND FA

DECISION OF THE APPEAL BOARD

Regulatory Commission: Richard McLean (Chair)
Peter Clayton
Yunus Lunat

Secretary to the Commission: Conrad Gibbons

Date: 28 September 2023

Hearing format: Paper hearing via Microsoft Teams

Introduction

1. These are the written reasons for a decision made by the Appeal Board following an appeal by Mr Jamie Hextall against the decision of a Disciplinary Commission of Leicestershire & Rutland FA (“the CFA”). The subject matter of the decision originates from a fixture between Barlestone St Giles and Leicester Bharat on 23 July 2023. Mr Hextall was manager of the Barlestone St Giles side.

Decision of the Disciplinary Commission

2. At Mr Hextall’s request, the Disciplinary Commission considered his case in his absence via correspondence. By decision dated 30 August 2023 the Disciplinary Commission had found the following charges proved:

“FA Rule E3 – Improper Conduct (including foul and abusive language)

Details: It is alleged that Jamie Hextall used abusive and/or indecent and/or insulting words or behaviour contrary to FA Rule E3.1, and it is further alleged that this is an aggravated breach as defined by FA Rule E3.2 because it includes a reference to Gender. This refers to the comment(s) “fuck that, I’m not doing that for that bitch” or similar, and/or it is alleged that Jamie Hextall said “yes you fucking slag” which resulted in a dismissal from the technical area or similar, and/or it is alleged that the conduct of Jamie Hextall contributed towards the abandonment of the fixture.

...

FA Rule E3.2 – Improper Conduct – aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability

3. The comments were alleged to have been directed towards the female referee for the fixture. Having found the charges proved the Disciplinary Commission issued Mr Hextall with an 8-match suspension to include a ground/venue ban, in addition to a fine of £90, and a requirement to complete a mandatory online education programme before the suspension is served.
4. Mr Hextall had agreed use of the words “*what the fuck was that?*” on two occasions but not the use of the discriminatory words “*slag*” and “*bitch*”. The Disciplinary Commission’s written reasons relevantly found in respect of Mr Hextall as follows:

“20. The statement of Jamie Hextall and the supporting witnesses agree with the events described of the repeat of the comment and the subsequent dismissal. Only the statement from Jamie Hextall notes he had not moved away from the area of the field of play as required to do so. The supporting statements both note they are sure the aggravated comments had not been used by the participant charged but they do not mention any further exchanges after the dismissal

21. The Referee is clear in their allegations towards Jamie Hextall, they had approached the alleged offender and were close to them. It is unlikely there would have been anyone in between them at the time and it would be expected the Referee to have had a clear view, close enough to have heard the comments from the participant charged clearly and would be able to identify the individual that had made the alleged comments.

22. Whilst Charge 1 has been admitted, on the balance of probability the Commission find it is more likely than not the words of “slag” and “bitch” had also been used by Jamie Hextall, therefore Charge 1 has been found as Proven on the use of these terms in addition to the expletives used in conjunction with them.

23. The aggravated aspect... was then considered, the use of the term’s “slag” and “bitch” towards the Referee are derogatory comments made towards females. As such these are clear references to gender and, in the context used have been done so in a derogatory manner based on the gender of the Referee. These words do meet the threshold for an aggravated breach, therefore, Charge 2 has also been found Proven.”

5. The Disciplinary Commission went on to consider Mr Hextall's previous offence history, stating that he had no other misconduct in the preceding 5 years. It noted credit for an admission of Charge 1. It also noted that the guidelines for a breach of FA Rule E3.2 provided for a suspension of 6-12 matches where 6 is the standard minimum.
6. The Disciplinary Commission stated in its decision very clearly the written statements and documents it considered during the hearing.

The Appeal

7. Mr Hextall's appeal grounds appealed the findings on the basis that the Disciplinary Commission came to a decision to which no reasonable such body could have come, failed to give the participant a fair hearing, and imposed a penalty, award, order or sanction that was excessive. He requested a paper hearing.
8. Mr Hextall's appeal grounds were fleshed out in a separate message. To summarise:
 - a. Mr Hextall stated he was appealing his sanction of 8 games and a full ground ban.
 - b. Mr Hextall denied any allegation of aggravated language being used.
 - c. Mr Hextall noted "I provided witness statements that stated that I didn't call the official anything sexist or discriminatory. There was no statement other than the official who [h]as stated this."
 - d. the only evidence offered that we have seen, is the testimony of one individual who neither stopped playing during the game or mentioned the incident to either his parents or coach at the time".
 - e. He noted that he helps out with another side on Saturdays, and that as a result of this ban he will miss 10+ games for his Saturday side in addition to the 8 game ban for Barlestone St Giles.
 - f. Mr Hextall stated that his mental health is eased by weekend coaching football and he was scared that this would be adversely affected.

Determination

9. Mr Hextall appealed on three grounds as above. The Appeal Board has scrutinised the decision of the Disciplinary Commission, both in line with Mr Hextall's submissions and of its own initiative.

10. To find in favour of Mr Hextall on the ground that the Disciplinary Commission came to a decision to which no reasonable such body could have come, the Appeal Board would have to find that the decision of the Disciplinary Commission was outside the scope of reasonable outcomes. The Appeal Board was mindful that it was not within its remit to consider whether it would have come to the same decision, as it was to conduct a review of the decision as opposed to a re-hearing.
11. Mr Hextall's submissions, as summarised above, essentially consist of a dispute with the evidence and disagreement with the Disciplinary Commission's findings based on his assessment of the strength of that evidence. As above, it was not the role of the Appeal Board to assess these submissions by carrying out its own process of weighing up the evidence. Rather, the Appeal Board made an assessment whether or not the Disciplinary Commission's findings and written reasons were within the scope of reasonable responses in light of that evidence.
12. The Appeal Board considered that the decision was within the range of reasonable responses for the following reasons:
 - a. All the evidence was considered, as detailed in the written reasons. While there is no requirement for the evidence considered to be rehearsed exhaustively in written reasons, the Appeal Board were minded that the Disciplinary Commission had clearly referenced all evidence it considered.
 - b. Evidence was presented before that Disciplinary Commission which substantiated the charge. The Disciplinary Commission weighed this against the other evidence and found the charges proved. This weighing-up exercise is described in the written reasons.
 - c. The Disciplinary Commission was mindful of the fact, and indeed explicitly stated, that the burden of proof was on the balance of probabilities. It found the charges proved on that basis. The wording throughout the decision also reflected this.
 - d. The Appeal Board further noted that the appellant had the opportunity to give further evidence, and indeed attend in person, the original hearing. The Disciplinary Commission did however have to make an assessment of the evidence on the papers, which the Appeal Board considered it did reasonably.
 - e. On the basis of the above, the Commission determined on the evidence that the charges were found proved. The Appeal Board concluded this was within the range of reasonable outcomes.
13. The Appeal Board did not uphold the appeal ground that the CFA failed to give the participant a fair hearing. The Commission charged the participant and offered him the opportunity to respond. It proceeded on the papers reasonably. It then went on to consider all evidence, the relevant rules, and the sanction guidelines before reaching its

determination. The Appeal Board noted that Mr Hextall had not provided any specific reasoning as to why the hearing was unfair in the written submissions provided. The Appeal Board had considered his objections to the conclusions on evidence under the previous ground, and determined that this process was in addition procedurally fair.

14. In terms of the fairness of the sanction applied, the Appeal Board concluded that the sanction imposed by the Disciplinary Commission was too lenient and determined that a 10 match suspension and £120 fine should be applied. It made this determination for the following reasons:

- a. The Appeal Board noted that the Commission had determined there were sufficient aggravating factors for a 10 match suspension, however had applied an 8 match suspension due to mitigation in the form of the Appellant's clean offence history.
- b. The Appeal Board determined that the sanction applied was not excessive. It considered that the sanction range was 6-12 matches, and that this case involved multiple instances of aggravated abusive language. It would at the very least attract a sanction above the 6 game standard minimum, and 8 matches was not a harsh outcome in the circumstances even taking into account the Appellant's clean offence history. Similarly, the Appeal Board determined that the ground ban element of the suspension was not unduly harsh, and indeed that the misconduct justified it.
- c. The Appeal Board considered the information submitted by the Appellant that he would miss matches for the other team he is involved with due to the ground ban, in addition to his comments regarding mental health. However, the Appeal Board found that the sanction guidelines were correctly applied.
- d. The Appeal Board however determined that the discriminatory language found proved in this case was particularly egregious and severe in nature. He was found to have said to and/or within hearing distance of a female referee "yes you fucking slag", and "fuck that, I'm not doing that for that bitch". The language used was in layman's terms highly sexist. It was in the Appeal Board's view a serious example of abusive language related to someone's gender.
- e. The Appeal Board noted regulation 21.2 of the Appeal Regulations, which states:

"The Appeal Board shall have power to:... exercise any power which the body against whose decision the appeal was made could have exercised, whether the effect is to increase or decrease any penalty, award, order or sanction originally imposed..."

- f. Taking that into account, the Appeal Board determined that owing to the seriousness of the misconduct found proved, it should exercise its power to increase the sanction applied both in terms of the length of suspension and

the financial penalty imposed. The Appeal Board was also mindful of the need to mark the seriousness of such misconduct towards a female referee. Additionally, the Appeal Board was aware of the potentially corrosive nature of this sort of misconduct on women's participation in football including female officials. The Appeal Board's view was, even giving the Claimant credit for his previous clean disciplinary record, 10 matches together with a ground ban and an increased fine of £120 was an appropriate level of suspension.

15. Accordingly, a suspension of 10 matches and a fine of £120 was deemed appropriate and this sanction was substituted.

Decision

16. The Appeal Board unanimously dismissed the appeal.

17. The sanction was increased from 8 to 10 matches.

18. The fine was increased from £90 to £120, payable to the Respondent.

19. All other sanctions imposed were to remain the same.

20. There was no order made as to costs but the appeal fee is to be forfeited.

21. The Appeal Board's decision is final and binding on all parties.

Richard McLean
Peter Clayton
Yunus Lunat
18 October 2023