

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

ON 20th April 2023

David Reade KC, Emma Vase and Tapan Debnath

BETWEEN:

Kevin Williscroft

Appellant

And

Staffordshire FA

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The Appeal Board (“the Board”) was appointed under The Football Association’s (“The FA”) Disciplinary Regulations- Appeals 2022/23 (“the Appeal Regulations”) to determine an appeal brought by Kevin Williscroft (“the Appellant”) by Notice of Appeal dated 22nd March 2023.
2. By the Notice the Appellant appealed the decision of a Disciplinary Commission, held on 28th February 2023, convened on behalf Staffordshire FA (“the Respondent”), that the Appellant had been guilty of the Offence of E3 - Improper Conduct (including foul and abusive language) and that had been an “Aggravated Breach” as defined by E3.2. The sanction imposed was an immediate suspension from all football and football activities for 28 days, a fine of £50 and a requirement of completion of an online mandatory education programme.
3. The appeal was heard on 20th April 2023 by way of MS Teams. The Appellant attended and was represented by Lyall Thompson. The Respondent was represented

by Mark Ives (Sport Integrity Matters). Ms Collins the Respondent's Senior Regulatory Officer attended as an observer.

4. The Board had before it:
 - a. The Notice, with supporting materials;
 - b. The Respondent's Responses and
 - c. The Decision appealed and its' reasons.
5. The Appellant, through Mr Thompson, made submissions and these were responded to by Mr Ives on behalf of the Respondent.
6. The Board considered the entirety of the materials which the parties put before us and the submissions made. If we do not explicitly refer a particular point, document or submission, it should not be inferred that we have overlooked or ignored it. We have considered all of the matters placed before us.

Background

7. The Appellant was subject to disciplinary charges which arose out of a Facebook posting responding to a previous post. The original post stated "Is it me or does rishi sunak look tired or unwell". The Appellant posted a reply in which he states "Probably had a bad samosa...lmao" followed by smiling emojis.
8. The Appellant did not formally respond to the charge. He had filed a response to the charges with the Respondent in which he stated that this was nothing more than a "silly comment made with no offence to anyone". He also stated that the post was on a personal account, not a football one – though it appeared in a thread regarding football.
9. A Disciplinary Commission was convened which determined the case on paper on 28th February 2023. The charge was found to be proven.
10. The Appellant appealed, the grounds of appeal being relied upon being that the Commission had a) Misinterpreted or failed to comply with the Rules and/or

regulations of The Association relevant to its decision, b) come to a decision which no reasonable body could have come and c) had imposed a penalty, award, order or sanction that was excessive.

Grounds of Appeal

11. The written grounds of appeal introduced material which appeared to be new evidence which had not been before the Disciplinary Commission. This took the form of records showing the frequency of the Appellant's appointment as a referee. Despite it being acknowledged to be new evidence, in submissions, the Notice of Appeal failed to comply with the Rules by making an application to admit that evidence and further failed to explain why it had not been adduced before the Disciplinary Commission.
12. As this appeared to be new evidence the Board considered whether the evidence should be admitted under Rule 10 of the Appeal Rules despite the failure to comply with the requirement for there to be an application in the Notice of Appeal.
13. No explanation was given as to why this evidence had not been placed before the Disciplinary Commission, other than lack of engagement on the part of the Appellant through lack of experience of the disciplinary process. In closing submissions the Appellant's representative sought, without any application, to make a reference to the Appellant's dyslexia as an explanation for his lack of understanding.
14. The Board was not satisfied with the reasons given for the failure to place the evidence before the Disciplinary Commission and there being no exceptional circumstances the Board refused the application to adduce the new evidence.
15. Turning then to the Grounds

Ground 1

16. In summary the argument was that the Disciplinary Commission had erred in the application of the rules in that it had failed to undertake a two stage decision making

process: firstly considering whether there had been improper conduct contrary to E3 and only if it had concluded that there had been considering whether that breach had been aggravated. The Appellant's contention was that the reasons did not show that the two stage process had been followed and that there had been a failure to conclude that that there had been improper conduct contrary to E3.

17. The Respondent did not contest that a two stage process was required.

18. Whilst the Board considered that the reasons of the Disciplinary Commission could have been expressed more clearly the approach was clear if one read the reasons as a whole, in particular paragraphs 20 and 21 when read together. Taking the reasoning as a whole the two stage approach had been applied.

19. The Board therefore rejected this ground of appeal.

Ground 2

20. The contention was that the Disciplinary Commission's conclusion was one which no reasonable body could have reached.

21. It is clear that a different conclusion could have been reached on the facts as established. That is not the test for this ground of appeal. It is not enough that another body may have formed a different opinion of the facts. The decision of the body appealed has to be one that no reasonable body could have reached. The Board was not satisfied that this was the case here.

22. The Board therefore rejected this ground of appeal.

Ground 3

23. The Appellant argued that the penalty was excessive. It was not disputed that the correct form of penalty for the Appellant as a referee was a suspension measured in days rather than matches. The argument was that the frequency of the Appellant's referee activities meant that a 28 day suspension was more onerous than the five

match ban which the reasoning suggested the Disciplinary Commission was looking for the suspension to equate to.

24. The reasoning of the Disciplinary Commission was lacking in its translation of a match based sanction to the 28 period of suspension. However, it had no material before it on which to determine the impact on the Appellant. This was the material which the Appellant now sought to adduce by way of new evidence which the Board refused.
25. Faced then with the lack of any material upon which to conclude that the Disciplinary Commission was unduly onerous we cannot conclude that the decision to make the suspension one of 28 days was excessive.
26. The Board therefore rejected this ground of appeal.

Conclusion

The Board therefore dismisses the appeal.

27. The Board considers that in all the circumstances no order for costs is appropriate, but the appeal fee will be forfeited.
28. The Board's decision is final and binding on all parties.

David Reade KC

Emma Vase

Tapan Debnath

26 April 2023