

THE FOOTBALL ASSOCIATION

GENERAL APPEALS PANEL

Appellant: Mr Macauley Lane
Respondent: Lincolnshire Football Association
Date of hearing: 17 February 2023
Incident date: 13 November 2022
Appeal: Personal, via Microsoft Teams

WRITTEN REASONS AND DECISION

A. THE APPEAL BOARD

1. The Appeal Board comprised Chris Reeves (Chairperson, FA Council Member), Nabila Zulfiqar (Legal Panel Member) and Jamie Russell (Legal Panel Member). None of the Appeal Board Members had any conflict of interest arising out of the Appeal.
2. The Appeal Board was assisted by Conrad Gibbons (Judicial Services Officer) sitting as Secretary.
3. The Appeal was heard via video-conference on Microsoft Teams, with Macauley Lane (the Appellant) appearing in person and Alistair Hayes appearing on behalf of the Respondent.

B. SUMMARY BACKGROUND

4. On 13 December 2022, the Respondent charged the Appellant with breaches of ('charge 1') FA Rule E3 – Improper Conduct (including foul abusive language/behaviour), and ('charge 2')

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

5. The Charge Letter dated 13th December 2022 alleged that the Appellant during a match on 13th November 2022 between Smugglers Old Boys FC (of which the Appellant was a member) and Sands Utd Football Club Charity ('Sands FC') used foul and abusive language to a Sands FC player "fuck off on the sun bed you daft cunt" or similar so as to constitute a breach of FA rule E3.

The Charge Letter further alleged that the words used constituted an aggravated breach as defined by FA rule E3.2 because it included a reference to Colour/Race.

6. The FA appointed Naila Hadid to sit as a Disciplinary Commission ('the Commission') to hear the Charges sitting as Chair alone.

The Commission considered the Charges during a consolidated hearing including E3.1 and E3.2 Charges against the Sands FC player to whom the words alleged to have been used by the Appellant were directed. Those charges were both dismissed by the Commission.

7. The charge was based upon the referee's report of 13th November 2022 which referred to a comment that he heard made by the Appellant "Go back to the sunbeds". He did not know at the time to whom the comment was addressed but as he was about to walk to the changing room a Sands FC player informed him that the comment had been made towards him and that he was mixed race. The referee took no action against the Appellant but did inform the Smugglers FC manager of the complaint.

Statements considered by the Commission were from the Match official dated 13th November 2022 (Appeal Bundle p 18) and 7th December 2022 (Appeal Bundle p19); Lee Dias 26th November 2022 (Appeal Bundle p21); an undated statement from the Appellant (Appeal Bundle p23) and an undated statement from Thomas Thompson (Appeal Bundle p24).

8. The Commission found the E3.2 Charge proven and imposed an 8 match suspension, a fine of £65, 6 Club penalty points and ordered the Appellant to complete an online education course.
9. The Commission provided its decision and written reasons on 7th January 2023 (Appeal Bundle p37).

C. APPEAL

10. On 31st January 2023 a Judicial Panel Chair nominee allowed an application by the Appellant to appeal outside of the regulatory time frames following submissions by both parties.
11. The Appellant's Notice of Appeal (p.3 of the Appeal Bundle) selected the ground of appeal as:
 - (a) failed to give the Appellant a fair hearing
 - (b) misinterpreted or failed to comply with the rules and/or regulations of the Association relevant to its decision.

The Appellant's statement in support of his appeal appears at page 4 of the Appeal Bundle.

12. Prior to the hearing the Appeal Board considered the application by the Appellant to introduce new evidence. The Appellant was informed of regulation 10 of the Non-Fast Track Appeal Regulations of the FA. The Appellant confirmed there was no new evidence he wished to introduce other than anything which could come into that category contained within his statement at page 4 of the Appeal Bundle.

After hearing from the Respondent the Appeal Board refused the application and agreed to ignore any material in the Appellant's notice of appeal that it regarded as new evidence.

13. At the hearing the Appellant confirmed he did not intend to rely on the second ground of his appeal and this ground therefore fell away. After discussion with both parties it was agreed that the Appellant would be permitted to include an additional ground of appeal namely that the Commission came to a decision to which no reasonable body could have come.

14. The Respondent's response to the Appellant's notice of appeal is at p.8 of the Appeal Bundle.

15. The Appeal Board proceeded to hear the Appeal taking into account the submissions of the parties and giving the Appeal Bundle careful consideration.

Reasons

16. With regard to the allegation that the Commission failed to give the Appellant a fair hearing the Appeal Board noted that:

(a) The Appellant had not seen any of the case papers until he received the Appeal Bundle.

- (b) His statement at page 23 of the Appeal Bundle was made on the 8th December 2022 after he had been told by his manager that he needed to make a statement. This was 5 days prior to the charge being issued.
- (c) The Appellant repeatedly queried why there had been no direct communications with himself and consistently maintained that he had not been informed of the details of the charges against him by the Club.
- (d) The Appeal Board was concerned at the lack of detail in the written reasons of the Commission to explain its decision. Paragraph 24 of the reasons simply stated that the Commission “does not accept this as a plausible explanation”. The Commission went on to say “. . . the assessment is not about what the speaker intended or referred to but more about what the impact of the comment was on the receiver.”
- The Appeal Board considered that the reasons did not address on what basis the Commission found that the impact of the words used were such as to justify the finding that the aggravated E3.2 charge was proven.

D. OUTCOME

17. Taking all relevant matters into account the Appeal Board concluded that the Appellant’s complaints as to the fairness of the hearing were compelling due to his lack of awareness of the papers prior to the Commission’s hearing of the case and more importantly the lack of detail in the Commission’s written reasons as to the basis on which the Aggravated E3.2 charge was found proven.

The Appeal Board was satisfied that a hearing where the participant charged had not had a chance to view or respond to the papers before the Commission could be fair.

The Appeal Board was not satisfied that the Commission’s written reasons adequately explained why it had come to its decision and that that factor underpinned the Appellant’s

case that he had not had a fair hearing.

18. The Appeal Board having taken into account the submissions of the parties and having given the Appeal Bundle careful consideration unanimously upheld the appeal on the basis that the Commission failed to give the Appellant a fair hearing.

On that basis the Appeal Board were not required to determine the second ground of appeal namely that the Commission came to a decision that no reasonable body could come to.

19. The Appeal Board in accordance with Regulation 21 of the Regulations ordered the following:

- i) That the charge pursuant to rule E3.2 is expunged
- ii) The charge pursuant to rule E3 having been accepted by the Appellant stands
- iii) The Appeal Board varied the sanction imposed by the Commission to a 2 match suspension, a £20 fine and 5 Club penalty points.
- iv) The online education course is removed from the sanction.
- v) There is no order as to costs and the appeal fee is to be returned.

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

CHRIS REEVES Chair

23 February 2023