

**THE FOOTBALL ASSOCIATION
GENERAL APPEALS PANEL**

Appellant: Mr Marco Black
Respondent: London Football Association
Date: 29 March 2023
Incident date: 15 October 2022
Appeal: Personal, via Microsoft Teams

WRITTEN REASONS AND DECISION

A. THE APPEAL BOARD

1. The Appeal Board comprised Jonathan Darby (Chairperson, Football Panel Member), Ian McKim (Football Panel Member) and Tony Rock (Football 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 Alastair Kay (National Secretary, Berkshire & Buckinghamshire FA) sitting as Secretary.
3. The Appeal was heard via video-conference on Microsoft Teams, with Fiona McNamee appearing on behalf of the Appellant and Carl Long appearing on behalf of the Respondent. The Appellant also attended.

B. BACKGROUND

4. By letter dated 21 November 2022 [AB/57], the Respondent charged the Appellant with a breach of FA Rule E3 – Improper Conduct involving an Assault or Attempted Assault on a Match Official, with an alternate charge of Improper Conduct against a Match Official (including physical contact or attempted physical contact and

threatening and/or abusive language/behaviour), arising out of an incident on 15 October 2022.

5. For completeness, Rule E3 states that:

“E3.1 A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.”

6. The Charge Letter alleged that, on 15 October 2022, during a match between London South United and Independent FC Veterans in the Southern Veterans League Division One, the Appellant used violent conduct and/or threatening and/or abusive and/or indecent and/or insulting language / behaviour contrary to FA Rule E3.1 and it was further alleged that this constituted Assault or Attempted Assault against a Match Official as defined in FA Regulations. This referred to the allegation that he pushed the Club Assistant Referee (“**CAR**”) during an altercation. Furthermore, he is alleged to have been part of a group of players who struck the CAR after he was dragged to the floor.
7. The sanction range for the charge is immediate suspension from all football activity for a period of between 5 and 10 years, subject to the following: i) where the participant is aged 14 or under, the standard minimum shall be 2 years; and ii) where any assault causes serious injury to the Match Official, the standard minimum suspension shall be 10 years. There is also a requirement for an order that the participant completes an education programme before the time-based suspension is served.
8. The Charge was based upon information supplied by the Match Official (including an extraordinary report [AB/62] and email chain [AB/64]); email to all parties [AB/69]; Southern Vets League comments via email [AB/72], [AB/75]; statement from Southern Vets League official Liberatore Di Cesare [AB/81]; Southern Vets League Committee Decision [AB/84]; email chain with CAR [AB/87]; statement from CAR [AB/89]; photographs of the CAR’s injuries [AB/96]; medical report of CAR’s injuries [AB/101]; London South United comments via email [AB/104]; statements from Lloyd Marriott [AB/104], [AB/112]; Riquelme Marriott [AB/105], [AB/113]; Dean Oxley

[AB/106], [AB/114]; Marco Black [AB/106], [AB/115]; Paul McCabe [AB/117]; email from venue [AB/118]; and video footage.

9. The Board also notes that additional evidence was also available to the disciplinary commission that heard the initial charges (the “**First Instance Commission**”) from D’Wayne Townsend [AB/86], [AB/120]; Ed Palmer [AB/121]; Leon Leslie [AB/122]; Paul Barrett [AB/123].
10. The Appellant provided a ‘Deny – Personal Hearing’ response to the Charge [AB/125], [AB/131].
11. The First Instance Commission, sitting on 28 and 29 November 2022 via MS Teams (following a request for postponement on 14 November 2022, which was granted by the appointed Chair by return), found the charge proven and imposed the following sanction on the Appellant:
 - a. To serve a suspension of 5 years from all football activity to include ground / venue ban backdated to 4 November 2022;
 - b. Satisfactory completion of a mandatory face-to-face education programme before the suspension is served or the Appellant be suspended until such time, he successfully completes the mandatory education programme.
12. The First Instance Commission provided its decision and detailed written reasons (dated 30 November 2022) [AB/5]. In its decision, the First Instance Commission noted: Charges [AB/7]; Reply [AB/11]; details of the Commission [AB/12]; Hearing and Evidence [AB/13]; standard of proof [AB/40]; findings and decision [AB/41]; previous disciplinary record [AB/43]; mitigation [AB/43]; sanction [AB/45].

C. APPEAL

13. On 8 December 2022, the Appellant brought an appeal, citing as a sole ground of appeal that the First Instance Commission “*Came to a decision to which no reasonable such body could have come*” [AB/49].
14. Further details were provided by the Appellant in support of his appeal [AB/50], stating inter alia as follows:

"I don't believe the 'guilty' decision made against me was fair. The decision should be based on all of the facts presented and not whether I was deemed to assault a match official (opposition player). There are mitigating circumstances that lead to the initial altercation in the first instance. This entire incident could have been avoided if the assistant referee had followed the rules and the responsibility reasonably expected of an assistant referee. He failed this task, hence the altercation transpire [sic] from his failings.

In looking at this incident in its entirety the first instance you have to look at is whether or not the rules were followed prior to the incident. If the rules were not then the assistant referee needs to be partly accountable.

My situation had been considered, and the FA said I have not followed the rules relating to the code of conduct. Yet it seems the assistant referee is exempt from scrutiny as to whether or not he followed the rules. It was not considered whether the assistant referee played an active role in the triggering of altercation.

All the fact need [sic] to be considered, the assistant referee failed in his responsibilities which lead to the altercation. Had the AR followed the reasonable expected process where he is being subjected to abuse, the first thing they are required to do is raise their flag alerting the referee. Instead he came at me abandoning his duties. Furthermore he admitted he threw down the flag to throw a punch at me, therefore taking the law into his own hands. By these actions of throwing down the flag. This action removes the protection of an assistant referee as he abandons his duties. He has not be made accountability [sic] for any of his or his attempted assault on me.

All facts have not been taken into consideration. This is the basis on which I ask for an appeal to be considered."

15. By document dated 6 January 2023, the Respondent submitted its observations on the Appeal [AB/52].
16. The Appeal Board convened on 1 February 2023. However, the Appellant made an application for an adjournment on various grounds, including that he was suffering from ill health that adversely affected his ability to participate in the hearing. The Appellant's representative also made submissions on the availability of certain additional evidence, and her ability to conduct the appeal having only recently been instructed in the matter, but in the event the application for an adjournment based on the Appellant's ill health was not opposed by the Respondent. The Appeal Board

therefore granted an adjournment, and whilst not making any findings on the further submissions made on behalf of the Appellant, gave directions as to the recirculation of the Appeal Bundle and the timing of any further applications that may be required.

17. The hearing was relisted for 15 February 2023. On 13 February 2023, after the deadline set by the Appeal Board for the making of any further applications, updated grounds of appeal were then received from the Appellant [AB/141], alleging that an adjournment was required *“pending the provision of a transcript of the original proceedings”* and with reference to:

- a. Procedural unfairness *“regarding the approach to the evidence of the Disciplinary Commission, in that no reasonable tribunal, properly directed, could have come to the decision on the charges”*;
- b. Procedural irregularity *“in that inadmissible and highly prejudicial material was presented to the Disciplinary Committee”*;
- c. Disadvantage arising from *“repeated IT issues whereby connections were unstable and lost”*, with reference to a failure to give the Appellant a fair hearing;
- d. Error of law *“in terms of how [the Disciplinary Commission] approached the legal test for self-defence”*;
- e. Disadvantage arising from *“the spectre of a criminal investigation”*.

18. This Appeal Board convened on Wednesday 15 February 2023, with the Appellant then making his application for an adjournment based on submissions addressing the above factors. Given the Respondent’s lack of objection to an adjournment, the Appellant’s application was granted, with directions being given including as to filing and/or receipt of i) the Appellant’s original notes of the First Instance hearing; ii) perfected grounds of appeal and written submissions addressing those grounds of appeal; iii) observations from the Chair of the First Instance; and iv) a final response from the Respondent.

19. Following a short extension of time for compliance, the Appellant subsequently filed his *“Grounds of Appeal”* [AB/143], which raised the following grounds:

- (1) Self-defence (paras 1 – 11), including that *“[b]y not considering self-defence, and the corroborating witness statements the Disciplinary Committee came to a decision to which no reasonable such body could have come to”* (para 11);

- (2) Prejudicial material in the bundle (paras 12 – 15), including that “[a]t p89 of the bundle allegations of criminality were disclosed to the Disciplinary Committee” (para 12) and that “[b]y not redacting irrelevant and prejudicial material, the Association failed to give the Appellant a fair hearing” (para 15);
- (3) Technical issues at the hearing (para 16), including that “the Appellants were disadvantaged by repeated IT issues whereby connections were unstable and lost” (para 16);
- (4) Not regarding available evidence (para 17), including that “[a] request should have been made to the police” for footage allegedly available as part of the police investigation into the incident.

20. In line with the Appeal Board’s directions, the following further material was also received:

- a. The Appellant’s original notes [AB/147];
- b. Observations from the First Instance Chair [AB/155], including an addendum [AB/156];
- c. Final observations from the Respondent (dated 8 March 2023) [AB/157]

21. For the avoidance of doubt, the above is intended only as a summary of the principal submissions made by the parties. It does not purport to contain reference to all the points made, or to all the statements and information provided, and 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 determined the Appeal.

22. At the outset of the hearing, the Appeal Board reminded the parties of the nature of the appeal, including with reference to Regulations 7, 10 and 12 in particular. The appeal process is not an opportunity to have a first instance matter ‘reheard’, it is a review process of the decisions and actions of the First Instance Commission, in relation to the grounds of appeal raised. It is also to be remembered that decisions at first instance are taken on the balance of probability – i.e. that something is more likely than not to have happened.

23. The Appeal Board confirmed that it would hear the appeal with reference to all the points raised in the perfected grounds of appeal [AB/143], rather than confining the Appellant to the single ground stated in his Notice of Appeal. It was noted that the points raised in the Appellant's perfected grounds of appeal fell broadly within the scope of two grounds of appeal available to the Appellant pursuant to the Regulations; namely that the First Instance Commission:
- 2.1 Failed to give the Appellant a fair hearing;
 - 2.3 Came to a decision to which no reasonable such body could have come.
24. It was on this basis that the Appeal Board then proceeded to hear the Appeal, taking into account the submissions of the parties and giving the Appeal Bundle and available footage careful consideration. The Appellant's representative made detailed submissions on the points raised in the perfected grounds of appeal, with particular focus on the issue of self-defence.
25. In reaching its decision on each ground, the Appeal Board noted as follows.
26. With regard to the allegations that the First Instance Commission failed to give the Appellant a fair hearing and came to a decision to which no reasonable such body could have come, the Appeal Board noted inter alia that:
- a. The First Instance Commission provided detailed and thorough reasons for its decision.
 - b. Those reasons included a detailed summary of the evidence submitted to, and heard by, the First Instance Commission. Although the Appellant's representative repeatedly asserted that there were discrepancies in that evidence, the Appeal Board notes that this is often the case with such appeals, with the decision-making body being charged with assessing and weighing the available evidence and then coming to a decision on the balance of probabilities.
 - c. Furthermore, the Written Reasons expressly note that they present a summary of the evidence, as follows (at paras 17 and 18 [AB/13]):

“17. The following is a summary of the principal submissions provided. 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 we did not take such point, or submission, into consideration when we determined the matter. For the avoidance of doubt, we have carefully considered all the evidence and materials furnished with regard to this case.

18. Below is a summary of the main points within the case bundle.”

d. The Written Reasons summarise the live evidence that was heard at First Instance [AB/29], including as follows:

- i. The County witnesses: the alleged victim (para 42, [AB/29]) and three other individuals (para 43, [AB/30]; para 44, [AB/31]; para 45, [AB/32]);
- ii. The Appellant (para 47, [AB/33])
- iii. Mr Loughran-Oxley (para 48, [AB/34]);
- iv. Mr Suleyman (para 49, [AB/36]);
- v. A witness in support of the Appellant(s) (para 50, [AB/37]).

e. The Appellant was permitted to (and did) provide his defence, submitting and giving evidence, calling a witness and making submissions, as summarised in the Written Reasons (para 51, [AB/38]).

f. The First Instance Commission heard and weighed the evidence presented to it in writing, as well as that which was given by witness testimony. It formed relevant conclusions as to the credibility of those witnesses, as well as reaching its decision on the balance of evidence before it.

g. The Written Reasons record (para 51, [AB/38]) that the Appellant was asked if he had received a fair hearing to which he is recorded as having responded as follows (para 51.4, [AB/38]):

“51.4 When asked if he had a fair hearing Mr Black initially stated he was not able to answer that question as the hearing had not been finished. When it was noted by the Chair this referred to the ability to question

the County FA witnesses and to be able to provide their own evidence he believed he had."

27. Taking all relevant matters into account, the Appeal Board concluded that, in essence, the Appellant's complaints as to fairness and the reasonableness of the decision were limited to a disagreement with the outcome of the First Instance Commission. The submissions made by the Appellant's representative often focused on perceived discrepancies in the available evidence and unsubstantiated assertions based upon the availability or otherwise of additional evidence but without any meaningful focus on how, even if correct, those points gave rise to procedural fairness or unreasonableness.
28. In particular, this is true of the submissions that were made with reference to self-defence, which were never developed fully and, in any event, in the Board's view are simply not borne out by a fair assessment of the evidence that was before the First Instance Commission.
29. At paragraph 31 of the Written Reasons, the First Instance Commission recorded the Appellant's evidence and arguments on the causes of the altercation with the CAR, including his allegation that the CAR *"took a step towards me in a manner which I felt was threatening and spat towards me. I instinctively pushed him away with reasonable force to create a greater distance between us. The lineman stepped towards me again and I pushed him away for a 2nd time where he then proceeded to throw punches in my direction and landed a few."* The argument that the Appellant had been acting in reasonable self-defence was therefore clearly before the First Instance Commission and something that it considered, whether or not a detailed analysis of the law of self-defence was set out in the Written Reasons.
30. In any event, however, the Appeal Board was not persuaded that further analysis of the law of self-defence would have led to any different outcome. Further evidence before the First Instance Commission was in conflict with the Appellant's account. In particular, the CCTV footage available to the First Instance Commission and the Appeal Board appeared to show the Appellant striking the CAR without any prior contact or threat from the CAR. Therefore, the Appeal Board considered that the evidence before the First Instance Commission was more than sufficient to support its

conclusion on the Charges, and its analysis would not have been affected by any additional argument on self-defence at the first hearing.

31. In the view of this Appeal Board, it was clearly within the bounds of reasonableness for the First Instance Commission to conclude, on the balance of evidence before it, that the Charge was made out, even if the Appellant's allegations with regard to the CAR's own behaviour on the day in question were taken at their highest.
32. To the extent that the Appellant's representative made submissions with regard to other issues, they were not always developed fully or easy to follow; for example, various submissions were made with reference to the status of the CAR as either a match official or a volunteer. When pressed, the Appellant's representative acknowledged that even taken at its highest this point could only be relevant to sanction, which – as she had confirmed at the outset of the hearing – did not form part of the Appellant's appeal.
33. Insofar as the Appellant alleged that technical issues had prejudiced his ability to receive a fair hearing, the Appeal Board considered that this was not supported by the material available to it. That material included the Appellant's own acceptance that he had received a fair hearing when asked a direct question by the First Instance Commission, as recorded in the Written Reasons (para 51.4 [AB/38]).
34. A further point pursued by the Appellant related to the allegation that prejudicial material was before the First Instance Commission in relation to previous convictions and/or publicised criminality. When the Appellant's representative was pressed in this regard, it became clear that this did not relate to the Appellant and was the material at [AB/89] relating instead to one of the Appellant's co-accused. As such, the Appellant's submissions did not come close to establishing any material prejudice, unfairness or procedural impropriety.
35. Finally, the Appellant argued that additional CCTV footage obtained by the police and shown to him as part of their investigation into the incident would support his account, and had it been available to the First Instance Commission more weight would have been attributed to other evidence that corroborated his account. The Respondent noted that it would not have had the ability to demand this footage from

the police, and requests made on behalf of both the Appellant and the Respondent had not been answered. The evidence that was said to be corroborative was also, in the Appeal Board's view, of very limited assistance to the Appellant's case. The First Instance Commission could not be criticised for proceeding on the basis of the evidence presented to it, and (as noted above) the Appeal Board was satisfied that the First Instance Commission had reached a conclusion that was properly open to it on that evidence.

36. Having taken into account the Appellant's representative's submissions, and having heard from the Appellant himself, the Appeal Board concluded that on balance there was no lack of procedural (or any other) fairness associated with the conduct of the first instance hearing and/or the First Instance Commission's decision. The Written Reasons set out the reasoning and basis for the First Instance Commission's decision in adequate and appropriate detail. In particular, with regard to fairness, the Appellant's representative's submissions were largely related to the perceived 'fairness' of the outcome with reference to the Appellant's opinion as to the balancing of evidence, contradictory evidence and discrepancies, as well as what appeared to be a sense of unfairness arising from the fact that he considered the CAR's actions on the day of the incident to themselves have some degree of blameworthiness. The Appeal Board noted that there was nothing to suggest that the fairness of the process was raised before the First Instance Commission.
37. With regard to the points made as to sanction, even had the complaint been properly raised by a formal ground of appeal into the imposition of a penalty, award, order or sanction that was excessive, the Appeal Board noted that the Appellant's representative chose not to amplify those submissions much beyond the wider criticisms of the outcome of the first instance decision overall. In any event, had this Appeal Board been required to review the imposition of penalty and/or sanction, it would have been noted that – having found the charge proven – the First Instance Commission imposed a sanction of suspension of 5 years, which falls at the bottom end of the sanction range. The imposition of an education programme is also mandatory in such circumstances. Again, on balance therefore, the Appeal Board would have found that the penalty and sanctions imposed fell well within a reasonable range, given the nature of the Charge.

D. OUTCOME

38. The Appeal Board, having taken into account the submissions of the parties and having given the Appeal Bundle careful consideration, unanimously dismissed the Appeal on both grounds.

39. There was no order made as to costs and the appeal fee is to be forfeited.

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

Jonathan Darby, Chairperson

Ian McKim

Tony Rock

3 April 2023