

## DECISION OF AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION

IN THE MATTER OF AN APPEAL BY RAYMOND JOHNSTON (the appellant)  
AGAINST A DECISION BY SOMERSET FA (the respondent)

10 JANUARY 2023

### APPEAL BOARD

Roger Burden (Chair)  
Anthony Biddulph  
David McWilliam

Vicky Collins (Secretary to the Board)

### FOR THE APPELLANT

Raymond Johnston  
David Wilkinson – representing Mr Johnston  
Ian Lanning – Club Secretary, observing

### FOR THE RESPONDENT

Jonathan Pike - County Secretary

### THE APPEAL

#### 1. Summary of the Appeal

The Appellant had pleaded not guilty to a charge under FA Rule E3. – Improper Conduct against a Match Official (including abusive language/behaviour). He requested a personal hearing.

At that hearing, a Disciplinary Commission of the Respondent found the charge proven and issued a sanction of a 3-match ground ban and a £60 fine.

The Appellant appealed that decision on the grounds that the Commission came to decision to which no reasonable body could have come and imposed a penalty, award, order or sanction that was excessive.

#### 2. Other Summaries

- I have summarised below the submissions and our deliberations. As it is a summary, I have not included every detail but the Appeal Board read, listened to, and carefully considered, all the submissions.

### 3. The Written Evidence for the Respondent's Disciplinary Commission

The Disciplinary Commission was provided with the following

- A report from Ali Hajiali, the Match Referee, in which he stated that, at the end of the first half and, particularly at the end of the match, Ray Johnston was rude and disrespectful, arguing about decisions and told the Referee that he didn't have a clue about the game and he was a fucking horrible Referee. Mr Johnston went on to say "I'll have to fucking live with it" and "I'll have to kick the cat when I get home".
- A report from David Smith, one of the Assistant Referees, in which he said that Mr Johnston approached the officials at half time and repeatedly asked about an incident in the match. Mr Smith said that, at full time, Mr Johnston again protested to the Referee for what, Mr Smith thought, was for too long but Mr Smith did not recall any direct abuse or insult. Mr Smith added that his son was a substitute for Radstock Town, Mr Johnston's team.
- A report from Brian Bishop, one of the Assistant Referees, in which he said that, as the officials were leaving the pitch at half-time, Mr Johnston asked the Referee to explain a situation regarding the goalkeeper, which the Referee did try to explain. Mr Bishop then said that, at the end of the game, Mr Johnston approached them again and said to the Referee "you don't have a clue", "I'll have to fucking live with it" and "I'll have to kick the cat when I get home...".
- An email from Ian Lanning in which he said that there was dialog between Mr Johnston and the match officials at half-time and full-time and nothing "overstepped the mark".

### 4. Written Reasons for the Disciplinary Commission's Decision.

- The reasons covered some 13 pages. Extracts from those reasons included paragraphs regarding the decision, the reasonableness of which the Appeal Board has to consider –

"On the balance of probabilities, the Commission decided that Mr Johnston had deliberately confronted the Referee at half time and full time to brow-beat him about his performance during the match and, as a result had therefore intimidated and belittled him directly, causing him considerable discomfort. Additionally, at full time, Mr Johnston had also been mildly derogatory and insulting about the Referee's ability".

"The Commission considered this to be abusive behaviour towards the Referee".

### 5. Summary of Appellant's Written Submissions to the Appeal Board

Mr Johnston's Club submitted a detailed appeal on his behalf, the key points were-

-the decision was based on a flawed probability and it also questioned that the Commission consisted of three Referees and no independent member.

-the fact that Mr Johnston sought to question the Referee as they left the field at half time and at the end of the game, was not disputed. nor that he repeated his questions several times but it was not in a confrontational manner and that it was the Referee's refusal to answer that inflamed the situation.

-the allegation of swearing is not proven and Mr Johnston claims he did not swear.

#### 6. Summary of Respondent's Written Submissions to the Appeal Board

The County FA submitted a comprehensive response to the appellant's appeal. It was signed by all 3 members of the Commission. The key points were-

-one of the Commission members was independent.

- before the hearing, Mr Johnston had confirmed that he was content with the members of the Commission and, at the end of the hearing, he had confirmed that he had received a fair hearing.

-detailed rejection of the appellant's claims in his appeal.

-the fact that in his verbal evidence to the Commission, Mr Johnston had admitted saying "I am going to fucking live with this" but that it had not been directed at the Referee. He could not deny that he had said "you are a horrible Referee" nor "you don't have a clue about the game". The Commission regarded this as derogatory and insulting the Referee's ability.

- having found the case proven, the Commission felt that it fell in the low range of sanctions but noted that Mr Johnston's record showed 3 previous cases of Improper Conduct against Match Officials, the most recent of which (2020) had led to a 6-match suspension and a £115 fine. Consequently, the Commission decided on a sanction in the upper mid-range, leading to the 3-match ban and £60 fine.

#### 7. Verbal Submission to the Appeal Board, on behalf of the Appellant.

- Mr Wilkinson told us that, although one Commission member was independent of the Somerset FA, he and the other 2 members were referees, leading to the real possibility that they would allow their refereeing experience to lead to bias towards the match referee's version of events.
- He said that, at the end of the hearing, Mr Johnston had said that he had received a fair hearing but that was in reference to the range of questions and the general conduct of the hearing. He was not aware that all the members were referees.

- During the game, the referee had made two serious errors for which Mr Johnston wanted explanations, but the referee refused to answer which had inflamed the situation. The best referees are prepared to have dialogue. This referee simply had to say that he understood Mr Johnston's frustration and that he would discuss it later.
- The junior assistant referee (Mr Smith) was closest to the conversations and could have supported Mr Johnston's evidence but he was not available for the time of the hearing.
- With regard to the sanction, Mr Wilkinson said that the Commission had agreed that the case was at the lowest level of sanctions and therefore no suspension was necessary. He said that the mid-range of sanctions was not justified as Mr Johnston's record had been clear for 2 years and he was a changed man.
- Responding to questions from the Appeal Board, Mr Johnston said that he assumed that the Club had asked for Mr Smith to attend but he was not available.
- He agreed that Mr Smith was the father of a Radstock player but said that he was a man of integrity who would give an honest account. He had been asked to stand in because the appointed assistant was not available.
- Mr Wilkinson said that, although Mr Johnston had approached the referee at the end of each half, this was not in a confrontational manner as Mr Johnston was walking alongside the referee. The dugouts are on the opposite side of the pitch to the changing rooms so everyone makes their way across the pitch in the same direction.
- When asked why he regarded the father of a Radstock player to be a man of integrity but appeared to question the integrity of the Commission members, Mr Wilkinson said that it was not a question of integrity but one of unintentional bias.
- Mr Johnston spoke briefly to emphasise that he was not intimidating or aggressive when speaking to the Referee, but he confirmed that he did repeat the question to the referee about 6 times because the referee would not answer him.

#### 8. Verbal Submission by the Respondent

- Mr Pike confirmed that the 3 Commission members were all referees but said that one was independent as he was not connected with the Somerset FA and all 3 had undergone the appropriate FA training and were therefore all qualified to sit.

#### 9. Final Submissions

- Mr Pike said that he had nothing to add.

- Mr Wilkinson said that he wanted to emphasise that the matter was decided upon by 3 referees who would be influenced by their own experiences. There should have been a different balance of membership of the panel.

#### 10. The Appeal Board's Deliberations

- The Board firstly considered the appellant's appeal on the grounds that the Commission came to decision to which no reasonable body could have come.
- The Appeal Board agreed that having 3 referees sitting on a commission is not ideal but is allowed by the FA and is not good evidence that the hearing was unfair. The appellant had agreed that the process during the hearing was fair. It was for Appeal Board to decide, based on all it had read and heard, whether the decision-making was fair or that it had come to a decision to which no reasonable body could have come, the test for which is difficult to overcome as the decision has to be so unreasonable that no reasonable body would have made the same decision.
- The appellant had not produced any evidence to overcome this test. Quite the reverse, he had admitted persistently questioning the Referee at half-time and full-time and had made other remarks that indicated that he was extremely frustrated with the Referee. Whilst the appellant did not see any of this as abusive language or behaviour, the Commission decided that it was, and the Board did not regard this decision as at all unreasonable.
- In considering if the Commission had imposed a penalty, award, order or sanction that was excessive, the Board noted that the Commission had first placed the offence in the low range within the FA's Sanctions Guidelines.
- Those guidelines provide for movement outside the range guidelines where appropriate mitigating or aggravating factors exist. There appeared to be no mitigating circumstances, but the Commission had noted that Mr Johnston's record showed 3 previous cases of improper conduct against Match Officials over the past 5 years, the most recent one (09/09/2020) resulting in a 6-match suspension and a £115 fine. Whilst this was 2 years prior to the current case, the sanction indicates that this was quite a serious offence which, together with the other 2 offences against Match Officials during the 5-year period, added up to clear aggravating factors. The Commission then referred to the FA's mid-range of sanctions to take account of the aggravating factors.
- The Board felt that the 3-match suspension imposed by the Commission was entirely appropriate. One Board member felt that the £60 fine was a little on the high side, but all members agreed that it was not unreasonable and that the Board should not interfere with it.

## 11. The Appeal Board's Decisions

- Both grounds of appeal are dismissed due to the reasons set out above.
- The appellant's appeal fee is retained but no order is made as to costs.

The above decisions are final and binding on all parties.

Roger Burden  
Chair  
12 January 2023