

## DECISION OF AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION

IN THE MATTER OF AN APPEAL BY ROSS MCFALL (the Appellant) AGAINST A  
DECISION BY THE LIVERPOOL FOOTBALL ASSOCIATION (the Respondent)

8 March 2023

### APPEAL BOARD

Roger Burden (Chair), Francesca Keen and Ellie Menezes

Conrad Gibbons (Secretary to the Board)

### FOR THE APPELLANT

Lewis Raper  
Ross McFall  
John McFall (observing)  
Dave Jones (observing)

### FOR THE RESPONDENT

Mark Lloyd (Senior Administrator)

#### 1. Background

- The Appellant was originally charged under FA Rule E3 – Assault Participant on Participant.
- The Respondent offered an alternative charge under FA Rule E3 – Improper Conduct (including violent conduct and threatening and/or abusive language/behaviour).
- The Appellant pleaded not guilty to the first charge. He pleaded guilty to the alternative charge and requested a verbal plea.
- The FA appointed a Commission from its Serious Case Panel. The Commission was informed that the Respondent was not proceeding with the primary, serious charge. The Commission, therefore, had only to hear the verbal plea, together with any character witnesses, re the alternative charge, and then decide on sanction.
- The Commission decided on a sanction of a suspension from all football for 40 matches and a fine of £125, plus 8 penalty points to the Appellant's club.

#### 2. The Appeal

- The Appellant appealed on the grounds that the Commission imposed a penalty, award, order or sanction that was excessive.

### 3. Application to Submit New Evidence

- The Appellant claimed that a statement that he had made was missing from the original hearing and from the Appeal Board's papers. He asked that it could be retrieved from the Respondent and submitted to the Appeal Board.
- He also requested that a team sheet (showing that the recipient of the violent conduct played 2 weeks after that offence) be submitted as new evidence.
- The Respondent was written to by the Appeal Board and asked for clarification regarding the statement but failed to respond. The Appeal Board then invited the Appellant to re-submit it for consideration.
- The statement suggested that the main accusation seemed to be that the Appellant had broken someone's jaw even though it definitely did not happen. He said that the opponent had lunged into him high in a dangerous tackle and that he had lashed out in retaliation. He added that he accepted that his actions were wrong and had pleaded guilty to the improper conduct.

### 4. Summarising the Reasons

The Appeal was determined on the basis of the papers, video and oral submissions. As this is a summary of the reasons, not everything in the papers and submissions is mentioned. However, for the avoidance of doubt, the Appeal Board read, viewed and discussed all submissions.

### 5. Evidence and Submissions before the Respondent's Disciplinary Commission

- The Disciplinary Commission was provided with a number of statements alleging that, after being fouled, the Appellant punched an opponent and stamped on the opponent's head whilst the opponent was on the ground. One of the statements was from the opponent who said that the Appellant stamped on his head and he lost consciousness for about 5 seconds.
- There were several suggestions that the opponent suffered a broken jaw, however, one note from the opponent's mother said that subsequent examinations showed that it was not a fractured jaw but was swelling and bruising.
- Medical notes.
- Videos of the incident.
- Emails from Lewis Raper (Bootle FC Club Secretary) referring to other incidents in the match but there appeared to be no statement from the Appellant in the Commission's papers.
- A verbal plea from the Appellant in which he described the incident as a "tussle". He said that it was a bit of a blur and he did not wish to inflict any sort of harm. He mentioned a recent diagnosis that a family member had received on the same weekend as the match and said that this had been on his mind.

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

The Commission's reasons for the sanction included the following-

- Aggravating factors were that the Appellant had stomped on the back of the player, punched him twice with his right hand and stomped on his face.
- Mitigating factors were the admission to this alternative charge, previous disciplinary record, some provocation as a result of the tackle and personal issues.
- The Commission, having referred to the FA Sanction Guidelines, considered that the maximum of 10 matches was not a sufficient sanction for this particular incident. It referred to the FA Disciplinary Regulations on Page 174 of the FA handbook and in particular the following part of 42.1.

*“A Regulatory Commission may only depart from such standard where it deems it appropriate having regards to the facts of an individual case (for example, where a particular act of misconduct is sufficiently serious that the sanction guideline would not constitute sufficient penalty for the misconduct that has taken place)”.*

- The Commission decided that, in addition to the fine and penalty points, a 50-match ban would address the misconduct but that the mitigating factors merited a reduction of 10 matches.
7. Summary of Appellant’s Submissions to the Appeal Board and the Appeal Board’s deliberations.
1. The sanction was a significant deviation from the guidelines:
    - The guidelines allow deviation where a Commission finds that the act is sufficiently serious, which it did in this case. The Appeal Board saw no reason to disagree as this was an extreme case of violent conduct.
  2. The Commission applied the sanction for assault, for which the Appellant had been found not proven:
    - There was no evidence to suggest that this was the case. The Commission had made no reference to the assault charge when outlining its reasons for the sanction.
  3. There was no risk to the safety of others as the Appellant did not resist when being pulled away:
    - The video showed the Appellant resisting when first being pulled away. He continued to throw punches when confronted by another group of players.
  4. The Commission had noted that the injury sustained was a broken jaw, despite evidence that the jaw was not broken. The new evidence showed that the injured player played 2 weeks later:
    - The Commission did, incorrectly, refer to a broken jaw in its preamble. However, it made no mention of it in its reasons for the sanction. In those reasons, the Commission said that the video speaks for itself and it referred to the stomp to the player’s face and said that alone was a form of excessive force and brutality. The Appeal Board agreed. The stamp to the face was made with force and gave rise to an initial hospital diagnoses of a broken jaw, which was subsequently corrected to severe bruising.

5. The Appellant had not been able to show remorse or apologise as he went on holiday shortly after the game and by the time he returned he had been informed that it was a police matter:
  - We noted that any police involvement had ended by the time of the Commission, yet the Appellant had made no apology in his plea of mitigation to the Commission.
6. The Commission had incorrectly interpreted a mitigating factor, being the dangerous tackle that was made towards the Appellant and had been wrong to only describe the tackle as “reckless”:
  - The tackle was made with excessive force. The Commission had already allowed mitigation for the provocation of the tackle and the Appeal Board agreed that there can be no scale of allowable violence based on the seriousness of a tackle received.
7. The Commission had not applied appropriate mitigation regarding the Appellant’s mother’s health. The Commission had shown a lack of empathy and, at the hearing, had told the Appellant that “he had no place on a football field” after he had received such traumatic news:
  - “Personal issues” were clearly stated as a mitigating factor in the Commission’s reasons and, in the Appeal Board’s view, was appropriately taken into account in the Commission’s decision.
8. The Appellant is at a critical stage in his football development with this being his first year in adult football:
  - This was not a matter that would allow an Appeal Board to interfere with a Commission’s sanction.
9. The Appellant had received an immediate ban due to the serious charge that was dropped, yet the Commission had made no allowance for this ban when setting the dates for the sanction:
  - The Appeal Board agreed to consider this point.
8. The Appeal Board’s Decision re the Appeal
  - As shown above, the Appeal Board found nothing in the Appellant’s appeal to give it reason to interfere with the original decision on sanction.
  - The Appeal Board unanimously dismissed the Appeal.
  - In accordance with Regulation 21 of the Appeal Regulations, the Appeal Board orders that the match-based suspension is back-dated to the date that the interim suspension was imposed as set out in the Charge Letter dated 7 December 2022.
9. Costs
  - There is no order as to costs against the Appellant, but the appeal fee is to be forfeited.
  - The Appeal Board noted that the Respondent had not complied with the order and directions of the Appeal Board (dated 21 February 2023).

- In accordance with Regulation 18 of the Appeal Regulations, the Appeal Board makes an order of costs of £25 against the Respondent. This to be remitted to the Association within 35 days. Failure to do so will result in an increase of 25% of the amount due. Failure to pay within a further 35 days may result in a further order.

10. The above decisions are final and binding on all parties.

Roger Burden  
Chair  
9 March 2023