

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL
ASSOCIATION

DATE 20th January 2023
Case Number 10942802M

BETWEEN

Ryan Golding

Appellant

and

Kent County Football Association

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Disclaimer

These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Commission did not take such a point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, this Appeal Board has carefully considered all the evidence and materials in this matter.

Introduction

1. This is an appeal by Mr Ryan Golding (the “Appellant”) against a decision of Kent County Football Association (the “Respondent”) that was made by the Disciplinary Commission sitting in a personal hearing (via video conference) on the 17th November 2022.

2. A summary of the facts is that as a result of a football match on the 8th October 2022 where Mr. Golding was playing for Halls AFC against Tenterden Town FC, Mr Golding was subject to disciplinary proceedings relating to “E3 – Improper Conduct towards the Match Official (including violent conduct and threatening and/or abusive language/behaviour)”. The charge letter was sent to Halls AFC (addressee Mr. Bradley Marshall, Club Secretary) on 14th October 2022 with a response required by 28th October 2022. The charge was denied and elected to be dealt with by way of a personal hearing via video conference.

3. Those disciplinary proceedings were heard on the 17th November 2022 and the outcome of that hearing was that the Commission imposed a 133 day suspension (effective 20/11/22) and a £75 fine on Mr. Golding and he was ordered to undertake an FA online education course. This was communicated to Mr Golding and Halls AFC on the 24th November 2022.

The Appeal Board

4. This Appeal Board ("We" and "Us") was appointed in accordance with The Football Association's ("The FA") Disciplinary Regulations - Appeals 2022/23 to adjudicate on this case. Assisting the board on this occasion was Shane Comb as FA National Secretary of The Wiltshire FA. For the purpose of fairness, there were no conflicts of interest raised or identified between the Appeal Board and parties in this case.

The Grounds of Appeal

5. The Appellant communicated to the Respondent by way of Notice that he had made the decision to appeal the Disciplinary Commission's decision on the following grounds located in the FA Handbook 2022/23 under Appeals – Non-Fast Track that the Commission:

Ground 1

Came to a decision to which no reasonable such body could have come;

Ground 2

Failed to give the Participant a fair hearing;

Ground 3

Imposed a penalty, award, order or sanction that was excessive.

The Appellant also sought leave to admit new evidence to the Appeal. Regulation 7 states that the Notice of Appeal must apply for leave to present new evidence pursuant to Regulation 10.

Regulation 10

The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Such application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied with the reason given as to why it was not, or could not, or could not have been, presented at the original hearing and that such evidence is relevant. The Appeal Board's decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given the opportunity to respond.

The Hearing and Evidence

6. The Appeal Board heard this case on the 20th January 2023 from 11.00 online via Teams. Mr Golding was in attendance and was represented by Mr Chris's Michaleas, Halls FC Club Secretary with Mr George Michaelas Halls AFC Manager observing. For the Respondent was Mr Jonny Ricketts, Senior Football Services Officer of the Kent FA. The Appellant was reminded that this was a review and not a re-hearing of the decision made by the Disciplinary Commission.

The following documents were presented to us for this appeal:

- 6.1. Notice of Appeal;
- 6.2. Statement from Mr Chris Michaelas;
- 6.3. Response to Notice of Appeal from Mr Jonny Ricketts;
- 6.4. Supplementary Correspondence;
- 6.5. Papers of First Instance;
- 6.6. Participant Offence History;
- 6.7. Results Letter;

6.8 The Decision and Written Reasons of the Commission.

7. As a preliminary matter, the Appeal Board considered a request to submit New Evidence by the Appellant on 17th January 2023, in accordance with Regulation 10 of the Disciplinary Regulations in the FA Handbook 2021/22, p.167. The New Evidence was in the form of written submissions. The Appeal Board were satisfied that the New Evidence should not be admitted under the exceptional circumstances criterion. The reasons for not allowing the application were the fact that the New Evidence was not accompanied by an application to submit new evidence, the lateness of the submission and that the content of the evidence was not material to the Appeal.

Ground 1

8. In respect of the first ground – “ Came to a decision to which no reasonable such body could have come”

The Appellant was charged at first instance with E3.1 Improper conduct towards the match official (including threatening and/or abusive language/behaviour) where he is alleged to have said to the referee “I will wait for you outside after the game” or similar.

Rule E3.1 provides that:

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.

The FA Disciplinary Regulations specify offences against match officials into three categories

Threatening behaviour;

Physical contact or attempted physical contact; and

Assault or attempted assault.

The first offence of *Threatening behaviour* is the relevant offence in this matter

The FA Regulations go on to specify what constitutes *Threatening behaviour*

Regulation 96 defines: 96.1

Threatening behaviour as words or action that cause the match official to believe that they are being threatened. Examples include but are not limited to the use of words that imply (directly or indirectly) that the match official may be subjected to any form of physical abuse either immediately or later, whether realistic or not, the raising of the hands to intimidate the match official; pretending to throw or kick an object at the match official.

The question for the Appeal Board to consider in respect of Ground 1 was that, on the balance of probabilities, did the Appellant's words and/or actions cause the match official to feel threatened and as such could the Commission have come to a reasonable decision when it found at first instance that the Appellant had used threatening words and/or conduct.

In evidence in the first instance the referee, Haniel Whitmore, stated that the words used by the Appellant were “intended as a threat” and therefore it is a reasonable assumption that the referee felt threatened by the Appellant.

The question then arises did the Appellant use such words or were his actions such that on the balance of probabilities a threat was made to the match official? The Appeal Board relied on the written evidence of both the Appellant and the Respondent from the first instance, of the oral testimony given to the Commission and video evidence submitted by the Appellant at the first instance.

With regard to the written and oral evidence submitted at the first instance hearing on behalf of the Appellant, the evidence was vague and in the form of denial or not having heard the words "I'll wait for you after the match" or similar. There was a complete lack of a positive assertion from a witness that the Appellant did not use the threatening words. The best explanation offered on behalf of the Appellant was that any words used were misconstrued. Accordingly, the Appeal Board came to a unanimous view that the evidence for the Appellant lacked cogency.

With regard to the written and oral evidence submitted at the first instance hearing by the Respondent, the three match officials (the referee and two referee's assistants) all corroborated each other and were consistent with a threat having been made to the referee by the Appellant. Accordingly a great deal of cogency was attributed by the Appeal Board to this evidence.

Turning to the video evidence, at the Appeal time was given over to the video evidence. The video camera was sufficiently far enough away that the audio was completely unintelligible and as such could not be relied upon. This was accepted by all participants. With regard to the video itself, it clearly shows there is an exchange of words between the referee and the Appellant. However other than the fact there was an exchange, the video evidence is inconclusive. However, in written evidence and oral testimony at first instance, evidence given on behalf of the Appellant confirmed that the Appellant was in an irritated state and displayed a belligerent manner and refused several times to leave the area of play. In evidence at the Appeal, Mr. Chris Michaelas did concur that around the time of the exchange which was witnessed on the video evidence, the situation did quickly escalate and that the Appellant was in a state of ire and that this exchange was somewhat heated.

Assessing the lack of cogency of evidence from the Appellant, the strong corroborative nature of evidence from the Respondent and the fact that a heated exchange occurred between the Referee and the Appellant from which the Referee felt threatened, the Appeal Board concluded that on the balance of probabilities a threat was made by the Appellant to the match official and as such the Commission came to a conclusion that a reasonable body would make and thereby the case against the Appellant is proven.

Ground 2

9. In respect of the second ground – "Failed to give the Participant a fair hearing"

The Appellant at first instance denied the charge and asked for a personal hearing at which he attended along with a representative and 2 witnesses. When asked by the Commission Chairman if he felt he had received a fair hearing both the Appellant and his representative Mr. George Michaelas confirmed that he had been treated fairly and given a fair hearing. When asked about this by the Appeal Chair, Mr Chris Michaelas said that although the Appellant had confirmed he had received a fair hearing at first instance, on reflection he felt he had not.

When questioned at Appeal about why on reflection the Appellant felt this, the explanation offered was that the Appellant felt the Chairman of the Commission had pursued a line of questioning that asked witnesses to speculate when they had not been present when events happened which he felt was inappropriate. It was also offered that due to some technical interruptions the Appellant did not hear everything.

The Appeal Board took the view that there was no evidence offered to support such an assertion about the Chair's questioning and was a matter of opinion rather than fact and as such cannot be relied upon. With regard to the technical difficulties, again no cogent evidence was offered about this and both the Appellant and the Respondent would have been similarly affected. Added to this the fact that the Appellant had confirmed he had received a fair hearing at first instance and which was supported by his representative at the time but upon receiving an unfavourable outcome had on reflection decided he did not have a fair hearing, was felt by the Appeal Board to be something of a cynical attempt to bring about a favourable result at Appeal. Accordingly, the Appeal Board concluded that the Appellant did receive a fair hearing

from the Commission. It is worth mentioning that at the Appeal, Mr Chris Michaelas volunteered a thank you to the Appeal Chair for allowing him to elaborate on all of his points raised.

Ground 3

10. In respect of the third ground – “Imposed an award or sanction that was excessive”

The range available to the Disciplinary Commission for a charge under FA Rule E3 Improper Conduct against a Match Official (including threatening and/or abusive language/behaviour) is:

-suspension from all football activities for a period of between 56 days and 182 days. The recommended entry point, prior to considering any mitigating or aggravating factors is 112 days.

-a fine of up to £100 with a mandatory minimum fine of £50.

-The Disciplinary Commission shall also impose and FA Education Course before the time based suspension is served.

The sanction actually imposed by the Commission was:

-suspension from all football activities for 133 days.

-a fine in the sum of £75 (seventy five pounds)

-an order to complete an online education course to be completed before the time based suspension is served

-Halls AFC shall be subjected to 7 disciplinary points

Having found that the case against the Appellant was proven at first instance, the Commission set about considering both mitigating and aggravating factors for the sanction against the Appellant. A 133 day suspension was arrived at by imposing the entry point of 112 days and adding a further 6 weeks for aggravating behaviour of continuing poor behaviour after his sending off, a lack of any remorse or insight and the fact that as captain he should be setting an example. However, this 6 weeks aggravated behaviour was reduced to 3 weeks in light of the Appellant's good disciplinary record.

At the Appeal, the Appeal Board was asked to consider the fact that the Appellant was in fact not the Captain. It was felt by the Appellant's representative that the 112 day entry point should in fact be reduced on the basis of the good disciplinary record and that there were no aggravating factors to consider.

When questioned as to whether the Appellant was captain for the match in question, it was confirmed that he was not in fact captain that day. When questioned if the Appellant had been captain or was sometimes captain it was confirmed that he had been captain on one occasion this season. It was however, also established that the Appellant is a senior player and in training is used as a role model for other players in the club.

The Appeal Panel took the view that the aggravating factors were not in any way diminished by the fact that the Appellant was not captain that day and indeed his status as a senior player who is used as a role model at the club was, as such, a major aggravating factor along with the Appellant's belligerent behaviour and demeanour at the time of the incident. Therefore the Appeal Panel concluded that the sanction was not excessive and should remain in place.

The Decision

11. The Appeal Board did not accept the Appellant's first ground of appeal that the Disciplinary Commission came to a decision that no reasonable such body could have come to. Rather, it

found that the Disciplinary Commission were right to come to the decision they did with the papers and cogency of evidence before them. The Appeal Board also reminded itself that the role of the Appeal Board is to review the decision of the Disciplinary Commission and not re-hear the matter. Accordingly the Appeal Panel dismissed the Appellant's First Ground of Appeal.

12. The Appellant had previously confirmed that he had received a fair hearing at first instance and did not offer a credible explanation as to why he subsequently took the view that he did not received a fair hearing on reflection. Accordingly, the Appeal Panel dismissed the Appellant's Second Ground of Appeal

13. The Appeal Board unanimously agrees with the sanction imposed by the Disciplinary Commission and agrees with the aggravating and mitigating factors for the sanction imposed. Accordingly, the Appeal Panel dismissed the Appellant's Third Ground of Appeal.

14. There is no order made as to costs and the appeal fee is to be retained.

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

Paul Richardson, Chair, Christine Harrop-Griffiths, Peter Clayton 23rd January 2023