

IN THE MATTER OF AN APPEAL BOARD

BETWEEN:

HEREFORDSHIRE FOOTBALL ASSOCIATION

And

DANIEL MOON

DECISION AND REASONS ON APPEAL AND DECISION ON SANCTION

Introduction

1. The Football Association (“The FA”) appeals pursuant to The FA Disciplinary Regulations (“the Regulations”) against a decision of a Disciplinary Commission sitting on behalf of Hereford County Football Association (“the Commission”) made on 26 July 2023 (“the decision”) in respect of Mr Daniel Moon. He was subject to a suspension of seven matches.
2. The FA appeals in respect of the original Commission’s failure to consider the Mr Moon’s correct disciplinary record when reaching its decision.
3. Pursuant to Part C, Appeals, Non-Fast Track of the Regulations (pg 189 of The FA Handbook 2023/24), The FA appeals on the grounds that the Commission:
 - i. Misinterpreted or failed to comply with the Rules and/or Regulations of The Association relevant to its decision (1.1); and/or ii.
 - ii. Imposed a penalty, award, order or sanction that as so unduly lenient as to be unreasonable.
4. As will be apparent from the Reasons set out below, we have allowed this appeal on both grounds. We wish to make clear the failure to consider the correct disciplinary record arose through no fault of the Commission. The Reasons they provided for their decision were otherwise exemplary. The Commission was misinformed that he had a clean record. It had no reason to doubt the accuracy of the information it was provided at that time.

Background

5. On 24 May 2023, the Respondent was charged with Misconduct for a breach of FA Rule E3 which was alleged to also amount to a breach of FA Rule E3.2, for the use of the words “*you fucking poof*” (or similar).

6. The Respondent denied the charges and requested that they be considered by way of a personal hearing.
7. A remote hearing took place on 24 July 2023.
8. The Commission considered written and oral evidence of James Cairns, the Assistant Referee, and James Whittington, the Match Referee. The Commission also considered video footage of the fixture, as well as written and oral evidence from the Respondent.
9. Having heard all the evidence, the Commission went on to determine whether the charge was proven or not. It did so on to the civil standard of proof, namely, the balance of probabilities. The decision and reasons for it are set out in a document entitled Decision and Written Reasons dated 26 July 2023 (which is annexed hereto as Appendix A).
10. The Commission determined that the charges were found proven, and then went on to consider the appropriate sanction. At paragraph 28 they record that:

“In view of the charges being found proven, the Commission was informed of Mr Moon’s previous disciplinary record for the previous five seasons. Mr Moon had a clean disciplinary record with no misconduct charges brought against him during that time.”
11. They considered the sanction range and the Commission noted as follows:

“Reference was made to all of the FA Rules including the Disciplinary and Sanction Guidelines in arriving at the sanction. The sanctioning range for a breach of FA Rule E3.2 is a suspension of 6-12 matches. 6 matches is the standard minimum suspension a Commission may impose. The Commission must also order that Mr Moon completes an education course.”
12. The Commission identified 3 aggravating features:
 - (a) Mr Moon used foul language at the time of the aggravated breach;
 - (b) Mr Moon had a position of responsibility as his team’s Manager; and
 - (c) Mr Moon attempted to conceal the breach by telling the Commission that he had said “*powder puff*” instead of “*fucking poof*”.
13. The Commission concluded that, prior to considering mitigating features “*a suspension of nine matches would be appropriate*” (emphasis added).
14. The Commission then considered the following mitigating factors:
 - (a) Mr Moon’s clean disciplinary record; and
 - (b) Mr Moon’s extensive work in his local community.

15. The Commission imposed a 7 match ban (i.e. a reduction of two games from the starting point having regard to mitigation). It also required Mr Moon to undertake an online education course before the match-based suspension has been served.
16. Contrary to the position set out in the Written Reasons Mr Moon does not have a clean disciplinary record. His disciplinary record includes the following:
 - (a) Following an incident on 8/9/18 he was charged with an offence of Improper Conduct against a Match Official - (including abusive language/behaviour). He received a 2 match suspension. A fine of £40 was also imposed.
 - (b) Following an incident on 19/9/18 he was charged with an offence of Improper Conduct against a Match Official - (including abusive language/behaviour) for which he received a 3 match suspension. A fine of £65 was also imposed.
 - (c) Following an incident on 19/1/19 he was charged with an offence of Improper Conduct against a Match Official - (including abusive language/behaviour). He received a fine of £90.
 - (d) Following an incident on 20/7/21 he was charged with an offence of Improper Conduct against a Match Official - (including abusive language/behaviour). He received a 2 match suspension. A fine of £55 was also imposed.
 - (e) Following an incident on 18/12/21 he was charged with an offence of Improper Conduct against a Match Official - (including abusive language/behaviour). He received a fine of £35.
 - (f) Following an incident on 9/4/22 he was charged with an offence of Improper Conduct against a Match Official - (including abusive language/behaviour). He received a 1 match suspension. A fine of £50 was also imposed.
 - (g) Following an incident on 10/12/22 he was charged with an offence of Improper Conduct against a Match Official - (including abusive language/behaviour). He received a 4 match suspension. A fine of £106.25 was also imposed.
17. In addition to his persistent improper conduct against match officials, Mr Moon has also been sanctioned for a failure to comply with a sanction for which he received a 2 match suspension and a £40 fine. This additional sanction was imposed because he failed to comply with a prior sanction which prohibited his attendance at a match.

The application to adduce fresh evidence

18. The FA state in their Grounds of Appeal that:-

“As part of the Commission’s assessment as to the appropriate sanction, the Commission stated that the Respondent had a ‘clean disciplinary record’. This was incorrect. The Respondent in fact had 7 previous proven offences involving dissent and/or abusive language within the last 5 years. The Respondent also had a

previous offence for failing to comply with a decision of The Association by for attending a fixture in breach of a 4-match ground ban, along with other matters.”

19. Regulation 131 of the Disciplinary Regulations, Section Three: Provisions Applicable to Category 5 states that:

“Where the Charge is found proven the Disciplinary Commission will decide what punishment, if any, is to be imposed. In so doing, the Disciplinary Commission must consider the overall nature and effect of the offence(s) and the Player’s disciplinary record during the current playing season and the previous five playing seasons and any plea in mitigation...”

20. This did not happen because the Commission was misinformed.

21. The FA seeks permission to adduce fresh evidence in this Appeal – namely, Mr Moon’s correct disciplinary record. Regulation 10 of the Non-Fast Track Appeals Regulations (p190) states:

“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. Any 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 (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) 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 an opportunity to respond.”

22. The correct disciplinary record is obviously relevant to sanction. The Commission failed to account for an aggravating feature – namely a poor disciplinary record containing 7 offences relating improper conduct against a match official and gave credit for mitigation was not present – namely a clean record. We recognise that these are two sides of the same coin. The second limb of the test – i.e. is the material relevant? – is easily satisfied.

23. As for the reason why this was not adduced before the original Commission, we have been provided with an e-mail chain which is attached as Appendix 1 to the FA’s Appeal. The Regulatory Commission Chair notes:

“I have reviewed my notes from the hearing which state that the Commission were advised that Daniel Moon had no previous misconduct charges raised against him. The Commission therefore made a decision on sanction based on there being no previous misconduct charges, whether they be other E3.1/E3.2 charges or otherwise.”

24. This understanding is expressly set out in the Commission's Written Reasons.
25. In an e-mail dated 2 August 2023 from Richard Pallott, The Football Services Manager, accepts responsibility for the error:-

"It would appear that this is entirely my fault as I have given the information incorrectly to the panel, I have read across the top of the record which was entirely blank but that was of course for the 23/24 season, I have no idea why I haven't glanced below.

I can only apologise for this, and the extra work and hassle this has caused, as an experienced secretary I should have been more diligent."

26. We accept Mr Pallott's explanation. Plainly, it should not to have happened. There can be no doubt that this has caused – as Mr Pallott candidly accepts – 'extra work and hassle'. But, regrettably, mistakes can and do happen.
27. Mr Moon must have appreciated Mr Pallott's his error and he did not correct it.
28. The General Provisions to the Disciplinary Regulations state at paragraph 5

"All parties involved in proceedings subject to these General Provisions shall act in a spirit of co-operation to ensure such proceedings are conducted expeditiously, fairly and appropriately, having regard to their sporting context."

29. Mr Moon did not act in the spirit of co-operation to ensure that the proceedings were conducted fairly and appropriately in that he failed to point out the error made by Mr Pallott when inaccurate information about his disciplinary record was provided.
30. Therefore we are satisfied that we should admit the new evidence which is obviously relevant to sanction.

The Appeal

31. Having admitted the new evidence, we now consider the Appeal.
32. As we note in paragraph 19 and 20 above, the Commission did not consider the Mr Moon's actual disciplinary record.
33. Mr Moon's previous record reveals a lengthy and frequent pattern of foul and abusive language. Although his previous breaches have involved incidents where foul and abusive language has been directed at match officials, and here the abuse was directed at the opposition manager, we do not consider anything turns on that difference.

34. We also acknowledge that this was Mr Moon's first aggravated breach. There is no history of homophobic abuse. We also acknowledge that the sanction imposed was the most severe sanction that Mr Moon has received to date.
35. The charge to which this Appeal relates was Mr Moon's most serious offence to date. If Mr Moon was in fact someone with a clean disciplinary record, we consider that a 7-match suspension was justified for calling a fellow participant a '*fucking poof*' for the reasons set out by the Commission.
36. We are satisfied that had the Commission known about Mr Moon's actual disciplinary record, which was and is poor, it would have imposed a significantly greater sanction in relation to the offence which the Commission found proven. The disciplinary record was highly relevant.
37. We are satisfied that the Commission imposed a sanction which was so unduly lenient as to be unreasonable. The sanction was based on the erroneous premise that he had no relevant disciplinary record and that his previous good record mitigated his actual offence. Plainly, a more serious sanction would have been imposed had the correct position been known.
38. Accordingly, this Appeal should be allowed.

Remedy & Sanction

39. We sanction Mr Moon on the basis of the factual findings made by the original Commission save with the modification that we consider his actual disciplinary record. We do so because, we are otherwise, in complete agreement with the approach adopted by the Commission.
40. We have considered the FA Rules including the Disciplinary and Sanction Guidelines in arriving at the appropriate sanction.
41. We note that the sanctioning range for a breach of FA Rule E3.2 is a suspension of 6-12 matches. Six matches is the standard minimum suspension a Commission may impose. The Commission must also order that Mr Moon completes an education course.
42. The following aggravating factors were considered:
 - (a) Mr Moon used foul language at the time of the aggravated breach;
 - (b) Mr Moon has a position of responsibility as his team's Manager;
 - (c) Mr Moon attempted to conceal the breach by telling the Commission that he had said "powder puff" instead of "fucking poof";
 - (d) Mr Moon has a very poor disciplinary record.

43. Prior to considering any mitigating factors, we consider that a suspension of 11 matches would be appropriate.
44. We take account of the following mitigating factor:
 - (a) Mr Moon's extensive work in his local community.
45. Accordingly we order as follows:
 - (a) The Appeal is allowed.
 - (b) The 7-match suspension is increased to a 10-match suspension on the same terms as imposed by the original Disciplinary Commission.
 - (c) The remainder of the terms imposed by the original Disciplinary Commission remain as imposed, including the requirement to complete an online education course before the match-based suspension is served.
46. Although the Appeal has been successful, we have concluded that there should be no order as to costs of the appeal. The Appeal was necessary because of the FA's failure to provide the correct information at the time of the original hearing. We do not consider that the costs of the Appeal should be borne by Mr Moon.

Dominic Adamson KC

Emma Vase

Daniel Mole

11 October 2023