

WETHERBY ATHLETIC JUNIORS (Appellant)

-and-

WEST RIDING FA (Respondent)

DECISION OF THE APPEAL BOARD 18 DECEMBER 2023

1. The Appeal Board comprised:

Roger Burden (Chair) - Former FA Council Member
Dennis Strudwick - Football Panel Member
Glenn Moulton - Football Panel Member

Appeal Board Secretary was Shane Comb – FA National Secretary

2. Nick Delafield represented the Appellant.
3. Jack Mason represented the Respondent.
4. The Appeal was held on-line. The fact that some matters are not referred to in this summary should not be assumed to mean that they were not considered. The Appeal Board carefully listened to, watched, read and considered all the submissions.

BACKGROUND

5. Following a game played between the Appellant's U13 team and Hunslet U13, played on 24 September 2023, the Appellant lodged a complaint against the conduct of its opponents. The complaint was supported by video evidence and 11 witness statements from parents and players.
6. Despite all this, the Appellant was charged under FA Rule E20 - Failed to ensure directors, players, officials, employees, servants, representatives, spectators and/or its supporters (and anyone purporting to be its supporters or followers) conducted themselves in an orderly fashion whilst attending any match.
7. The Appellant did not appear to respond to the charge, which was found proven by the Respondent's Disciplinary Commission. The Appellant was fined £15 and charged a £30 hearing fee.

Summary of the Original Commission

8. When making its decision, the Commission had before it a statement from the Appellant, complaining about the behaviour of its opponents, together with a video of the match, also submitted by the Appellant. It did not have any of the 11 witness statements that had been submitted by the Appellant in support of its complaint.

The Appeal

9. The Appellant appealed on the grounds that the Commission failed to give the Appellant a fair hearing.

The Appellant's Appeal

10. The Appellant suggested that the hearing had been unfair because it had pleaded not guilty and requested a personal hearing.
11. The Appellant stated that it had brought the attention of the Respondent to the behaviour of the opponents and had submitted substantial evidence (the video and 11 witness statements in addition to its statement of complaint) to the Respondent.
12. The Appellant did not receive a personal hearing but was notified of the sanction.

The Respondent's Written Response to the Appeal

13. The Respondent stated that an error had occurred in the system and the Appellant's request for a personal hearing had been changed to "no-response".
14. The Respondent requested that the Appeal be upheld and the matter be remitted to a re-hearing.

The Oral Submissions to the Appeal Board.

15. Mr Delafield said that he thought that the written submission covered all his points and he had nothing to add.
16. Mr Mason confirmed that the Appellant had requested a personal hearing but that an error in the system had changed this to "no response".
17. He stressed that although the Respondent agreed that the Appeal should be upheld, the Respondent should not be held accountable for any costs as it was clearly an FA systems error.
18. In responding to the Board's questions, Mr Mason said that the Commission had deemed the Appellant's statement of complaint, together with the video, which showed mass confrontations, sufficient evidence to find the charge proven.
19. He said that the Respondent had seen no value in submitting to the Commission any of the 11 witness statements as they all said the same thing. He added that it was the Respondent's responsibility to put forward evidence to support its charge and it was the Appellant's responsibility to put forward evidence in its defence.

Closing Submissions

20. For the Respondent, Mr Mason said that he was content with the submissions and had nothing to add.

21. For the Appellant, Mr Delafield said that he was absolutely astonished that the Appellant had been charged as a result of raising a complaint and supplying substantial evidence to support it, including the video showing one of his team being assaulted and a spectator jumping the barrier and placing hands on one of the Appellant's boys. He said any actions by his boys were clearly in defence of their teammates.
22. He said he had never before complained about a team but this game would live long in the memory and had a dramatic effect on the team, with 2 boys having left due to what had happened.

The Appeal Board's Deliberations and Decisions.

23. The Board was entirely satisfied that the failure to give the Appellant a personal hearing was due to a systems error and was no fault of the Respondent.
24. The Board felt that, based on the evidence that was submitted to the Respondent - the substantial complaint, the video and 11 witness statements, after which there was no evidence of an investigation taking place, the charge was difficult to justify.
25. Unfortunately, of this evidence submitted by the Appellant, the Respondent chose to only submit the complaint and the video. The witness statements were not seen by the Commission.
26. The Appeal Board felt that, if the Commission had seen all the evidence submitted by the Appellant, it would most likely have found the charge not proven, based on the appropriate standard of proof - the balance of probabilities.
27. As a result, rather than remit the matter for a re-hearing (which would likely be some 5 months after the match), the Appeal Board decided to exercise its power in accordance with Regulation 21.2 of the FA's Non-Fast Track Appeal Regulations which gives the Appeal Board the power to:
"exercise any power which the body against which the decision the appeal was made could have exercised...."
28. The Appeal is upheld on the ground "Failed to give the Appellant a fair hearing" as it not only did not receive the personal hearing requested, but, in the hearing that it did receive, the Commission was not given all the evidence.
29. Recognising the weakness of the original charge, the Appeal Board orders the charge and sanction to be withdrawn and considered void.
30. The fine and Hearing Fee are to be returned to the Appellant.
31. The Appeal Fee is to be returned.
32. There is no order as to costs.

These decisions are final and binding on all parties.

Roger Burden (Chair)
Dennis Strudwick
Glenn Moulton

19 December 2023