

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

WOODHOUSE FC (Appellant)

-and-

WEST RIDING FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member
Paul Tompkins – FA Council Member
Martin Hill – Independent Football Panel Member

Secretary: Conrad Gibbons – Judicial Services Officer

Date: 3 February 2023

Venue: Held remotely via Microsoft Teams

INTRODUCTION

1. The Appeal Board was appointed to determine an appeal under the Disciplinary Regulations – Appeals (“the Appeal Regulations”) of The Football Association (“The FA”).
2. The Appeal Board conducted a paper hearing on 3 February 2023 to determine an appeal by Woodhouse FC (“the Club”) against the decision of a Disciplinary

Commission convened by West Riding FA which considered the case as a paper hearing on 20 December 2022. The Commission found the case proven and produced written reasons dated 3 January 2023.

3. The Club submitted a Notice of Appeal asserting that the Commission had imposed a penalty, award, order or sanction that was excessive.
4. The Appeal Board had before it a bundle (“the Appeal Bundle”) containing the following documents:
 - Notice of Appeal
 - Response to Notice of Appeal
 - Papers of First Instance
 - The Club’s Offence History
 - Results Letter and Written Reasons
5. This document constitutes the written reasons for the Appeal Board’s decision. The Board considered the entirety of the materials that the parties put before it. If this document does not expressly refer to a particular point, document or submission, it should not be inferred that the Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

6. The charge arose out of a match between Halifax Panda FC First and the Club which was played on 27 November 2022 (“the Match”).
7. Following the Match, West Riding FA received an email from the referee saying that he had had to abandon the Match with ten minutes remaining because the Club’s players had decided to walk off the pitch.

THE CHARGES

8. On 7 December 2022 West Riding FA charged the Club with a breach of Rule E20 of the Rules of The FA.

9. The charge letter sets out the details of the charge in the following terms:

“It is alleged that the club failed to ensure that Directors, players, officials, employees, servants, representatives, conduct themselves in an orderly fashion and refrained from improper, violent, threatening, abusive, indecent, insulting and/or provocative words and/or behaviour contrary to FA Rule E20.

This refers to the allegation that the club refused to continue with the game / taking their players off the pitch. This caused the abandonment of the game”.

10. The Club accepted the charge and indicated that it wanted the case to be dealt with at a non-personal hearing. It submitted a statement outlining the reasons why its players walked off the pitch.

FIRST INSTANCE DECISION

11. As indicated above, the case was referred to a Disciplinary Commission, which considered the case on 20 December 2022. The Commission had before it the referee’s report referred to in paragraph 7 above and the Club’s submission referred to in paragraph 10 above.

12. After considering the evidence, and based on the Club’s acceptance that its players left the pitch and caused the Match to be abandoned, the Disciplinary Commission found the charge proven.

13. The Commission imposed a financial sanction on the Club of £140.00.

NOTICE OF APPEAL

14. Together with its Notice of Appeal, the Club sent a short statement explaining why, in its view, the sanction was excessive:

“We are disappointed with the outcome of the previous hearing. We’d like to appeal the decision. We feel the fine imposed on us is excessive. We took our players off the field of play before another one was assaulted. The referee offered us no protection. Our opponents have form for assaulting players and officials

and we did not want a repeat of this. Our players safety will always remain number one priority for us. Could we please be advised on what to do if this situation arises again? We had be praised in the previous 3 games for our conduct towards referees, etc.

We hope that the fine imposed on us is reduced significantly and we can move on from this. We would like to hear the advice from the Fa/West Ridings regarding what to do in this situation. Reporting referees doesn't work, we've tried that route before. They seem to be untouchable and their word is gospel."

THE APPEAL REGULATIONS

15. Regulation 2 of the Appeal Regulations sets out the grounds on which a participant may appeal a first instance decision. They are:

"... the body whose decision is appealed against:

2.1 failed to give that Participant a fair hearing; and/or

2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or

2.3 came to a decision to which no reasonable such body could have come; and/or

2.4 imposed a penalty, award, order or sanction that was excessive."

16. Regulation 12 of the Appeal Regulations states:

"An appeal shall be by way of a review on documents only..."

17. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal.

THE CLUB'S SUBMISSIONS

18. As indicated in paragraph 3 above, in the Notice the Club relied on just one of the grounds of appeal cited in paragraph 15 above, namely that the penalty imposed on it was excessive.

19. The Appeal Board understood the Club's main argument to be that it took its players off the pitch because they were being assaulted and given no protection by the referee.

WEST RIDING FA'S SUBMISSIONS

20. In response to the Notice, West Riding FA submitted observations. It submitted that the Disciplinary Commission gave detailed consideration to the aggravating and mitigating factors in the case and its sanction was proportionate. It also noted that the account of the Match put forward by the Club was markedly different to that of the referee.

LEGAL TEST

21. Regulation 12, cited in paragraph 16 above, makes it clear that the task of an Appeal Board is to conduct a review of the first instance decision rather than a *de novo* hearing. In other words, the Appeal Board is not considering the matter afresh.

22. Guidance on how this review should be carried out is to be found in previous cases, including:

(a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

“When considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission’s decision as unreasonable.”

and

(b) The FA v José Mourinho, 18 November 2018, which states, at paragraph 54:

“It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to ‘second guess’ the Commission; ...

... We are permitted to ‘intervene’ only when there has been an error or principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone ‘plainly wrong’.”

23. Accordingly, the Appeal Board applied the following principles in its approach to the appeal in this case:

- An appeal proceeds by way of a review of the decision of the Disciplinary Commission. It is not a rehearing of the evidence and arguments at first instance.
- It is not open to the Appeal Board to substitute its own decision for that of the Disciplinary Commission simply because the Board might itself have reached a different decision at first instance.
- If the Disciplinary Commission has made findings of fact which it was reasonably open to it to make, the fact that the Appeal Board might have made different findings is irrelevant.
- The principles set out above apply not only to its findings of fact, but also to the question of whether the Disciplinary Commission applied an excessive sanction. The Appeal Board cannot interfere with the sanction applied unless it was manifestly unreasonable and/or the Commission failed to determine the sanction in accordance with the relevant sanction guidelines.

DETERMINATION

24. The Appeal Board considered the parties’ submissions in accordance with the principles set out above.

25. Having read the written reasons, the Appeal Board was satisfied that the Commission had considered all the material before it.
26. The Appeal Board was satisfied that the Disciplinary Commission had afforded the Club a fair hearing and that the correct process had been followed.
27. In terms of sanction, the Appeal Board reminded itself that its task was not to consider the penalty that it would have imposed if it had been sitting at first instance, but rather to determine whether the sanctions imposed by the Disciplinary Commission were excessive in the sense that they were outside the range of penalties that were properly open to that Commission. While the Disciplinary Commission did not indicate in its written reasons whether it had placed the offence in the medium or high category of the sanction range (a fine of £140 being at the top of the medium category and the bottom of the top category), it did clearly state that it considered both the fact that the Club's actions led to the abandonment of the Match and its previous disciplinary record to be aggravating factors. It also noted that the Club had admitted the charge. The Appeal Board concluded that the sanction imposed by the Disciplinary Commission was one that was properly open to it. The Appeal Board therefore had no reason to interfere with the sanction.

28. CONCLUSION

29. The appeal against the decision of the Disciplinary Commission is dismissed for the reasons set out above. The penalty imposed by the Commission stands.
30. The Appeal Board's decision is final and binding on all parties and there is no further right of challenge.

Sally Davenport
Paul Tompkins
Martin Hill
10 February 2023