

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

CRAIG WALTON (Appellant)

-and-

BIRMINGHAM COUNTY FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member

Roger Burden – Former FA Council Member

Loraine Ladlow – Independent Football Panel Member

Secretary: Conrad Gibbons – Senior Judicial Services Officer

Date: 2 August 2024

Venue: Held remotely via Microsoft Teams

INTRODUCTION

1. The Appeal Board was appointed to determine an appeal by Craig Walton (“the Appellant”) against the decision of a Disciplinary Commission (“the Commission”) sitting on behalf of

Birmingham County FA (“the Respondent”). No objection was raised concerning the composition of the Appeal Board.

2. The Appeal Board conducted a hearing on the papers only on 31 July 2024. It had before it a bundle, which contained the following documents:
 - Notice of Appeal
 - Response to Notice of Appeal
 - Papers of First Instance
 - Participant Offence History
 - Results Letter and Written Reasons
3. Both parties submitted further observations ahead of the hearing. The Appeal Board considered all of the materials before it. If this document does not explicitly refer to a particular document, point or submission, it should not be inferred that the Appeal Board overlooked or ignored it.
4. This document constitutes the written reasons for the Appeal Board’s decision.

BRIEF BACKGROUND FACTS

5. At the material time the Appellant was the Assistant Manager of Alvechurch Ladies FC (“Alvechurch”). On 28 April 2024 Alvechurch played a match (“the Match”) against Bewdley Town Ladies FC (“Bewdley”). The Match was abandoned.
6. On 28 May 2024 the Respondent charged the Appellant with assault or attempted assault on a match official improper conduct contrary to FA Rule E3 (“the Charge”). Specifically it was alleged that CW pushed the Assistant Referee (from Bewdley) and attempted to punch/strike him. The Charge Letter also included an alternate charge of improper conduct against a match official (including physical contact or attempted physical contact and threatening

and/or abusive language/behaviour) (“the Alternate Charge”). It imposed an Interim Suspension Order pending the outcome of the hearing.

7. On 4 June 2024 Alvechurch submitted a response through The FA’s Whole Game System (“WGS”) denying the charge and asking for the case to be dealt with by correspondence.

FIRST INSTANCE DECISION

8. A Disciplinary Commission consisting of a Chair of the National Serious Panel sitting alone (“the Commission”) dealt with the Charge on 11 June 2024. The Disciplinary Commission also considered another charge against the Appellant, which is not the subject of appeal, and a charge against a Bewdley player. The Commission considered the Charge on the basis of the documentary evidence before it, which is referred to and quoted in its written reasons dated 11 June 2024 (“the Written Reasons”). The Commission found the Charge proven and imposed a suspension of 6 years 182 days from all football activity, backdated to 28 May 2024. It indicated that it would have found the Alternate Charge proved as well had it been required to do so. It also ordered the Appellant to complete a mandatory face-to-face education programme. The Results Letter was sent to Alvechurch on 17 June 2024.

THE APPEAL REGULATIONS

9. Regulation 2 of the Appeals – Non-Fast Track Regulations (“the Appeal Regulations”) sets out the grounds upon 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.”

10. Regulation 10 deals with the circumstances in which new evidence may be admitted on appeal. It 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. 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 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 an opportunity to respond.

11. Regulation 12 of the Appeal Regulations states:

“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”

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

THE APPELLANT'S CASE

13. When stating his intention to appeal, the Appellant indicated that he relied on three of the four grounds of appeal cited in paragraph 9 above, namely that the Commission had failed to give him a fair hearing, came to a decision to which no reasonable body could have come and/or imposed a penalty, award, order or sanction that was excessive. In his Notice of Appeal, drafted by Counsel, Mr Mass Ndow-Njie, the Appellant limited his submissions to the single ground of failure to give him a fair hearing. The essence of the Appellant's appeal was that he had had no knowledge of the Charge and that Alvechurch had submitted a response and provided evidence (included an edited version of a statement that he had written after the Match), without his knowledge. He submitted that he had not had the opportunity to respond to the violent conduct allegation and that he had written his statement to deal with the Referee's attempt to send him off, and with what he referred to as the Linesman's assault

on his son, not in response to the Charge. He requested that the appeal be allowed and that the case be remitted for a fresh hearing before a new Disciplinary Commission.

14. In his submissions, Counsel for the Appellant drew the Appeal Board's intention to paragraph 111 of Section Two (which the Appeal Board has taken to mean Section Three) of Part D, Chapter 11 of the FA Handbook. It states:

"Where a Participant has been issued with a Charge both the Club Secretary and the Participant will be required to sign and return the form to the Affiliated Association".

15. It was submitted that the Appellant had not had a fair hearing in at least four ways due to Alvechurch's failure to notify him of the Charge, compounded by the Respondent's failure to ensure that he had signed off on the reply form:

- He was deprived of his right to request a personal hearing
- He was prevented from obtaining evidence from other witnesses to support his case
- Due to his misguided belief as to the purpose of the statement that he was asked for, he did not address his confrontation with the linesman in detail
- He did not seek legal or disciplinary advice

16. In his Notice of Appeal the Appellant made an application to submit new evidence. That evidence consisted of the following:

- A text message exchange with the Alvechurch manager, Ben Davis ("BD"), in April 2024 regarding a witness statement
- An email from the Alvechurch Foundation Secretary, Ant Hasker ("AH"), dated 25 June 2024 stating that the Appellant was not sent any correspondence relating to the Charge
- An email exchange between the Appellant and the Alvechurch Secretary, Stephen Denny ("SD"), on 26 June 2024 in which SD confirmed that he had sent the correspondence relating to the Charge to AH rather than to the Appellant

THE RESPONDENT'S RESPONSE

17. In its Response, the Respondent stated that the Appellant's main position was that he had not been aware of the severity of the Charge and how properly to respond as Alvechurch had only asked him to submit a statement. It said that this was illogical because Alvechurch was provided with all correspondence as per FA Regulations and was familiar with the process. It submitted that new evidence should not be permitted and that an appeal is not an opportunity to have a first instance decision reheard. The process was "*fair, clear and transparent*".

FURTHER SUBMISSIONS

18. On 26 July 2024 the Appellant submitted a further document entitled "*Observations & Clarifications on Appeal Bundle*". He contended that the Respondent had misunderstood or misinterpreted the core basis of his appeal. His position was that he was not aware of the Charge in the first place and only learned of it after the Results Letter was issued. The Appellant expanded considerably on his assertion that the Respondent was in breach of Regulation 111 because it had not ensured that it had a signed response form from the Appellant. The Appellant requested copies of three documents:

- The response form signed by him
- Evidence of his signature (electronic or otherwise) uploaded to WGS
- The correct results letter (due to the fact that the letter in the Appeal Bundle actually related to the second charge against him)

19. By way of reply, the Respondent indicated that it had no observations other than what was outlined in its Response. It added that it completely opposed any new information that was not submitted in line with the Appeal Regulations.

CHAIR'S DIRECTIONS

20. On 30 July 2024 the Chair directed that the Respondent should provide the following ahead of the hearing:

- a copy of the decision letter for the case being appealed (1176488M)
- confirmation that the Respondent did not receive a response form signed by the Appellant and/or Alvechurch
- confirmation that the Respondent did not chase for a signed response form
- confirmation as to whether the evidence submitted in support of the Appellant's defence was submitted via WGS or by email. If the latter, the Respondent was asked provide the covering email
- a copy of any correspondence with AH regarding the evidence submitted in support of the Appellant's defence

21. The Respondent did not reply to the direction and no documentation or information was provided.

22. The Chair also directed the Appellant to provide a copy of the message "*asking for his thoughts*" that was referred to in the email sent to him by AH on 25 June 2024. The Appellant said that no such message was received by him and that the only message that he had had was from BD on 28 April 2024 when he was asked for a witness statement. The Appellant said that he had checked with AH following the Chair's request and provided a copy of their email exchanges.

LEGAL TEST

23. Regulation 12, cited in paragraph 11 above, makes it clear that the task of the 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.

DECISION

24. The Appeal Board carefully considered the parties' submissions on the question of a fair hearing.
25. The Appeal Board began with the issue of new evidence. It noted the Respondent's observations, but did not consider that the documentation provided by the Appellant was new evidence within the meaning of Regulation 10. The documentation was not evidence in relation to the Charge itself, but rather evidence in support of the Appellant's contention that he had not been aware of the Charge. Clearly if the Appeal Board were to accept Appellant's contention, it must follow that the documentation could never have been before the Commission.
26. The Appeal Board reviewed all the material provided to it in support of the fact that the Appellant had not been aware of the Charge. The Charge letter clearly set out that a proven charge of assault or attempted assault on a match official would result in an immediate suspension from all football activity for a period of between 5 and 10 years. The Appeal Board noted that the Appellant had resigned on 4 June 2024 and queried whether this was because he had been made aware of the Charge and the interim suspension referred to in the Charge Letter. However, it was satisfied on the balance of probabilities that the Appellant had not received a copy of the Charge Letter and had not been made aware of its contents. In coming to that decision it noted that the Appellant was employed within football, meaning that the sanction would have a dramatic impact not only on his ability to be involved in football as a player/coach, but also on his ability to earn a living. It concluded that in those circumstances the Appellant would have sought to play an active part in the proceedings had he been aware of them.
27. The Appeal Board carefully considered the Appellant's submissions regarding the need for the Respondent to be in possession of a response form signed by the Appellant as well as Alvechurch. It acknowledged what paragraph 111 says. However, it took the view that paragraph 111 has to be considered alongside paragraph 4 of the same Section, which is reproduced below with our emphasis added:

“Where a Club receives a notification pursuant to this Section Three, it is the duty of the Club Secretary and the Player, by the deadline stated on any notification, to ensure that either (a) the Affiliated Association Secretary receives the completed player reply form or (b) ensure that a response has been provided via the electronic system operated by The Association from time to time with such information that includes:

4.1 the full name and address of the Player;

4.2 the Player’s date of birth (and other personal identification data requested);

4.3 the name of each Club for which the Player is currently registered or was registered in the previous two playing seasons;

4.4 the signature of the Player concerned (where applicable); and

4.5 the names of any school, college or other educational establishment currently attended by the Player.

Where the Player is not available to sign the player reply form, the Club should complete and return it indicating the reason for the non-completion together with the administration fee and confirmation as to whether or not the Player has been made aware of the contents.

Where the Club provides a response via the electronic system operated by The Association from time to time, in doing so the Club Secretary acknowledges that the Player has been made aware of the contents. Any suspension order resulting from failure to comply with this paragraph 4 shall be on the Club and the individual Player, subject to paragraph 108 below.”

28. The Appeal Board had some difficulty reconciling the two provisions, but did note that the Regulations appear to be trying to cover the situation of responses being submitted solely via WGS, which from the Appeal Board’s own experience is now very much the norm. In light of the use of WGS, the Appeal Board queried whether the paper response form sent with charge letters was in fact still fit for purpose, although that was not something within its jurisdiction. Given the reference to submission via WGS in the paragraph cited in paragraph 27 above, the Appeal Board was not prepared to accept the Appellant’s submission that the appeal was bound to succeed because the Respondent did not insist on having a signed response form.

29. The Appeal Board was concerned at the cavalier approach taken by Alvechurch, and AH in particular, both when the Charge Letter was received and after the Results Letter was issued. AH did not appear to have recognised the severity of the Charge and the possible consequences of it being found proven. When asked for clarification during the appeal process as to what he had or had not done, his answers were vague. The Appeal Board felt that the Appellant had been let down by Alvechurch.

30. Having concluded that the appeal could not succeed purely on the basis of the absence of a signed form, the Appeal Board went on to consider whether the Appellant had nonetheless been deprived of a fair hearing. In its deliberations it noted that it would not normally allow an appeal on that ground in the absence of procedural failings by the Respondent. However, this was not a “normal” case in the sense that the Charge was at the most serious end of the spectrum and the penalty, if proven, was a five-year suspension as a minimum. It took the view that the Respondent should have satisfied itself that the Appellant was personally aware of the Charge and its potential consequences. It noted that the evidence submitted by Alvechurch included a partial statement from the Appellant, that the other statements submitted by Alvechurch all appeared to have been written shortly after the Match rather than after the Charge Letter was received and that none of the statements made any direct reference to the Charge and the evidence provided by the Respondent in support of the Charge, in particular the allegation that the Appellant had struck the Assistant Referee in the face. It also felt that the Commission, having reviewed all the paperwork, should have asked the Respondent to check that the Appellant did in fact want the case to be heard on the papers without any further evidence before determining the case.
31. Taking all of the above factors into consideration, in particular the level of the penalty associated with the Charge, the Appeal Board concluded that the Appellant had not had a fair hearing and that the correct course, as requested by the Appellant, would be to remit the case to a fresh Disciplinary Commission. The Appeal Board wishes to stress that it did not make any findings on the evidence, although it noted that the Appellant was clearly involved in an altercation with the Assistant Referee and that his actions appeared to have caused or contributed to the abandonment of the Match. The outcome of the new hearing could be that the Charge is found proven, with the possibility of a higher sanction. Equally it could be that the Charge is dismissed, in which case the Alternate Charge, with its much lower penalty, will fall to be considered. The Appellant should be given the opportunity to respond to the Charge and the Alternate Charge properly and to provide evidence, whether written or oral evidence or both, in support of his defence.

32. The Appeal Board allowed the Appellant's appeal. It made no order as to costs. It ordered that the appeal fee be returned.

33. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport

Roger Burden

Loraine Ladlow

9 August 2024