

**Marc Beresford (Appellant)**

**-and-**

**Kent FA (Respondent)**

**DECISION OF THE APPEAL BOARD 20 May 2024**

1. The Appeal Board comprised:

Roger Burden (Chair)  
Gordon Mellis  
Leon Bird

Shane Comb, FA National Secretary, was Secretary to the Appeal Board

2. The Appeal was held on-line via Microsoft Teams

3. These written reasons do not purport to refer to all points made in the course of the Appeal, however, the fact that some points are not mentioned should not imply that they were not considered. The Appeal Board carefully read, listened to, and considered all the submissions.

**Background and First Instance Decision**

4. Following a game played between Westwood FC and The Vale FC played on 21/01/24, the Appellant was charged under FA Rule E3 – Improper Conduct (including foul and abusive language).

He was also charged under FA Rule E3.2 – Improper Conduct – aggravated by a person’s ethnic origin, colour, race, nationality, faith, gender, gender reassignment, sexual orientation or disability, as it was alleged that the Appellant’s language included a reference to gender, based on the comment “you are fucking lucky, if Joey Barton was fucking here, he’d have none of this fucking shit”.

5. It was further alleged that the Appellant had made the comment “I am checking that you are not a cheating ginger cunt” towards an Assistant Referee.

6. The Appellant did not respond directly to the charges and the matter was dealt with on the basis of a “not guilty” plea, based on the correspondence submitted.

7. The case was heard by a Chair from the FA’s Serious Case Panel. The decision was that the case was proven and the sanction was an 8-match suspension from all football (including a ground ban), a £50 fine and an order to complete an education programme.

8. Note – In a consolidated case heard by the same Commission, the Appellant was also charged under FA Rule E3 – Improper Conduct against a Match Official – (including threatening and /or abusive language/behaviour. This charge was also found proven and the sanction was a 126-day suspension from all football including a ground ban, a £50 fine and an order to complete an education programme. This matter was not included in the Appellant’s appeal.
9. The Appeal Board had before it the papers of first instance and the written reasons of the Commission.
10. The papers included the Respondent’s evidence, consisting of reports from 2 witnesses, one an Assistant Referee and one a female spectator, in support of the allegations.
11. There was no direct response from the Appellant, but there was an email from the Appellant’s Manager, which suggested that the Appellant had supplied him with a statement in which the Appellant said that he was not confrontational.
12. In the written reasons, the Chair of the Commission noted that the Appellant did not provide a formal statement, did not respond in detail to the allegations and did not formally respond to the charges.
13. The only direct evidence in front of the Chair was that within the Respondent’s evidence.
14. The Chair stated that he was satisfied that, on the balance of probabilities, the charges were proven.
15. In deciding sanction, the Chair noted that the FA’s sanction range for the charges was a suspension of 6 – 12 matches. He started at 7 matches due to the nature of the comments and added a further match due to the Appellant’s previous disciplinary record.

### **The Appeal**

16. The Appellant appealed on 3 grounds:
  - a. that the Commission came to a decision to which no reasonable such body could have come.
  - b. that the Commission failed to give him a fair hearing.
  - c. That the Commission imposed a penalty, award, order or sanction that was excessive.

### **New Evidence**

17. Although the Appellant had not made an application to present new evidence, his Appeal included a witness statement which he did not provide to the original Commission and which he considered to be an important part of his Appeal.

18. FA Regulations are clear that new evidence is only allowed when the Appeal Board is satisfied with the reason given as to why it was not, or could not have been, presented at the original hearing.
19. The Appellant told us that his witness had been originally unwilling to provide evidence as he was from the opposition and feared that there might be repercussions from his team. Having been assured that his anonymity could be preserved in an Appeal, his witness had agreed to provide a statement.
20. In that statement, the Appellant's witness said that he was stood next to the Appellant and did not hear anything horrible being said by the Appellant or the linesman.
21. The Respondent told us that if the new evidence from the opposition player is deemed admissible, it appeared to focus solely on the offence involving the Assistant Referee, which was not the subject of the Appeal.
22. We had some sympathy with the Respondent's view but, accepting the Appellant's explanation as to why the new evidence was not made available to the Commission, we agreed to accept the new evidence.

### **The Appellant's Written Submissions to the Appeal Board**

23. The Appellant stated that the charges were not documented in the Referee's report which he suggested was a crucial piece of evidence and undermines the fairness and validity of the charges.
24. Without concrete evidence it is unjust to uphold the charges solely based on conjecture or hearsay.
25. The prospect of being suspended for 8 games without concrete evidence can have a profound impact on the Appellant's mental health.
26. The Appellant had recently obtained a new statement. The statement is crucial as it provides additional evidence and perspective that could potentially refute the allegations against the Appellant.
27. Upholding the original decision without considering the newly obtained witness testimony would constitute a violation of due process. Every individual has the right to present evidence and witnesses in their defence and denying the Appellant the opportunity would be inherently unfair.
28. The principle of innocent until proven guilty dictates that disciplinary actions should not be imposed without clear and convincing evidence of wrong doing.

29. Relying on the balance of probabilities leaves room for misinterpretation and subjective judgements. Without objective evidence to support the allegations, the decision may be influenced by bias or preconceived notions.

### **The Respondent's Written Submissions to the Appeal Board**

30. The Respondent stated that the Referee's report was not required and the charge was based on the evidence of members of the opposition.
31. The secondary charge considered as a consolidated case at, and by, the same Commission was not being challenged by the Appellant, suggesting that the Appellant was satisfied with process for that charge.

### **The Appellant's Oral Submissions**

32. The Appellant told us that he was aware that there had been a number of admin issues within the Club.
33. He said that the Club had not made him fully aware of the charges, he was simply told that there had been a complaint and so he made the brief statement that was included in the papers of first instance.
34. He was later told that they might need another statement.

### **The Respondent's Oral Submissions**

35. The Respondent told us that poor admin by the Club did not mean that it wasn't a fair hearing. The Respondent had liaised with the Club on 9 February and made the seriousness of the charge clear.
36. There was a presumption of innocence as the Appellant's case was treated as a denial of the charge. The Commission based its decision on the balance of probabilities as per FA Regulations.
37. The Respondent made no final submission, relying on all its previous submissions.

### **The Appellant's Final Submission**

38. The Appellant said that his witness had not referred to any of the alleged language as no such language had been used so couldn't report on something that he hadn't heard.
39. The Appellant said that it was not right to accept hearsay evidence from a husband and wife.
40. He said the lady was not offended at the time, she had to ask her husband about it.

41. He said that he had no idea about Joey Barton's views.

### **The Appeal Board's Deliberations**

42. Any Appellant who pursues an Appeal on the grounds that a Regulatory Commission has come to a decision to which no reasonable such body could have come, has a high hurdle to clear.
43. The test for the Board to apply is to determine whether the Commission acted so irrationally, or perversely, that no other reasonable body could have come to the same decision.
44. The Respondent had submitted first-hand accounts of the witnesses' comments, and their accounts were not hearsay. The Commission was entitled to take them at face value, particularly in the absence of any formal statement from the Appellant.
45. Despite the Appellant's assertions to the contrary, the standard of proof in these matters is the balance of probability. This standard was correctly applied by the Commission which, quite reasonably, had been more comfortable with the evidence submitted by the Respondent, rather than from the Appellant.
46. The Appellant's suggestion that the decision was unfair was largely based on the fact that the additional evidence should be included in the decision-making process. This evidence was not available to the Commission so cannot be used to suggest that the Commission's decision was unfair. The Board was satisfied that, even if the new evidence had been made available to the Commission, it would not have changed the Commission's decisions.
47. The Commission's written reasons were clear and comprehensive. We saw no reason to interfere with them.
48. The sanction fell within the FA's sanction guidelines. The Commission properly considered the aggravating factors of the language involved and the Appellant's previous record. It could not be considered excessive.

### **The Appeal Board's Decision**

49. For the reasons set out above, the Appeal Board unanimously dismissed the Appeal on all three grounds.
50. There was to be no order as to costs.
51. The Appeal fee is to be forfeited.

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

Roger Burden (Chair)  
Gordon Mellis

Leon Bird

22 May 2024