

THE FOOTBALL ASSOCIATION

APPEAL BOARD

NON-PERSONAL HEARING

of

RINGMER AFC (Appellant)

&

SOUTHERN COMBINATION FOOTBALL LEAGUE (Respondent)

REASONS OF THE APPEAL BOARD

These are the written reasons of the decision of an appeal board (the “Appeal Board”), having considered the matter as a personal hearing held online via the video platform MS Teams on 19th March 2024.

Introduction

1. The Football Association (“The FA”) had received an appeal against a decision of the Southern Combination Football League (“SCL”) finding a charge proven against the Appellant.
2. The charge had concerned an alleged breach of SCL League Rule 8.28, having “an unsatisfactory technical area”. The alleged rule breach had occurred in a match played on 14th January 2024 between Bexhill United FC U-18s and Ringmer AFC U-18s (“the Match”).
3. The charge had been dealt with by a Disciplinary Sub-committee of the SCL where the charged had been proven and communicated to the Appellant by a letter of 9th February 2024 (“the Decision”).

4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The Appeal Board convened on 19th March 2024 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)

Keith Allen (Football Panel Member)

Laura McCallum (Legal Panel Member)

The Appeal Board was assisted by Conrad Gibbons of FA Judicial Services acting as secretary to the Appeal Board.

6. No parties were in attendance as the Appellant had opted for a non-personal hearing; in other words the appeal was to proceed on consideration of the papers alone.

Preliminary Issues:

7. Prior to the appeal hearing the Chair had been asked to consider arrangements for the appeal hearing. The Appellant had indicated it was content for the appeal to be heard on papers alone while the Respondent would have preferred a personal hearing. Under the provisions of Non-Fast Track Appeal Regulation 14 the Chair exercised his power to direct how matters should proceed to allow the proper conduct of the appeal and directed that it was appropriate for the appeal to proceed as a non-personal hearing.

The Appeal Documentation:

8. The Appeal Board had before it the full appeal bundle comprising:

- The Appellant's Notice of Appeal & Submissions
- Response to Notice of Appeal
- SCL Respect Details
- SCL Club Code of Conduct
- Match Return 11/09/23
- Warning Letter from the Respondent to the Appellant
- Match Return 21/01/24
- Charge Letter
- Correspondence
- Charge Response

- Decision Letter
 - Correspondence
 - Extract from SCL League Rules
 - Chair Directions & Final Submissions
9. The Appeal Board had before it the full appeal bundle, including all papers of first instance, with which all members of the Appeal Board were fully conversant. Absence of specific reference to any part of the appeal bundle in these written reasons does not mean they were not considered; they were considered in full.

Submissions by the Appellant:

10. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle.
11. The Appellant was appealing against the decision on the grounds that the Respondent:
- Came to a decision to which no reasonable such party could have come,
 - Failed to give the appellant a fair hearing,
 - Imposed the penalty, award, order or sanction that was excessive,
 - Misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision
12. The Appellant claimed that no reasonable body would have come to the decision of the Respondent. The Appellant submitted that the Respondent had wrongly quoted SCL Rule 8.28 when charging the Appellant and “*any reasonable body would not have deleted large sections of Rule 8.28 in order to give the impression that they are able to charge a club with this offence*”.
13. It was further claimed that the Appellant had not had a fair hearing. The Appellant submitted that it had attempted “*to explain the functionality of Rule 8.28 in order to avoid any embarrassment on behalf of SCL. These attempts were ignored and SCL proceeded with a hearing that was grossly unfair by virtue of being unlawful.*”
14. The Appellant claimed that the sanction of a twenty five pounds suspended fine was excessive “*Given that SCL do not have the authority to sanction a club with this charge, any sanction is excessive by virtue of being issued.*”

15. The Appellant submitted that the Respondent had misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision because “*SCL has wrongly applied Rule 8.28 where sanctions relating to this rule must be applied by The FA*”.

16. In communication with the Respondent the Appellant claimed it had been told “*that they had been applying this for the last nine years*”.

Submissions by the Respondent:

17. The Appeal Board considered the formal response to the notice of appeal as well the written explanation as to how it had reached the Decision.

18. The Respondent explained in full its disciplinary process.

19. In its written submissions the Respondent submitted:

- Respect details had been sent to the Appellant on 31st July 2023 explaining the Respect programme and the required Code of Conduct including how the Respondent deals with technical area breaches and how the Respondent deals with continued breaches.
- The Code of Conduct, including what was expected from technical areas, had been returned by the Appellant duly signed on the 31st July 2023.
- There had been a previous incident this season in September 2023 when the Appellant had been charged under the same process under Rule 8.28 when the Appellant had been given a warning letter.
- The referee’s report for the Match contained reference to the Appellant having had an “*unsatisfactory technical area*”.
- The charge letter contained in the appeal bundle had been sent to the Appellant on 26th January 2024. Correspondence between the Respondent and the Appellant had been entered into. It was the Respondent’s case that the County Association agreed with the Respondent that this was a league charge and something to be dealt with by the Respondent.
- The Appellant had pleaded not guilty to the charge and had asked for a non-personal hearing.
- Further evidence relating to the unsatisfactory technical area had been sought from the Match referee before determining the outcome of the charge and this additional evidence had been included in the Decision letter sent to the Appellant on 9th February 2024.
- The fine had been in accordance with the SCL Rules fines tariff.

Deliberation

Legal test for all grounds of appeal

20. As is clear from Regulation 12 of the Non-Fast Track Regulations¹, the task of the Appeal Board is to conduct a review of the first instance decision, and not a new hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

21. Guidance on how this review should be carried out is to be found in:

(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 was unreasonable.”

and

(b) The FA v José Mourinho, 18 November 18, 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 of 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’.”

¹ The FA Handbook 2023/2024 at P.191

22. Accordingly, the Appeal Board applied the following principles in its approach to the grounds of appeal:

- An appeal such as this proceeds by way of review of the decision of the Respondent. 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 Respondent simply because the Appeal Board might themselves have reached a different decision at first instance;
- If the Respondent has reached findings of fact which it was reasonably open to the Respondent to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant;
- The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Respondent. Evidential assessments of the Respondent should only be interfered with if they are clearly wrong or if the wrong legal principles were applied to the making of those factual findings;
- Any Appellant who pursues an appeal on the ground that a Disciplinary Commission has come to a decision to which no reasonable such body could have come has a high hurdle to clear or a high threshold to overcome.

Discussions on the grounds submitted

23. In accordance with the principles set out immediately above, the Appeal Board considered all the parties' submissions.

24. The Appeal Board considered whether the Respondent had misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision.

25. In charging the Appellant and reaching the Decision, the Respondent had relied exclusively on SCL Rule 8.28. In full and verbatim this Rule reads:

“8.28 The occupants of the technical area must behave in a responsible manner at all times. Misconduct by occupants of this area will be reported by the Referee to The FA, who shall have the power to impose sanctions as deemed fit. Any occupant dismissed from the technical area shall immediately go to a location within the ground from which they cannot view the remainder of the game.”

26. Rule 8.28 as quoted in the charge letter and by the Respondent throughout the relevant correspondence is set out as:

“The occupants of the technical area must behave in a responsible manner at all times. Misconduct by occupants of this area will be reported by the Referee”

27. In particular the Respondent had intentionally omitted the words *“to The FA, who shall have the power to impose sanctions as deemed fit.”* It is the Appellant’s case that the Respondent had no jurisdiction to issue the charge in the first place or to sit in judgement on the allegations. The Appellant submitted that it was the prerogative of the FA not the Respondent and the rule specifically provides for the FA to impose sanctions, not the Respondent.

28. As for the apparent agreement of the County FA that the Respondent was proceeding in the correct manner, the Appeal Board interpreted this as agreement from the County Association that application of league rules was a matter for a league, not the County Association, but the Appeal Board did not consider this allowed the Respondent to take matters into its own hands and to charge the Appellant when this power had been specifically reserved to the FA.

29. The Appeal Board considered whether the Appellant had received a fair hearing.

30. The Appeal Board noted:

The ground for appeal in Regulation 2 of the FA’s Non-Fast Track Appeal Regulations² is that *“The body whose decision is appealed against failed to give that Participant a fair hearing.”* In other words, that the Respondent had failed to give the Appellant a fair hearing.

- The Respondent’s charge letter simply stated the Appellant had been charged under the truncated Rule 8.28
- It was only in the Decision letter of 9th February that the Respondent had quoted the Match referee’s report.
- When charging the Appellant the Respondent had quoted only the Rule under which the charge had been raised without mentioning any alleged misconduct at all.
- Until receipt of the Decision letter the Appellant had not been told why the charge had been raised.

² The FA Handbook 2023/2024 at P.189

31. Having considered the question of whether the Respondent had given the Appellant a fair hearing and whether the Respondent had misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision, the Appeal Board concluded that the appeal succeeds on both these grounds. For the Respondent intentionally to misquote a league rule when charging a club, whatever the intention, was simply wrong. That this should have been done to invest the Respondent with authority which was not provided by the Rules was also wrong.
32. For the Respondent not to notify the Appellant of the details of the charge until after the sub-committee had made its Decision meant the Respondent had not given the Appellant a fair hearing. How could the hearing have been fair if the Appellant was unaware of the allegations against it?
33. Having determined that the Respondent had not given the Appellant a fair hearing and that the Respondent had misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision, the Appeal Board did not need to consider whether the Decision was one to which any reasonable such body could have come.
34. The question of sanction became irrelevant as the charge was no longer proven.

Conclusion

35. In summary, the Appeal Board unanimously allowed the Appeal on the two grounds mentioned above. The Appeal Board did not need to consider the outstanding two grounds for appeal.
36. In order to give effect to this decision, the Appeal Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations³, orders that:
- i. The appeal succeeds.
 - ii. Any sanction is quashed and any record applicable to the Decision is expunged.

Costs

37. Pursuant to its powers under Non Fast Track Appeal Regulation 21.6⁴, the Appeal Board considered the question of costs: “*The Appeal Board shall have power to order that any costs, or part thereof, incurred by the Appeal Board be paid by either party or be shared by*

both parties in a manner determined by the Appeal Board.”

38. The Appeal Board considered the matter to have been clearly addressed by the Appellant in correspondence and it should have become clear to the Respondent that there was no prospect of successfully defending the appeal. The Respondent should not have used Rule 8.28 in the way that it had.
39. While the Appeal Board could have chosen not to award costs at all, this would have sent the wrong message. Leagues, competitions and County Associations cannot view the appeal process as being risk free. The Appeal Board was conscious that any financial penalty would have an impact upon the members and clubs whom the Respondent serves and for that reason costs were awarded against the Respondent but limited to two hundred pounds (£200).
40. This decision of the Appeal Board is final and binding and there shall be no right of further challenge.

Paul Tompkins

Laura McCallum

Keith Allen

21st March 2024