

THE FOOTBALL ASSOCIATION

APPEAL BOARD

NON-PERSONAL HEARING

of

SHAUNE HENRY (Appellant)

&

SURREY FOOTBALL ASSOCIATION (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 non-personal hearing held online via the video platform Microsoft Teams on 26th March 2024.

Background

1. The appellant had been charged with a breach of FA Rule E3.1.
2. The substance of the allegation was that he used threatening and/or abusive and/or indecent and/or insulting words or behaviour which constituted threatening behaviour against a Match Official.
3. The charge followed the report of referee, Carlton Scafe, after he abandoned a game between Seymour Villa and Selsdon Junior Eagles. The fixture was a Under 14s Tandridge Cup game that took place on Sunday 19th November 2023.
4. For context, the referee’s initial report stated as follows:

In the 30th minute of the game I sin bin, a player from Selsdon Junior Eagles for 8 minute in the sin bin for descent by words & action. Mr Shuan Henry, Selsdon

Junior Eagles manager ran onto the pitch shouting at me what are you doing you are cheating. I showed Mr Shuan Henry the red card for calling the referee a cheat and entering the field of play without the permission of the referee.

Mr Shuan Henry continued shouting and questioning all my decisions and coaching the team from the sidelines after being sent off.

The assistant manager took charge of the team and did the half time talk.

During the halftime break Mr Shuan Henry continued to shout abuse and gestures at the referee, I asked Selsdon assistant manager to speak with Mr Shuan Henry regarding his behavior (sic).

Mr Shuan Henry replied it's a public park ``No one can stop me from talking``

51st minute of the game. I had to sin bin a second player from Selsdon Junior Eagles for descent (sic) by words & action Mr Shuan Henry shouted to the player I just sin binned ``do not leave the pitch`` the referee is a cheat. I abandoned the match due to Mr Shuan Henry Insulting and abusive language towards the referee. After I abandoned the match Mr Shuan Henry ran toward me in a violent and threatening manner. The Selsdon assistant manager had to hold Mr Shaun Henry back. I was surrounded by the parents /coaches from Selsdon. I did not feel safe.

The manager Seymour Villa had to walk me to my car for my safety.

5. Following an investigation by the respondent, the above charge was raised. The appellant denied the charge and a personal hearing was scheduled.

The Personal Hearing

6. An independent panel appointed by the respondent heard this case on the evenings of the 1st, 2nd and 7th February 2024 via Microsoft Teams.
7. The appellant represented himself at the hearing.
8. The written reasons provided by the respondent explained that the charge sheet referred to the match taking place on the 8th October 2023. It was accepted by both participants that this was a typing error given all other documentation referred to the match being on the 19th November 2023.

9. The written reasons state that no issues were taken with the amendment of the charge.
10. Following the hearing the commission made the following findings:
 - i. They could not be sure that the appellant was responsible for using the words “cheat” or “useless” towards the referee.
 - ii. The appellant was, however, persistent in challenging the referee’s decisions and often shouted “what was that for”, “you’re a joke” and that the referee was “sabotaging the game”
 - iii. After he was sent off the appellant passed words of encouragement to his team.
 - iv. The appellant was not swearing or being physically abusive towards the referee.
11. The panel found the charge proven and noted that the appellant’s behaviour in challenging the referee crossed the line of just disagreement and became relentless to the point where the game was abandoned. The commission found this to be improper behaviour that was not in the best interests of the game and that it also brought the game into disrepute.
12. The commission ordered the appellant to serve an immediate 2 match ground ban from all football and footballing activity and imposed a fine of £25.

The Appeal

13. The appellant challenges the decision of the respondent, insofar as they found the charge proven, on the following grounds:
 - i. That the respondent failed to give him a fair hearing, AND
 - ii. The respondent came to a decision on the facts of the case which no reasonable body could have reached.
14. No other grounds of appeal were raised. It was noted by the Appeal Board, that the Notice of Appeal referenced the above two grounds, but that the appellant’s written submissions referred to failing to comply procedure and coming to an unreasonable decision. The Appeal Board concluded that this was simply an

error and the Grounds of Appeal as stated above were correct. In any event the complains under that heading have been addressed within these reasons.

15. The appeal board reviewed the bundle of 121 pages, plus the additional final submissions of the appellant dated 20th March 2024. The appeal board was satisfied that this was an appeal to be decided without a personal hearing.

16. Accordingly, the appeal was heard on 26th March 2024.

Failure to give a fair hearing/ Failure to comply with procedures

17. The appellant's submissions on this ground appear to have been merged with a complaint that the respondent failed to comply with the Disciplinary Procedures appropriate to hearing such charges – see para 15 above. In any event the issues can be distilled into the following separate points:

- i. The wrong date on the charge sheet highlights clear negligence in the handling of the case.
- ii. The referee was prompted by the respondent to add additional information to his original statement.
- iii. The appellant not been afforded the same opportunity to submit additional information after the deadline for doing so had passed.
- iv. The hearing had been postponed on two prior occasions which denied him the opportunity of having witnesses attending the hearing.

18. The position of the respondent is that the appeal on these grounds should be dismissed.

19. The Appeal Board found that the incorrect date on the charge was nothing more than an administrative error. It was clear to all parties what game was being referred to and there is little evidence that it led to any confusion and no evidence that it had any effect on the proceedings. The appellant did not take issue with it during the hearing. It is not open to him to now seek to suggest some unfairness when he not only knew about it at the time but in fact agreed that it was immaterial at the time.

20. The appeal concluded that there it was not improper for the County FA to have sought additional information from the referee. The appeal board agreed with the

submission that this was part of the normal practice in undertaking an investigation of this nature and it was not, in any event, just the referee who was asked to clarify information. Not all witnesses may be asked for additional information. The decision to request additional information falls within the remit of the investigating officer and there is no evidence that this discretion has been exercised incorrectly or inappropriately.

21. The appeal board reviewed the correspondence in the appeal bundle, and the competing submissions regarding the submission of further evidence after the deadline.
22. It is clear that whatever the appellant might say about the video evidence being referred to before the deadline, it cannot be disputed that it was not actually provided until after this date, and it was only provided after being chased by the respondent. It is difficult to see how he can claim to have been put at any disadvantage. Arguably he might not have been able to rely on a crucial piece of evidence. But that was not the case here.
23. There will again be some degree of discretion in whether to accept any evidence after any deadline. The request to Seymour Villa on 6th December revealed that statements had been sent, but not copied to the respondent.
24. What the correspondence actually reveals is that both parties had a similar opportunity to put forward whatever evidence they sought to rely upon and the respondent ensured that they had been able to do so. They were both treated equally in this regard.
25. The appeal board did not entirely understand the appellant's submissions on the postponements. Further, his comments following the service of the respondent's submissions seem to suggest that he believes the adjournment decisions were manipulated by the respondent in an effort to protect the referee. Not only is this a controversial point to make, it is completely unfounded on the evidence before the appeal board. This hearing took place over three evenings. Witnesses could have easily been scheduled over that three-day period and there is little evidence that this issue was raised during the hearing.

Came to a decision on the facts of the case which no reasonable body could have reached.

26. The appellant overall makes the points that the panel (i) were biased towards Mr Stanley's evidence, (ii) they attempted to rationalise the referee's decision to abandon game in their decision and (iii) the allegations against him were entirely fabricated and not supported in the evidence.
27. The respondent did not offer any submissions on this issue.
28. The appeal board notes that it is a high bar to succeed on this ground. It is not the task of the appeal board to substitute its own views and interpretations of the evidence. It is to look at the case overall and consider whether the decision reached was one which could have reasonably been arrived at on the evidence. In short, is the decision plainly wrong?
29. The test can be best summarised in 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'."
30. The written reasons provided by the respondent set out the findings that were made. They explained which evidence they accepted, that which they didn't and for their conclusions they provided a justification. It is acknowledged that this was a particularly lengthy hearing with numerous witnesses give evidence.
31. The appellant has provided his observations on the written reasons – in his initial appeal notice, in his response to the respondent's submissions and again in his final submissions.
32. It appeared to the Appeal Board that the appellant was at times trying to add information to that which was given at the hearing – for example in his final

submissions he appears to be explaining the context of his use of the word “shocker”.

33. Equally in his appeal submissions, he tries to suggest that the panel were wrong in the conclusions they drew from his own witnesses describing him as “passionate and wanting to win the game”. He does not dispute that this was said by the witnesses.
34. The appeal board concluded that the written reasons accurately summarised the evidence that was given at the hearing.
35. They have explained, with reference to that evidence, the decisions that they made – both in respect of matters proven and matters not proven.
36. The tribunal of fact will always be best placed to assess the credibility of each piece of evidence and the weight that they will attach to it. In this case it is clear that the decisions that were reached were open to the respondent on the evidence that was presented. The decision cannot be described as plainly wrong, however the appellant might disagree with it.

Conclusion

37. For the reasons set out above the Appeal Board rejected each of the Grounds of Appeal and dismissed the appeal.
38. The Appeal Board made no order as to costs and the appeal fee is to be forfeited.
39. This decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

Chris Williams (Chair)

4th April 2024

George Dorling

Chris Goodman