THE FOOTBALL ASSOCIATION

APPEAL BOARD

PERSONAL HEARING

of

A F C BIRMINGHAM (Appellant)

&

BIRMINGHAM FA (Respondent)

Case ID: 11918030M

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 3rd March 2025.

Introduction

1. The Football Association ("The FA") had received an appeal against a decision of the Birmingham Football Association ("Birmingham FA") finding a charge proven against the Appellant.

2. The charge had concerned an alleged breach of FA Rule E20 in that AFC Birmingham failed to ensure directors, players, officials, employees, servants, representatives attending any match do not behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative. The alleged misconduct had occurred in a match ("the match") played on 28th September 2024 between AFC Birmingham 1st v BNJS First in Division Three of the Midland Football League RFL. It had been alleged that during the match a mass confrontation took place involving players from both teams, or similar.

3. The charge had been dealt with by a commission of the FA's National Serious Cases Panel and had been heard by a three person commission ("the commission") sitting on behalf of the Respondent on 8th January 2025 ("the Decision"). The commission had also considered other, consolidated charges which are not the subject of this appeal.

4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The Appeal Board convened on 3rd March 2025 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)
Chris Goodman (Panel Member)
Daniel Mole (Panel Member)

The Appeal Board was assisted by Shane Comb of FA National Secretaries Panel acting as secretary to the Appeal Board.

6. The Appellant having opted for a personal hearing was represented by Mr John Paul Baker, Club Secretary of the Appellant club.

7. The Respondent was represented by Mr Mark Ives – Director, Sport Integrity Matters with Mohammed Juned, Football Services Manager with Birmingham FA observing.

The Appeal Documentation:

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

- The Appellant's Notice of Appeal
- The Respondent's Response to Notice of Appeal
- New Evidence submitted by the Appellant to the Appeal Board
- Papers of First Instance
- Appellant's Offence History
- Results Letter & Written Reasons

9. All members of the Appeal Board were fully conversant with the appeal bundle. 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. These written reasons quote from the papers of first instance only if and when necessary. Absence of wholesale reference to

the papers of first instance should not be taken as an inference that they were not considered by the Appeal Board.

Application to submit new evidence:

10. The Appellant had sought to introduce new evidence to the appeal hearing in his notice of appeal in the form of subsequent statements from the match officials, Ben Kular and Kurt Palmer, correspondence with the Respondent and Veo video footage of the match.

11. The Chair took the opportunity of explaining Appeal Regulation 10 and in particular the necessity for any party seeking to introduce new evidence to satisfy the Appeal Board as to the relevance of that evidence and to explain satisfactorily why that evidence could not be or was not produced at first instance.

    FA Non-Fast Track Appeal Regulation 10 states:

    "New Evidence

    10 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. Any 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 (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) 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".[1]

12. Mr Baker explained that the Appellant wasn't aware that it was being charged because they did not consider they had done anything wrong. In fact, he was shocked when he discovered that the club had been charged and he believed the referee's evidence had already been included in the case papers which is why the subsequent statements from the match officials were not obtained until after the Decision. The Appellant had received the notice of charge and asked for a personal hearing but was told they were too late, in which case the matter proceeded by way of a denial of the charge with a correspondence hearing.

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1 The FA Handbook 2023/2024 at P.190

13. The relevance of the new evidence was that it showed the referee and assistant referee did not believe the Appellant was responsible for the mass confrontation The video evidence had not been produced earlier as they had not seen the need as they had done nothing wrong.

14. By way of response, the Respondent quoted Regulation 10 which makes it clear what criteria need to be satisfied for new evidence to be admitted to an appeal hearing. The Appellant had admitted that there was time to respond to the charge and it was also clear that the new evidence was available at the time of responding to the charge but wasn't submitted. Although relevant, there was no explanation as to why the new evidence had not been submitted at the time of the response to the charge and therefore the necessary criteria of Regulation 10 had not been met.

Deliberation and Decision on New Evidence

15. The Appeal Board then retired to consider the application to introduce new evidence.

16. The Appeal Board reminded itself that, like all parties at an appeal hearing, they too are bound by FA Regulations. Appeal Regulation 10 requires there to be "exceptional circumstances" if new evidence is to be allowed to be presented to an appeal board. The Appeal Board did not agree that there were exceptional circumstances in this case, neither was there a satisfactory explanation as to why the evidence now being produced was not or could not have been produced in time to be submitted to the original commission.

17. Although Mr Baker had indicated that he had not contacted Birmingham FA until after the response date, there was no indication that neither he nor his club had known what was going on and, crucially, no attempt had been made to obtain the additional statements, let alone submit them, and no attempt had been made to lodge the video evidence until after the Decision had been made, some two months after the Appellant's response to the charge.

18. The application to introduce new evidence therefore fails.

19. The decision not to admit the new evidence was communicated to the Appellant and Respondent.

The Appeal Proper:

Submissions by the Appellant:

20. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle and invited Mr Baker to address them.

21. 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,

22. The Appellant claimed that no reasonable body would have come to the decision of the commission. Mr Baker submitted that:

- the Appellant had not made a slow start to proceedings. They had emailed straight away asking why they had been charged
- The Appellant had not received statements with the charge letter
- The charge had not appeared on whole game system (WGS) as maintenance work was being undertaken and the charge had appeared late on WGS
- He had attempted to seek a personal hearing of the charge but was told by Birmingham FA that he was too late and the matter would have to proceed by way of a denial by correspondence
- His original response had been on the 28th of September 2024 seeking a personal hearing
- If the Appellant had been two days late in responding they had still been charged for doing nothing wrong
- Having originally sought a personal hearing he was later told that he was out of time even though he had only had the paperwork for three days
- Once he had been told he was out of time he was also told he needed to send in statements. He had spoken with the referee and assistant referee both of whom said the Appellant had done nothing wrong
- "*I understand there is a process but I thought we wouldn't be found guilty*"
- The whole game had costed his club £300 with officials' fees, pitch costs, food that went to waste etcetera
- When asked why emails to which he was referring and which had been sent at the beginning of November had not been submitted with the appeal notice he accepted he was a volunteer and still didn't understand how the club had been found guilty
- On 1st October 2024 he had emailed the Birmingham FA saying he had been calling for two days without response
- Inconsistencies in Mr Baker's timeline were evident and it was established that it was on the 4th of November 2024 he first emailed the Birmingham FA. The charge had been sent on 25th of October 2024, although Mr Baker still insisted the first he had heard of it as Club Secretary was on 1st November 2024

- It was pointed out that the evidence referred to a "*mass confrontation*" and non-playing participants from both dugouts had entered the field of play but Mr Baker submitted he had not had that correspondence as it had not come with the original charge. He had only seen the original case papers once he had submitted the appeal
- His club had done nothing wrong on the day except to protect the match officials.
- Maybe they had got the procedure wrong but he was still adamant that his club had done nothing wrong.

Submissions by the Respondent:

23. The Appeal Board considered the formal response to the notice of appeal as well as the written reasons as to how the Decision had been reached.

24. Mr Ives, on behalf of the Respondent submitted the following in response to the appeal submissions:

- He was unaware of the administrative errors referred to in paragraph 8 of the written reasons (p93 of the appeal bundle), which had contributed to the delay in hearing the charge. This had been a serious case and had been administered by the National Serious Cases Panel
- The notification date stamped 25th of October 2024 on WGS cannot be overridden. It is automated by WGS and this was the date the charge would have been sent.
- He was unaware of any glitches in WGS in the month of October
- The charge letter and case papers would have been submitted simultaneously through WGS. The Appellant club could not have received the charge letter without the case papers, as had been alleged
- Nothing had been provided which suggested there had been a failure in WGS and no mention of this had been made until the appeal hearing
- The response to charge had been submitted by the Appellant through WGS on 4th of November. Simply because the response deadline had passed this did not prevent a club from applying for a personal hearing through WGS, although this request could be declined in accordance with regulations which state that once the reply deadline has passed the right to a personal hearing is lost.[2]
- Mr Ives accepted an error in the written response to the notice of appeal when it stated

[2] The FA Handbook 2024/2025 at P.222

that the charge had been accepted. That had been his own error but that had not been the information before the original commission and had not prejudiced the case at all

- There was no evidence with the notice of appeal that a personal hearing had been requested
- The Respondent had no problem with the Appeal Board exploring wider grounds for possible appeal than appeared in the appeal notice. The Respondent was content that the Appeal Board had investigated the circumstances surrounding the response to the charge
- The procedure which had been followed by the Respondent had been entirely proper
- Mr Baker had admitted that he responded to the charge with a denial and felt comfortable that the on evidence his club would be found not guilty
- In paragraph 29 of the written reasons, on page 99 of the appeal bundle, the key findings were outlined. There were two teams involved in what was described by the assistant referee as a "*mass confrontation*". Paragraph 31 had acknowledged that the Appellant was not the aggressor but that is not the same as saying they were not involved or were not guilty.
- If the Appeal Board disagrees with the findings of the original commission that is not sufficient for the appeal to succeed. The commission reached this decision quite succinctly and, submitted Mr Ives, it was a decision to which they were entitled to come on the basis of the evidence before them.

Closing Submissions

25. In closing Mr Baker submitted that there were two statements from match officials which were very similar and neither of which accused the Appellant of any misconduct. How could the Appellant be found guilty of doing nothing?

26. Mr Baker reasserted his belief that no one at his club had done anything which amounted to misconduct under FA rule E20.

27. Next time there is a situation like this he won't get involved and he will encourage his players and managing staff not to get involved for fear of being charged.

Deliberation

Legal test for all grounds of appeal

28. As is clear from Regulation 12 of the Non- Fast Track Appeal Regulations, 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[3].

29. 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'."

30. 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

[3] The FA Handbook 2024/2025 at P.191

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 ("Wednesbury" unreasonable and/or irrational and/or perverse) or if the wrong legal principles were applied to the making of those factual findings;
- The only likely scenario for the appeal board to interfere with factual findings of the Respondent is where there is no proper evidential basis for a finding of fact that has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;
- The test for the appeal board in determining whether the Respondent acted irrationally and/or perversely and/or "Wednesbury" unreasonably, or came to a decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review;
- 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

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

32. The Appeal Board was satisfied that on the basis of the papers before it the original commission had not come to a decision to which no reasonable such body could have come.

33. It was clear from the written reasons of the commission that they had correctly identified all of the issues on which they were expected to decide and had considered all of the evidence before them. In particular the Appeal Board noted:

- There had been no evidence of any fault with WGS

- The charge had been sent on 25th October 2024 with a response date of 1st November 2024
- The Appellant had responded on 4th November 2024 opting for a Deny – Correspondence Hearing
- On considering the decision-making of the original commission, the Appeal Board was satisfied that there was no contradiction in the statements of the referee and the assistant referee
- The assistant referee had identified a mass confrontation and also commented on players from both sides aggravating the situation
- Members of the Appellant's coaching staff had entered the field of play without the consent of the referee
- Text messages to which Mr Baker had referred in his evidence were not produced either to the commission nor to the Appeal Board

34. The commission's assessment of the individual witnesses was noted and it was clear from the written reasons that, on the balance of probabilities they were able to find that there was sufficient evidence that the Appellant had been involved in the mass confrontation. The commission had assessed the evidence before it and from that evidence it had concluded what it believed to have been more likely to have happened than not.

35. The Appeal Board reminded itself of the guidance and principles set out in paragraphs 28 and 29 above. The appeal was not to proceed on the basis of a rehearing nor of what the appeal board itself might have decided had it sat in place of the commission but rather whether the commission in reaching the decision had come to a decision to which no reasonable such body could have come. In other words, to allow the appeal the Appeal Board would need to be satisfied that the commission had reached a decision which on the facts it was not entitled to reach. The Appeal Board found that the Decision was within the scope of decisions the commission was entitled to make.

Conclusion

36. In summary, the Appeal Board unanimously dismissed the appeal.

37. The Appeal Board therefore ordered:

- The appeal was dismissed the appeal on all grounds raised
- There was no order as to costs and
- The appeal fee is to be forfeited

38. This decision of the Appeal Board is final and binding and there shall be no right of further challenge.

Paul Tompkins
Chris Goodman
Daniel Mole

12th March 2025