

THE FOOTBALL ASSOCIATION

APPEAL BOARD

PERSONAL HEARING

of

ARALE MOHAMED (Appellant)

&

LONDON FA (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 22nd April 2025.

Introduction

1. The Football Association (“The FA”) had received an appeal against a decision of the London Football Association (“London FA”) finding a charge proven against the Appellant.
2. The charge had concerned an alleged breach of FA Rule E3 - Improper Conduct against a Match Official (including abusive language/behaviour). The alleged misconduct had occurred in a match played on 21st September 2024 between Wokingham Town 1st v Hilltop FC in the Premier Division of the Combined Counties Football League (“the match”).
3. The charge had been dealt with at a personal hearing by a three person commission appointed by London FA (the commission”) sitting on 20th February 2025 (“the Decision”).
4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The Appeal Board convened on 22nd April 2025 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)

Evans Amoah-Nyamekye (Panel Member)

Nolan Mortimer (Panel Member)

The Appeal Board was assisted by Richard Pallot of FA National Secretary Panel acting as secretary to the Appeal Board.

6. The Appellant had opted for a personal hearing but was unable to attend in person. In his place the appeal was presented by Mahad Omar, his club secretary. Reference to “the Appellant” in these written reasons includes representations and submissions made on his behalf notwithstanding his absence.

The Appeal Documentation:

7. The Appeal Board had before it an appeal bundle comprising:

- Results Letter & Written Reasons
- The Appellant’s Notice of Appeal
- The Respondent’s Response to Notice of Appeal
- Papers of First Instance
- Appellant’s Offence History
- Supplementary Submissions

8. The Appeal Board had received 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.

Application to submit new evidence by the Appellant.

9. As was clear from the Notice of Appeal, the Appellant wished to rely on video footage to support the appeal. A link to the Veo footage of the match had been embedded in Notice of Appeal along with a formal application for this video footage to be admitted to the appeal.

10. It was made clear to the Appellant that FA Appeal Regulations require the appeal hearing to proceed on the basis of a review of the original hearing and must therefore rely upon

consideration of the same documentation and evidence which had been before the original hearing. Submission of new evidence was governed by Appeal Regulation 10 which was displayed to the hearing by the secretary. It was explained to the Appellant that for the Veo footage to be submitted it needed to be relevant and there needed to be a satisfactory explanation as to why the new evidence was not or could not have been produced at the original hearing. This was understood.

11. The Appellant was notified that the Appeal Board was satisfied as to why the video footage was relevant but a convincing explanation needed to be provided as to why that video footage was not produced to the original hearing.

12. It was the Appellant's case that the Veo footage had been included in the original response from Hilltop FC to the London FA and the Appellant did not understand why it had not been included in the case pack. The same link which was now included in the Notice of Appeal would have been attached to the original response or at least a copy of the video would have been sent. The Appellant had been refused permission to produce the video footage to the original hearing. Since the original hearing, the video footage has been submitted and is relevant when considering the credibility of the referee's evidence.

13. The Appeal Board chair referred to the appeal bundle which included the following correspondence between the Respondent and the Appellant's club:

- 24.9.24 general investigation email to Hilltop FC requesting that, amongst other things, "video footage, including VEO" be provided to the London FA
- 24.1.25 email from London FA to Abdullah Mohammed and Hilltop FC asking, "If you could provide the VEO footage by the aforementioned date (29th January) that would also be helpful."
- 30.1.25 email from "Abdul, Hilltop FC" to London FA stating, "we will ensure the requested VEO footage is provided before the deadline (now 20th February)".
- 3.2.25 email from London FA stating, "we can of course hear the case in your absence and accept written statements in response to the charge alongside the VEO footage"
- 7.2.25 email from London FA to Hilltop FC stating, "We do not appear to have received the VEO footage and so we have not been able to include this."

14. The Appellant was unable to explain why this email thread appeared to indicate that no video footage had been submitted prior to the hearing, which was consistent with the written

reasons where the commission chair had enquired after the video evidence but that nothing had been received by London FA.

15. In response, the Respondent directed the Appeal Board to the response to the Appeal pointing out that video footage had been requested when the charge was raised and had been requested on subsequent occasions including a statement that without the video footage it could not be included in the case papers. It had not been received by the Respondent prior to the hearing. The Respondent even commented to the Appeal Board that had they seen the Veo footage (now viewed by them) before the Charge had been raised then they might not even have charged the Appellant

16. The Respondent submitted that the club had had ample time to produce the Veo footage and it had been given several opportunities to do so and there was no satisfactory explanation as to why this had not been done in the first instance.

Deliberation on the admissibility of new evidence.

17. The Appeal Board retired to consider the application.

18. The Appeal Board took note of 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

¹ The FA Handbook 2023/2024 at P.190

18. 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. The Respondent had given the Appellant plenty of opportunity to produce the video evidence, including at least two reminders, and there was no explanation as to why it had not been submitted. The Appellant’s case that the video had been sent in response to the first investigatory e-mail was not credible. For one thing there was no indication as to whether this had been an embedded link or a separate video attachment. The Appeal Board also took note that the email of 30th January from the club to the Respondent had promised that the video evidence would follow, when a more natural response to a duplicated request would be to point out that it had already been submitted, if this was in fact the case.

19. There being no satisfactory explanation as to why the video evidence could not or was not submitted to the original commission, the threshold required by Regulation 10 had not been met and therefore the application for admission of new evidence to the appeal hearing was denied.

20. The Hearing reconvened and the decision not to allow the video evidence was delivered to the parties.

The Appeal proper:

Submissions by the Appellant:

21. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle.

22. The Appellant was appealing against the decision on the grounds that the Respondent:

- Misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision
- Failed to give the Appellant a fair hearing,

23. It was claimed that the Appellant had not had a fair hearing. The Appellant submitted that he had denied the misconduct charge and have been denied the opportunity of using key video evidence which would have assisted his defence. It was the Appellant’s case that the

referee's statement had been false but had formed the basis of the Charge having been found proven against him. In particular, the Appellant submitted that the referee had stated that the Appellant had sarcastically clapped the referee, having been shown a red card, and had also used foul and abusive language to the referee at the same time. Not only was this disputed, it could have been shown to have been false by viewing the video evidence.

24. It was, however, accepted by the Appellant that his inability to rely upon the video evidence is not the fault of the Respondent nor the commission, for the reasons set out above.

25. The Appellant's representative, Mahad Omar, claimed that he had wanted to join the original hearing and to speak on behalf of the club but had been prevented from doing so.

26. Further, the Appellant claimed that the Respondent had misinterpreted or failed to comply with the rules and or regulations of the Football Association relevant to the decision.

26. In particular, the Appellant had been found guilty of delaying the restart of play but this was different from the charge which had been brought against him. The Charge had included an allegation from the referee that the Appellant had clapped in the referee's face and had abused him but no other witnesses had seen this and the referee's version of events was not corroborated by anyone else, not even his assistant referees.

Submissions by the Respondent:

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

28. The Respondent addressed the Appeal Board and explained that the charge letter set out on page 33 of the bundle, clearly set out the allegations against the Appellant. The Appellant had "*used offensive and/or insulting and/or abusive words or behaviour*" and specifically alleged the Appellant "*initially refused to go to the changing rooms after being sent off*". Appellant had not been found guilty of anything for which he had not been charged.

29. On the ground that the Appellant had not been afforded a fair hearing, the Respondent had followed procedures and regulations completely and there was nothing which could be constituted either as being intrinsically unfair or contrary to the Regulations.

30. Although not specifically mentioned in the notice of intention to appeal, the appeal notice also alleged that the original commission had come to a decision to which no reasonable such body could have come and this was refuted. The Respondent maintained that the commission's examination of evidence with thorough and the conclusions drawn were

reasonable and, were the Appeal Board minded to consider this ground of Appeal, it was strongly rejected on the basis that the Decision was one to which the commission could reasonably have come.

31. When asked to explain the rationale behind the allegations all being included in the same charge, the Respondent submitted that it was a question of interpretation. All aspects of the Appellant's conduct had comprised the same course of action and that was why the Respondent had chosen to phrase the Charge in the way that it had. There is no actual charge for alleged insulting behaviour.

32. When asked, the Respondent confirmed that it considered walking across the goal intentionally to delay the restart of play would comprise improper conduct against a match official.

33. The Respondent was asked if the initial refusal to go to the changing rooms after being sent off and delaying the start of play had been a standalone charge, would it have been charged in this way? The Respondent replied that a different charge would more likely have been brought, maybe E3, Improper conduct – not acting in the best interests of the game or E3.1, Improper conduct (Not including Threatening and/or Abusive Language/Behaviour).

Closing submissions

34. In closing, the Appellant expressed his gratitude to the Respondent for the honest and transparent way the response to appeal had been presented. It was suggested that the Respondent could perhaps have dealt with the Charge differently.

35. The Appellant has already served the two match suspension imposed in the Decision so he has paid the price, although he still maintains that he was not guilty of the Charge

36. It was the Appellant's case that he may have been guilty of improper conduct against a match official but his conduct did not include abusive language or behaviour.

Deliberation

Legal test for all grounds of appeal

37. As is clear from Regulation 12 of the Non- Fast Track Regulations², the task of the Appeal Board is to conduct a review of the first instance decision, and not a new hearing. In other

² The FA Handbook 2023/2024 at P.191

words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

38. 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’.”

39. 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 (“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

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

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

42. There was nothing in the papers at first instance, the written reasons, the notice of appeal, the response or the submissions to the Appeal Board to suggest that the Appellant had not had a fair hearing. Every opportunity had been given for the Appellant to produce the video

evidence on which he apparently wished to rely and it was no one's fault other than the Appellant's and his club's that this evidence had not been before the commission.

43. Procedurally there was no apparent defect in the investigation or presentation of the case to the commission. There was also nothing to suggest that Mahad Omar had been prevented from appearing before the commission as was alleged.

44. This ground of the appeal fails.

45. On the question of evidential findings, deliberation and consideration of the evidence presented to the commission the Appeal Board could find no fault and therefore on questions of fact the commission had not come to a decision on the facts to which no reasonable such body could have come. The evidence had been very fairly and objectively considered leading to the conclusions presented in the Decision. The commission had found that there was insufficient evidence to find the allegation of sarcastic clapping at the match official or abusive language to the match official after having been sent off.

46. As to the allegations of initially refusing to go to the changing rooms and of delaying the restart in play, this evidence had been properly tested and the conclusion that the Appellant was guilty of those particular actions was not one which no reason was such body could have reached.

47. Where the Appeal Board did have difficulty was that the particulars of the Charge and what was found proven against the Appellant were at odds. The allegation of abusive language was disproven but was the proven behaviour abusive? Also, was his behaviour against a match official? The Respondent maintains that it must be if it is showing dissent against a match referee's decision.

48. The Appeal Board took great care to consider whether the Appellant's behaviour could have been regarded as abusive so as to fit the Charge.

49. The Appeal Board took note of the acceptance by the Respondent that had this behaviour led to a standalone charge it would have been charged differently and for this the Appeal Board was grateful to the Respondent for its candour and assistance.

50. The Appeal Board found no reason to interfere with the evidential findings of the commission but the crux of the appeal was whether the proven behaviour amounted to abusive behaviour against a match official. Intentionally delaying the restart of play is dissent but dissent is not synonymous with abuse, even though dissent might be abusive on occasion. In

this instance the Appeal Board could not find that the proven misconduct of the Appellant was sufficient to satisfy the threshold of the Charge as there was no abuse present in the proven behaviour.

Conclusion

51. In summary, the Appeal Board unanimously allowed the appeal on the single ground that the Respondent misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision

52. In order to give effect to this decision, the Appeal Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations², orders that:

- i. The sanction imposed is expunged from the record of Arale Mohamed.
- ii. The appeal fee is returned.
- iii. There is no order as to costs.
- iv. This decision is final and binding on all parties.

Paul Tompkins

Nolan Mortimer

Evans Amoah-Nyamekye

24th April 2025