

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

DARYL ADDIS (Appellant)

-and-

GLOUCESTERSHIRE FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member

James Cranston – Independent Legal Panel Member

Tony Rock – Independent Football Panel Member

Secretary: Vicky Collins – FA National Secretary, Staffordshire FA

Date: 9 January 2025

Venue: Held remotely via Microsoft Teams

Attending: Simon James (“SJ”), Viney St Swithins Secretary, representing
Daryl Addis
Mark Ives (“MI”), representing Gloucestershire FA
Chris Lucker (“CL”), Head of Football Services, Gloucestershire
FA, Observer

INTRODUCTION

1. The Appeal Board was appointed to determine an appeal by Daryl Addis (“the Appellant”) against the decision of a Disciplinary Commission (“the Commission”) sitting on behalf of Gloucestershire FA (“the Respondent”). No objection was raised concerning the composition of the Appeal Board.
2. The Appeal Board had before it a bundle, which contained the following documents:
 - Notice of Appeal
 - Response to Notice of Appeal
 - Papers of First Instance
 - Participant Offence History
 - Results Letter and Written Reasons
 - Sanction Stay Application and Outcome
3. The Appeal Board also had copies of three previous decisions to which the Appellant had drawn its attention. In addition it had further documentation and information provided ahead of the hearing in response to Directions from the Chair of the Appeal Board, as referred to below. This document summarises the written reasons for the Appeal Board’s decision. The Appeal Board considered all of the materials before it. If this document does not expressly refer to a particular document, point or submission, it should not be inferred that the Appeal Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

4. The Appellant plays for Viney St Swithins FC (“Viney”). On 31 August 2024 Viney played a match against Winchcombe Town FC First (“Winchcombe”).
5. By letter dated 23 September 2024 (“the Charge Letter”) the Respondent charged the Appellant with improper conduct against a Match Official (including threatening and/or abusive language/behaviour) contrary to FA Rule E3 (“the Charge”). Specifically, it was

alleged that during the Match the Appellant directed the comment(s) "*cheating cunt*" and/or "*Fucking cheat*" and/or "*Fucking cheating rat*" and/or "*Fucking joke*" and/or "*I'll get you, I don't fucking care what happens*" (or similar) towards the Assistant Referee from Winchcombe. It was further alleged that the Appellant attempted to enter the Winchcombe changing rooms after the Match and that he directed the comment(s) "*Fucking disgrace*" and/or "*You're not welcome in here, if you come in here there will be trouble*" (or similar) towards the Assistant Referee from Winchcombe.

6. On 6 October 2024 the Appellant submitted a response through The FA's Whole Game System ("WGS") denying the charge and requesting a personal hearing.

FIRST INSTANCE DECISION

7. The Commission dealt with the Charge at a hearing that took place over three evenings, on 25 October, 7 November and 13 November 2024. The case against the Appellant was consolidated with a separate E3 charge against another Viney player. The Respondent called three witnesses in relation to the Charge against the Appellant, the Referee, the Assistant Referee from Winchcombe and the Winchcombe Manager. The Referee's evidence (which largely related to the other Viney player's case) was heard on the first evening, but the hearing then had to be adjourned because the Respondent's other two witnesses could not attend beyond 7.30pm.
8. The Appellant gave his evidence on the second evening. He was represented by Simon James ("SJ") who presented the Appeal on his behalf as well. The case against the other Viney player was concluded on the second evening, but the hearing against the Appellant was adjourned to a third evening due to how late it was. The Appellant had wanted to call a witness, a fellow player, but his evidence was not heard by the Commission. The reasons for this are discussed further below. On the third evening the Commission delivered its decision. It found the Charge proven. The Appellant was ordered to serve an immediate suspension of 154 days from all football and footballing activity, not including a ground ban, fined £145 and ordered to complete an online education programme. A letter confirming the outcome ("the Results Letter") was sent to the Appellant on 15 November 2024. Written reasons of

the Commission, dated 19 November 2024 (“the Written Reasons”), were subsequently provided.

9. Following receipt of the Results Letter, a Notice of Appeal was submitted on the Appellant’s behalf. An application was made to stay the sanction until the outcome of this appeal. That application was granted. The Respondent responded to the Notice of Appeal on 18 December 2024 (“the Response”).

THE APPEAL REGULATIONS

10. Regulation 2 of the Appeals – Non-Fast Track Regulations (“the Appeal Regulations”) sets out the grounds upon which a participant may appeal a first instance decision. They are:

“... the body whose decision is appealed against:

2.1 failed to give that Participant a fair hearing; and/or

2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or

2.3 came to a decision to which no reasonable such body could have come; and/or

2.4 imposed a penalty, award, order or sanction that was excessive.”

11. Regulation 12 of the Appeal Regulations states:

“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”

12. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal, the power to remit the case for re-hearing and the power to exercise any power which the body against whose decision the appeal was made could have exercised.

THE APPELLANT'S CASE

13. When stating his intention to appeal, the Appellant indicated that he relied on all four of the grounds of appeal cited in paragraph 10 above. He provided detailed submissions on each of the grounds of appeal in his Notice of Appeal. They are summarised briefly below.
14. Put simply, the Appellant's main reason for saying that he had not had a fair hearing was that the evidence of his witness, Tom Pemberton ("TP"), had not been heard. The Appellant pointed out that the Written Reasons said that TP had not provided a written statement, which was incorrect. According to the Appellant, TP had provided a statement ahead of the first hearing. Supporting evidence was provided. The Notice of Appeal also referred to the fact that the Appellant suffers from severe anxiety and that The FA had been informed of this ahead of the hearing.
15. The Appellant asserted that the Commission had misinterpreted the Rules and Regulations because it had not delivered its decision within 24 hours of the hearing.
16. The Appellant said that the Commission had come to a decision to which no reasonable such body could have come because the Respondent's witnesses had acknowledged that there had not been any threatening behaviour and the Appellant's language had been said to be everyday football language.
17. The Appellant submitted that the sanction was excessive because the incorrect charge had been applied. He also referred to the fact that he had been told that he would not serve a ground ban when the decision was delivered at the end of the hearing, but this had not been reflected in the Results Letter.

THE RESPONDENT'S RESPONSE

18. The Respondent also provided a detailed Response. In terms of a fair hearing, it pointed to the lack of medical evidence of any condition that would require adjustments to be made. It stated that the hearing had been reconvened for the third evening in order to accommodate

the Appellant, due to the fact that his witness had had to leave on the second evening before his evidence had been heard.

19. The Respondent rejected the suggestion that there is a Rule or Regulation that stipulates when a decision must be delivered.
20. The Respondent reminded the Appeal Board of the approach that it must take when considering whether the Commission reached a decision to which no reasonable such body could have come, in particular the fact that it should be slow to interfere with evidential assessments and findings of fact. It submitted that the Commission had come to a reasoned decision that the Appellant's language was threatening and abusive.

21. CHAIR'S DIRECTIONS AND RESPONSES PROVIDED

22. On 6 January 2025 the Chair of the Appeal Board directed that the parties should respond to a series of requests/questions regarding the Appellant's witness TP, as set out below:

The Appellant's representative

Please provide a copy of the email sent to Gloucestershire FA at 13.15 on 25 October 2024 to which the statement of Tom Pemberton was appended.

The Secretary to the Commission

Did you receive an email from the Appellant's representative at 13.15 on 25 October 2024 to which a statement from Tom Pemberton was appended?

If so, did you pass on Mr Pemberton's statement to the Commission? When?

Why was the hearing adjourned to a third day? The Appellant representative states that this was simply to deliver the outcome (page 9). The Respondent states (paragraph 17 of its Response, page 23) that it was to give the opportunity to hear from Mr Pemberton.

The Chair of the Commission

Did you receive a copy of an email from the Appellant's representative timed at 13.15 on 25 October 2024 to which a statement from Tom Pemberton was appended, and or the statement itself? If so, when did you receive it

Why was the hearing adjourned to a third day? The Appellant representative states that this was simply to deliver the outcome (page 9). The Respondent states (paragraph 17 of its Response, page 23) that it was to give the Commission the opportunity to hear from Mr Pemberton.

23. All parties responded promptly to the Chair's Directions. Their responses are summarised below:

The Appellant's representative

The Appellant's representative provided a copy of an email sent to the Respondent on 25 October 2024 to which TP's statement was attached.

The Secretary to the Commission

The Secretary confirmed that he had received the email from the Appellant's representative referred to above and that he had forwarded it to the members of the Commission the same day.

The Chair of the Commission

The Chair of the Commission provided a comprehensive response. He confirmed that he and the other members of the Commission had received TP's statement and that the Written Reasons were incorrect when they stated (in paragraph 27) that TP had not provided any individual written evidence. The Chair apologised for his error. He confirmed that the statement had been read by all the members of the Commission and its contents noted, but said that the Commission was "*unable to place significant weight to the statement content because [TP] was not in attendance at the hearing, as we had expected him to be*".

The Chair also confirmed that the hearing had been adjourned again on the second evening due to the lateness of the hour and the adjournment had had nothing to do with the absence of TP.

24. Following receipt of the responses summarised in paragraph 23 above, the Chair of the Appeal Board sought further clarification from the Secretary and Chair of the Commission as to whether TP had been present on the second evening of the hearing, as stated in the Notice of Appeal. The Chair replied saying that he was not in a position to say as his notes would only record the live evidence given at the hearing. The Secretary confirmed that TP had attended, but had not been present when called to give evidence because he had had to leave.

DECISION

25. At the start of the hearing the Appeal Board indicated to the parties that it was concerned about the fact that TP had not been able to give his evidence and that this went directly to the question of whether the Appellant had had a fair hearing. It therefore invited the parties to make submissions on this ground of appeal specifically to begin with.
26. SJ, on behalf of the Appellant, reiterated the fact that the Appellant had not been afforded the same luxury as the Respondent. When its witnesses had had to leave before their evidence was given, a new date had been arranged and their evidence had been heard. That did not

happen in TP's case. In response to questions from the Appeal Board as to whether he had raised this at the end of the second hearing, or indeed during the third hearing, SJ said no. He commented that he had not been aware that TP's statement would not be considered. Furthermore, the hearing had concluded in a cordial and friendly fashion and the Appellant and SJ had believed that the case would be found not proven. When questioned as to whether the Appellant had been asked if he had had a fair hearing and what his response was, SJ confirmed that the question had been posed. Although disappointed that TP's evidence had not been heard, SJ said that he would not have felt comfortable saying that there had not been a fair hearing, given that the Commission was going to deliver the verdict. Furthermore, he and the Appellant had not been familiar with the disciplinary process.

27. MI for the Respondent, having consulted with CL, conceded that in light of the information provided in response to the Chair's Directions and in the course of the hearing, he had to concede that paragraph 18 of the Respondent's Response was wrong; the reason for the adjournment of the second hearing had not been to accommodate the Appellant and allow TP's evidence to be heard. MI did not dispute what had been said about TP being present in the waiting area for a considerable time. He accepted that there had been an imbalance in the way that the parties' witnesses had been treated, and for that reason alone agreed that the Appellant had not had a fair hearing.

28. MI reminded the Appeal Board that serious cases are referred by The FA to the Serious Case Panel ("SCP"), saying that County FAs carry out the investigation but thereafter the case becomes the responsibility of The FA and the Commission appointed from the SCP. That had been the case here and the procedural unfairness was not the fault of the Respondent.

29. Having reviewed all the material provided to it and considered the submissions from the parties, the Appeal Board concluded that the Appellant had not had a fair hearing because TP's evidence had not been heard. TP had been in the waiting room for a lengthy period during the second evening (from 7pm until around 9.20pm according to the Appellant, which was not challenged), and indeed had briefly attended on the first evening as well. The Commission had adjourned the hearing at 7.30pm on the first evening because two of the Respondent's witnesses had to leave at that point, but had not afforded the same treatment to

the Appellant's witness when he had had to leave. For that reason the parties had not been treated equally by the Commission. Furthermore, given the inconsistencies in the Written Reasons and the Chair's responses to the Directions, and absent any reference whatsoever to TP's statement in the Written Reasons, the Appeal Board could not be satisfied that any weight at all had been given to that statement. It therefore allowed the Appellant's appeal. It then moved on to consider how to deal with the matter, noting the wide powers conferred on it by Regulation 21.

30. MI invited the Appeal Board to remit the case for re-hearing, given the serious nature of the Charge. SJ requested that the Charge be dismissed altogether, pointing out that the Appeal Board had not heard from the parties on the other grounds of appeal. The Appeal Board considered what SJ had said about the other grounds of appeal. Based on the comprehensive written submissions that it had received and the evidence that it had reviewed, the Appeal Board's preliminary view was that none of the other grounds of appeal were likely to succeed so as to dispose of the case completely. However, it was mindful that the evidence of TP could cast a different complexion on the whole case. Having allowed the appeal on the fair hearing ground, it concluded that the proper course was to order a re-hearing.
31. The Appeal Board considered whether it should remit the case to the Commission to hear TP's evidence only, noting that this was likely to be less detrimental to the Appellant's wellbeing than a completely new hearing. The Respondent's representative submitted that the case should be remitted to a new Commission, indicating that there could be a perception of bias against the Appellant if it were remitted back to the original Commission. The Appellant's representative said that it did not matter either way – the Appellant would not attend another hearing due to the strain that it would put upon him.
32. The Appeal Board considered these points. It noted that no evidence of the Appellant's fitness to attend a hearing had been provided either at first instance or to the Appeal Board. It concluded that the case should be remitted for rehearing by a new Commission to ensure complete impartiality. Mindful of the length of time the case had already taken, and of the impact on the Appellant, it indicated that the hearing should take place by 31 January 2025 if possible. It ordered that the Appellant's witnesses should be limited to himself and TP and

that no new evidence was to be admitted without the permission of the new Commission. The sanction imposed by the Commission was set aside, as the question of liability, followed by sanction if appropriate, would be for the new Commission to determine at the remitted hearing. The Appeal Board also recommended to SJ that if the Appellant was not well enough to attend another hearing, or needed reasonable adjustments, he should discuss this with the Respondent and provide medical evidence.

33. The Appeal Board considered whether to make an order for costs against the Respondent but declined to do so, agreeing with the submission from MI that the Respondent was not responsible for the failure to give the Appellant a fair hearing and that the errors were down to the Commission. It ordered that the appeal fee be returned.

34. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport

James Cranston

Tony Rock

20 January 2025