

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

B E T W E E N: -

LEO ROGET (APPELLANT)

-and-

ESSEX FA (RESPONDENT)

**DECISION AND WRITTEN REASONS
OF THE APPEAL BOARD**

Brief Introduction

1. The Appeal Board conducted a hearing on Friday 16 May 2025 to determine an appeal by the Appellant against the decision of a Disciplinary Commission dated 17 March 2025.
2. This hearing was conducted over Microsoft Teams.

The Appeal Board

3. The members of the Appeal Board were:
 - Jeff Lewis (Chair);
 - Emma Vase;
 - George Dorling.
4. No objection was raised concerning the composition of the Appeal Board.
5. The Secretary of the Appeal Board was Jack Mason, FA National Secretary, and whose assistance was greatly appreciated.

Attendees

6. The Appellant attended the hearing and represented himself.
7. The Respondent was represented by Greg Hart, Head of Football Services of the Respondent.
8. The Appeal Board is grateful to both the Appellant and Mr. Hart for their submissions and assistance during the appeal hearing and for the courteous and appropriate manner in which they both conducted themselves during the hearing.

Brief Background Facts

9. A football match took place between Gidea Park Rangers Youth U10 Black FC ("GPR") and Hutton Youth U10 Gold FC ("Hutton") on 26 January 2025. The Respondent had received a complaint from the match referee, Steve Reynolds, ("the Referee") on 5 February 2025. This led to the Respondent's bringing two charges for Improper Conduct against the Appellant. The first charge was an allegation that the Appellant used threatening and/or abusive and/or indecent and/or insulting words or behaviour contrary to FA Rule E3.1 by using Threatening Behaviour Against a Match Official as defined in FA Regulations; the second charge was an allegation that the Respondent used violent conduct and/or threatening and/or abusive language or behaviour contrary to FA Rule E3.1 by striking an opposition coach on the back of the head in the car park, or similar, after the match had ended.
10. The instant appeal concerned only the second charge (the Appellant having been found not guilty of the first charge).
11. The Appellant was at the material time the manager/coach of Hutton.
12. It is common ground that there was a fracas between a GPR player and a Hutton player right at the very end of the match in question and that, as a result, the Referee blew the final whistle early in order to bring the game to a conclusion.
13. The charges were heard by a Disciplinary Commission ("the Commission") on 10th and 17th March 2025.
14. As stated above, the Commission found the Appellant not guilty of the first charge. Accordingly, all references below to the Charge shall be references to the second charge as set out above.

15. In relation to the Charge, the Commission heard oral evidence from the Referee, who had stated in a written statement that, after the match, the Appellant loitered by the entrance of the car park and, as the GPR manager attempted to leave, the Appellant struck him on the back of the head. The Referee stated that the situation required intervention from several GPR supporters to prevent escalation into a broader physical altercation.
16. The Commission also considered the written evidence of the GPR coach Ricky Lennon, which also stated that, in the car park, the Appellant swore at him and punched him in the back of the head.
17. The Commission also considered the written evidence of Lisa West, who was a spectator at the match and whose written evidence stated that she heard some shouting and saw the Appellant punch Mr. Lennon on the back of the head as Mr. Lennon was walking to his car.
18. The Commission also heard oral evidence at the hearing from the Referee and the Appellant.
19. The Appellant's initial response to the Charge was to plead not guilty (although, as noted below, he subsequently changed his plea to that of guilty). He accepted at the outset, however, that he did push Mr. Lennon, stating that this was a response to Mr. Lennon's swearing and pushing him. The Appellant went on to say that, after the match, whilst in the car park and saying goodbye to some of the parents and loading his truck with equipment from the match, he was speaking to a parent of a Hutton player, whereupon the GPR coaching staff and the Referee entered the car park. The Appellant's version of events was that there was a verbal exchange, and that Mr. Lennon then turned around and walked up to the Appellant, said "fuck off" and pushed the Appellant in the chest/shoulder area and turned back around and started to walk away from him. The Appellant's case is that he replied, "who the fuck do you think you are" and walked after him and that he then pushed him in the back. According to the Appellant's version of events, the parent to whom he was originally speaking stepped in between Mr. Lennon and the Appellant, and the Appellant turned away and walked in the opposite direction.
20. The Appellant's case is that he did not continue to engage with Mr. Lennon verbally or physically and that the other GPR/parents then surrounded the Appellant and told him to calm down. The Appellant's version of events was that he then went to walk towards his son (who was one of the players involved in the fracas on the pitch) and that, as he did so, one of the GPR coaches pulled the Appellant back by the sleeve of his coat and accidentally ripped it.
21. The Appellant's case was that he did not (as was alleged) punch Mr. Lennon in the head but that, instead, he pushed Mr. Lennon after having been provoked by Mr. Lennon's swearing at him and assaulting him by pushing him.
22. In his written evidence before the Commission, which he repeated before the Appeal Board, the Appellant stated that he took full responsibility for his behaviour in the car park and that he was not proud of his behaviour. The Appellant stated that he was not proud of his behaviour, as he prides himself on his example as a coach.

The First Instance Decision

23. The Commission was satisfied on the evidence (including taking into account what it described in its Written Reasons ("the Written Reasons") as the Appellant's apparent admission) that the Appellant had used violent conduct towards the Hutton coach. The Commission expressly passed sanction for this Rule E3 offence of violent conduct on the basis of a push in the back (as opposed to a punch in the head).
24. The Commission took account of the fact that the Appellant had no previous misconduct offences on his record and noted that the Appellant had stated that he had been provoked and had been sworn at and pushed first (albeit that the Commission do not state in the Written Reasons whether it accepts the Appellant's version of events in this respect).
25. The Commission imposed a suspension from all football activities for 4 matches, a fine of £80 and 6 club disciplinary points.

Notice of Appeal

26. The Appellant lodged a Notice of Appeal against the decision of the Commission. The grounds for his appeal were that:

26.1 The Commission had failed to give the Appellant a fair hearing. The Appellant noted that he had been deprived of the opportunity to cross-examine Mr. Lennon and that Mr. Lennon had not been asked to testify as to his version of events. The Appellant considered that, as Mr. Lennon was the key witness who was making the actual allegation against the Appellant, it would have been fair for the Commission to have allowed the Appellant to cross-examine Mr Lennon. The Appellant said that when he asked the Commission if he could cross-examine Mr. Lennon, he was told that it was not necessary, as the Commission already understood both parties' version of events. The Appellant said that, had he been given the opportunity to cross-examine Mr. Lennon, it would have been clear that Mr. Lennon and other witnesses had been giving false evidence.

26.2 The Appellant contended that the Commission imposed a penalty, award, order or sanction that was excessive. The Appellant said that Mr. Lennon had not denied pushing the Appellant prior to the Appellant's pushing him back and that Mr. Lennon testified to raising his arm first. The Appellant considered that, in imposing a suspension of as much as 4 matches, the Commission had not taken this into account and had not taken into account that the Appellant's improper conduct had been committed only after Mr. Lennon had sworn at him multiple times and assaulted him first. He regarded the 4-match suspension as being "unbelievably harsh" and said that FA guidelines directed that only a 3-match suspension be given to players/coaches who are guilty of a violent conduct offence.

27. The Respondent's response to the Notice of Appeal was to point out in an email from Mr. Hart dated 22 April 2025 that, prior to the Charge's being considered by the Commission, the Appellant had amended his response from originally disputing the Charge to accepting it and having the matter considered with a verbal plea. The Respondent stated that, because of this change, the Commission did not have any "witnesses" involved in the Charge and that this was why Mr. Lennon had not been required to be cross-examined (and that the Appellant had had the opportunity to put in mitigating factors for consideration by the Commission). The Respondent contended also that the sanction which the Commission imposed was "within the guide", although it accepted that the Written Reasons did not provide extensive reasoning for the sanction (albeit that reference is made to the mitigation provided by the Appellant and his previous clean record).

The Appeal Regulations

28. Regulation 2 of the "Appeals-Non-Fast Track" Regulations ("the Regulations") sets out the grounds upon which the Appellant may appeal the First Instance Decision(s). 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".*

29. Regulation 12 states:

“An Appeal shall be by way of a review on documents only and shall not involve a rehearing of the evidence considered by the body appealed against. 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”.

30. Regulation 21 sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal. It further provides at Regulation 21.6 that the Appeal Board has the 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.

New Evidence

31. The Appellant requested that two videos of CCTV footage of the incident in the car park, which was not before the Commission, be admitted into evidence before the Appeal Board. Although there was no formal application for this CCTV footage (“the Video Evidence”) to be admitted as new evidence, the Appellant had given notice of his application for it to be admitted when lodging his Notice of Appeal.

32. Regulation 10 of the Regulations states:

“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. Such 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 parties will be given an opportunity to respond.”

33. The Appellant explained in his Notice of Appeal that the reason why the Video Evidence was not presented before the Commission was because the Appellant had sent it to his club’s secretary, who was expected to submit it to the Respondent, who would in turn provide it to the panel. The Appellant said that “from the club secretary to [the Respondent] and then the panel the video seems to have not been included in the evidence”. He was unable to explain to the Appeal Board at what point the channel of communication in relation to the Video Evidence had broken down, and Mr. Hart was not in a position to provide any enlightenment to this issue.

34. The Appeal Board noted that:

34.1 There could be no certainty as to whether the fault for why the Video Evidence had not been put before the Commission lay with the Appellant or the Respondent or indeed neither.

34.2 The Video Evidence was very relevant because it captures the incident in question, the circumstances of which were in dispute as between the parties.

34.3 The Respondent, sensibly and fairly, had not objected to the admission of the Video Evidence.

35. In the circumstances, the Appeal Board considered that it was appropriate to allow the Video Evidence as new evidence, notwithstanding that new evidence may be admitted only in exceptional circumstances. The Appeal Board was satisfied that, for a combination of the factors set out in the above paragraph, it was appropriate to allow the Video Evidence to be admitted.

Sanction

36. The relevant sanction, if the Charge were found proven, is contained within the FA Sanction Guidelines and FA Regulations. The relevant sanctions are as follows: -

Low: a suspension between 1 and 3 matches and a fine between £20-£50.

Medium: a suspension between 2 and 4 matches and a fine between £40 to £80.

High: a suspension between 3 and 10 matches and a fine between £70 to £125.

The sanctions imposed upon a Participant should also take into account any mitigating or aggravating factors.

Legal Test for all Grounds

37. As is clear from Regulation 12 (supra), the task of the Appeal Board is to conduct a review of the first instance decision, and not to conduct a de novo hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, is reviewing the first instance decision.

38. Guidance on how this review should be carried out is to be found in, inter alia:

(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 as 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 or 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 Commission. 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 Commission simply because the Board might themselves have reached a different decision at first instance;

- If the Commission has reached findings of fact which it was reasonably open to the Commission 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 Commission. Evidential assessments of the Commission should only be interfered with if they are clearly wrong (“Wednesbury” unreasonable and/or irrational and/or perverse) or if 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 Commission 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 Commission acted irrationally and/or perversely and/or “Wednesbury” unreasonably, or came to 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.

Discussion

40. The Appeal Board noted that it appeared from the Written Reasons that the Appellant had admitted the Charge and also noted that this was corroborated by the email dated 22nd April 2025 from the Respondent. The Appeal Board sought and obtained confirmation from the Appellant during the hearing that he did not contest the Charge and that his appeal was limited to the sanction.
41. Accordingly, the Appeal Board considered whether the Appellant had been denied a fair hearing and whether the sanction which had been imposed by the Commission was excessive.
42. On the question of whether the Appellant had been given a fair hearing, the Appeal Board sympathised with the Appellant’s position, in that the Commission had not heard from the most crucial witness, i.e. Mr Lennon. The Appeal Board understood why, in light of the fact that the Appellant was admitting the Charge, the Commission considered that Mr Lennon could not be cross-examined by the Appellant, but nevertheless the circumstances behind the altercation were, in the view of the Appeal Board, critical, and relevant information may have emerged on cross-examination which would have operated properly to influence the Commission’s view on the appropriate sanction.
43. The Appeal Board noted that the Commission had imposed a sanction based upon there having been a push in the back (as opposed to a punch in the head), but it was not clear from the Written Reasons whether the Commission had accepted the Appellant’s evidence that the Appellant had been provoked and had been sworn at and pushed by Mr Lennon first. The Appeal Board’s view was that cross-examination of Mr Lennon would have enabled the Appellant to interrogate Mr Lennon on this point, and that this could, depending upon the findings reached, have affected the Commission’s view on sanction. In reaching this view, the Appeal Board were particularly mindful that the Video Evidence bore out the Appellant’s assertion that he had been guilty of a push in the back (as opposed to a punch in the head); the relevance here is not so much as to the direct impact of this on sanction (because the Commission had stated that it had passed sanction on the basis of a push in the back) but, rather, that there appeared, in light of the Video Evidence, to be genuine grounds for questioning the reliability of the evidence given by Mr Lennon, the Referee and Ms West. They had given evidence to say that the Appellant had punched Mr Lennon in the head, and they had not stated that the Appellant had been provoked or sworn at or pushed by Mr Lennon first. Although the Video Evidence did not clarify this latter point one way or the other, there were

grounds for believing that if the evidence of Mr Lennon, the Referee and Ms West was unreliable in relation to whether there had been a punch in the head or a push in the back (as the Appeal Board considered, having viewed the Video Evidence, that there was) then there were grounds for believing that the evidence of those three individuals as to whether there had been any provocation (or initial action) by Mr Lennon was also unreliable. Cross-examination of Mr Lennon before the Commission would or could have clarified matters and enabled the Commission to make a finding as to whether Mr Lennon had sworn at and pushed the Appellant before the Appellant retaliated.

44. Furthermore, Mr Lennon and Ms West (and probably the Referee) would have had a motive to portray the Appellant's behaviour as being worse than it was (or at least to have portrayed Mr Lennon's behaviour as better than it was), given that, so the Appeal Board was informed, a charge was also made against Mr Lennon in relation to the same incident and was heard at the same time as was the charge against the Appellant.
45. In relation to the sanction, the Appeal Board noted, by reference to the Regulations and Guidelines referred to above, that the Commission appears to have concluded that, after consideration of any mitigating or aggravating factors, the appropriate sanction is at the high extreme of the Medium band. The Appeal Board noted that the Commission does not set out how it reached the sanction which it did, but in particular the Appeal Board noted that the Written Reasons do not identify any aggravating factors and do set out some mitigating factors. The obvious conclusion, therefore, is that, but for the mitigation, the Commission would have considered the matter to be within the High band.
46. The Appeal Board considered that such an approach is wrong. It may be that the Commission was unduly swayed by the evidence of Mr Lennon, the Referee and Ms West and/or that the Commission did not accept that there was a mitigating factor in that Mr Lennon had provoked and swore at and pushed the Appellant first. The Appeal Board is conscious that the Commission did not have the benefit of seeing the Video Evidence (which the Appeal Board had found to be somewhat pivotal)
47. However, having seen the Video Evidence, and as stated above, the Appeal Board consider that it would be wrong to approach the matter on the basis that Mr Lennon had not sworn at the Appellant and pushed him first, bearing in mind the comments made above in relation to the unreliability of the evidence against the Appellant. Furthermore, the Appeal Board found the Appellant to be honest, and the Appeal Board therefore accepts his version of events, so that, in its view, it could properly take into account as mitigation the fact that the Appellant was provoked by Mr Lennon and was assaulted first.
48. The Appeal Board consider that, in addition to the mitigation set out above, credit should be given to the Appellant for his contrition (which the Appeal Board found to be genuine) and, as noted by the Commission, the fact that the Appellant had no previous misconduct offences on his record.

Decision

49. Notwithstanding the very limited grounds on which an appeal may be allowed (as set out above), the Appeal Board considered that it was appropriate to disturb the Commission's findings and to allow the Appellant's appeal. In particular, the Appeal Board considered that the Appellant had not had an entirely fair hearing and that in those circumstances the Appeal Board should not be slow to interfere. Furthermore, the lack of explanation in the Written Reasons as to how the Commission reached its decision on sanction, and the fact that the sanction imposed appeared to be outside of the Commission's reasonable discretion, meant that the high threshold for the Appeal Board to intervene in the Commission's decision had been met.
50. Taking into account all of the above, the Appeal Board considered that the appropriate sanction band is Medium, which would entail a suspension of between 2 and 4 matches and a fine of between £40 to £80. The Appeal Board considered that, when the mitigation set out above is taken into account, and there being no aggravating factors, the appropriate sanction is at the low end of the band.

51. Accordingly, the Appeal Board reduced the period of suspension to two matches and reduced the fine to £40.

Conclusion

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

Jeff Lewis (Chair)

Emma Vase

George Dorling