

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

ALFRETON TOWN FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

**DECISION OF THE APPEAL BOARD**

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Andrew Adie Independent Football Panel Member

Matt Wild Independent Football Panel Member

Non-personal hearing 9 June 2021

Background

1. The general background to this appeal is that as a result of the global pandemic football clubs have been severely affected by the inability to admit fans to matches and have thereby lost substantial parts of their revenue. Government support was provided to clubs in the National League, National League North and National League South in the form of Government grants for the period up to December 2020 however despite the hopes or expectations of many the Government decided that financial support thereafter would generally be in the form of loans. That change in the type of financial assistance was met with great disappointment by clubs. There was also a well-publicised and substantial increase in the rate of infection in December 2020 and

January 2021, leading to a further national lockdown being announced by the Government on 4 January 2021.

2. On 22 January 2021 the National League (“the League”) temporarily suspended the Step 2 Competition with immediate effect for two weeks until 6 February 2021. It was clear that, subject to any decision being made to end the season early, fixtures after 6 February 2021 would be effective. On 1 February the League circulated to clubs written resolutions the outcome of which would determine whether Step1 and/or Step 2 clubs would continue the season or whether the season would end and be declared null and void with no promotion and relegation, subject to the approval of the Football Association.
3. On 17 February 2021 the required number of votes were lodged with the League. Step 1 voted against ending the season whereas Step 2 voted to end the season. The result of the vote was declared on 18 February 2021. During the 12 day period between 6 February (when the temporary suspension of the season ended) and 17 February (when the result of the resolutions to end the season was announced) the Club, and a number of other clubs, failed to play scheduled fixtures.
4. Alfreton Town (“the Club”) was charged with two breaches of Rule 8.39 of the National League Rules (“the Rules”) for failing to fulfil two fixtures namely, on 13 and 16 February 2021.
5. By a decision dated the 25 March 2021 (“the Decision”) an independent panel (“the Panel”) found the Club to be in breach and imposed a sanction of £2000 per breach giving a total fine of £4000. A further point deduction was ordered, 2 points per fixture, although this was suspended on terms that the Club was not found guilty of a breach of Rule 8.39 in season 2021/22.
6. By Notice of Appeal dated 14 April 2021 the Club has not set out the grounds that it appeals the Decision however the League has assumed that it wishes to rely upon the following grounds namely that the Panel:

6.1 misinterpreted or failed to comply with the regulations relevant to the decision;

6.2 came to a decision that no reasonable body could have come;

The Appeal Board also approached the appeal on the basis that the Club seeks to challenge the sanction as being excessive in all the circumstances.

7. The parties have made no objection to the appointment or the composition of the Appeal Board.

## Rules

8. Rule 8.39 provides:

*Where a match has been postponed for any reason, the two Clubs concerned must agree within the seven (7) days of the postponement a new date (which shall, save in exceptional circumstances, be within 42 days of the original date) and in default the Board is empowered to order Clubs to play on a date it considers suitable. The Competition Secretary shall determine the new date.*

*Any Club without just cause failing to fulfil an engagement to play a Competition match on the appointed date shall for each offence be liable to expulsion from the Competition and/or such other disciplinary action the Board may determine, including the deduction of up to a maximum of three points from the offending Club's record, any expenses incurred by the opponents, and a fine.*

*In the event of a Club being in breach of the previous paragraph of this Rule then the Board may award points to the Club not at fault as if the match had been played and the League table shall reflect the position as if the match had been played with the result awarded by the Board. (underlining added)*

9. Appendix A to the Rules sets out the Disciplinary Procedures- Appeals 2020/21.

10. Regulation 2 of Appendix A provides:

*The grounds of appeal available to Participants shall be that the body whose decision is appealed against:*

*2.1 failed to give the 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 10 of Appendix A provides:

*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. 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 with the reason given as to why it was not, or could not have been, presented at the original hearing and 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.*

12. Regulation 21 of Appendix A 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.

Summary of the Club's Grounds of Appeal and Submissions

13. The Club contends that:

- 13.1 the fixtures could not have been met in any event because the other team had informed the Club they would not be attending;
- 13.2 continuing to play fixtures during the period between resumption of the season and the vote on whether to end the season would have placed an unnecessary financial burden on the Club in what was an extremely challenging period. This amounts to just cause under Rule 8.39;
- 13.3 if the Club had qualified for a loan under the Winter Survival Fund that would have added an unacceptable financial burden on the Club for years to come;
- 13.4 the sanctions imposed were excessive in all the circumstances.

#### Summary of the National League's Response and Submissions

#### 14. The position of the League is as follows:

- 14.1 the Club did not place its financial information before the Panel to demonstrate financial reasons why it was unable to play the fixtures. It was not the obligation of the League or the Panel to identify any previous correspondence or information provided by the Club to the League and decide what should be deployed in support of the Club's case;
- 14.2 there is no reasonable excuse for the Club not having submitted its financial information to the Panel;
- 14.3 in the absence of cogent financial information the Panel was entitled to find that there was no just cause and therefore no defence to the charge;
- 14.4 the effect of the season being declared null and void was to void the results of the season. It is not to affect in any way breaches of the Rules which therefore remained subject to disciplinary proceedings;
- 14.5 the Panel imposed a fine of £2000 for each breach which was less than the lowest end of the guidelines. Such a fine could not be described as excessive. Likewise the sanction of a suspended points deduction could not be described as excessive.

15. The League reminds the Appeal Board that it is not rehearing these charges but rather is reviewing the decision of the panel to determine if the grounds of appeal are made out.

#### Decision of the Appeal Board

16. The Appeal Board only reviews the Decision of the independent panel, it does not carry out a rehearing. It follows that it does not matter that the Appeal Board might have arrived at a different conclusion on breach or on penalty.
17. The Club had made it clear by letter dated 8 February 2021 that it would not be fulfilling League fixtures. Whatever the position of the other clubs, the Club decided it would not be playing.
18. The Club did not place any financial information before the Panel. The Panel was entitled to find that the Club did not have just cause not to play the fixtures and therefore to find the Club in breach. Even if financial information has been provided to the Panel that would have been scrutinised carefully to establish what the financial position of the Club was and whether such could amount to just cause. There is no proper basis for the Club to challenge the Decision on any of the appeal grounds.
19. In respect of sanction the fine imposed was below the lowest point in the guidelines. The Panel took into account all of the circumstances. The sanctions cannot be said to be excessive.
20. The Appeal Board considers that when the season was declared null and void the effect of this was to nullify the results for the season. This did not affect the breaches of the Rules and such continued to be subject to disciplinary proceedings.
21. It is the unanimous decision of the Appeal Board that the appeal is dismissed.

## Costs

22. The Appeal Board has considered the submissions made by the parties in respect of costs. The suggestion by the League is that the costs paid by the party that loses the appeal be reduced to take account of the fact that, it is said, normally appeals such as these are not chaired by an independent specialist panel member. That would effectively leave The Football Association to pick up part of the costs in respect of an appeal to which it is not a party.
23. In our judgment it is appropriate for the losing party to pay the costs incurred by the Appeal Board. The Club is therefore ordered to pay the sum of £1,200 within 30 days of the date of this decision.
24. The appeal fee is retained.



**David Casement QC (Chairperson)**  
**Signed on behalf of the Appeal Board**  
**Dated 14 June 2021**