

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

CURZON ASHTON FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD

Hearing: 3 June 2021

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Keith Allen Independent Football Panel Member

Andrew Adie Independent Football Panel Member

Michael O'Connor Lead Judicial Services Officer - Secretary

Curzon Ashton:

Harry Twamley Financial Director

Robert Hurst Club Secretary

The National League:

Mark Ives General Manager

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. Curzon Ashton Football Club (“the Club”) was charged with four breaches of Rule 8.39 of the National League Rules (“the Rules”) for failing to fulfil four fixtures namely, on 6, 9, 13 and 16 February 2021.
5. By a decision dated the 25 March 2021 (“the Decision”) an independent panel found the Club to be in breach and imposed a sanction of £2000 per breach giving a total fine of £8000. A further eight-point deduction was ordered, 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 8 April 2021 the Club has appealed the Decision on the grounds that:
 - 6.1 the panel came to a decision that no reasonably body could have reached;
 - 6.2 the sanction was excessive.
7. The parties have confirmed they have 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 it had just cause in not meeting the fixtures. It maintains there were exceptional circumstances prevailing at the time. The Club has always abided by the rules and met its fixtures however given the risk to health as a result of rising incidence of infection combined with the absence of testing for teams and staff, many of whom are volunteers, the Club felt it could not run the risk to health. That was its primary reason for not meeting the fixtures. The secondary reason for not meeting the fixtures was financial. The Club would have been faced with making a substantial financial loss by covering the fixtures at a time when, in the view of the Club, it was a foregone conclusion that the season was going to be ended once the votes were counted.
14. The Club asked for the matter to be dealt with at first instance by the panel solely on the papers. The Club's position was set out in writing although no financial information was provided. The Club, as with all clubs, had provided financial information to the League over the years in the normal way, however it was not placed before the panel in respect of the charges in question.
15. The fine of £2000 per breach is clearly excessive given the circumstances and the financial impact of the pandemic on clubs.

Summary of the National League's Response and Submissions

16. The position of the League is as follows:

- 16.1 the Club faces a high hurdle in asserting that the panel came to a decision which no reasonable body could have come to;
- 16.2 the Club has failed to show just cause for the failure to meet its fixtures. The decision not to play was not just cause but was the Club's preference;
- 16.3 approved protocols were in existence and issued to ensure the safety of players and staff at the grounds. The absence of testing at that time provided no justification for failing to meet fixtures;
- 16.4 the Club did not place any financial information before the panel to advance its case that there were financial reasons why it could not meet the fixtures;
- 16.5 the Club was warned of the likely breach before it failed to meet the fixtures but nonetheless it decided to carry on;
- 16.6 whether the season would be null and void was not known until the votes were counted;
- 16.7 failure to play a fixture is one of the most serious breaches of the Rules;
- 16.8 the sanctions imposed were well within the range of reasonable sanctions open to the panel. At the most serious end the panel has the power to expel a club. In the present case it imposed a fine that was less than the range provided in the guidelines;
- 16.9 the effect of declaring the season null and void is that the results for the season are nullified. It does not affect the position in respect of breaches of the rules which breaches remain subject to disciplinary proceedings.

17. The League reminds the Appeal Board that it is not rehearing these charges but rather is reviewing the decision of the panel.

Decision of the Appeal Board

18. 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. The Club in alleging that the Decision was such that no reasonable body could have come to such a decision is faced with a high hurdle.

19. The Decision of the independent panel was not such that no reasonable body could have made such a decision. Given the information before the panel there was clearly a failure to fulfil the fixtures and the panel was entitled to find there was no just cause. The Club did not provide any proper reasons or analysis of why the protocols in place in respect of matches were not sufficient protection to enable the games to be played. The Club also did not provide any financial information to the panel which it could then have considered and taken into account in respect of the Club's submissions on breach and also on appropriate sanction.
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 potential disciplinary proceedings.
21. In respect of sanction, the failure to fulfil a fixture is a breach at the most serious end of offences. However, the panel took into account the mitigating circumstances identified by the Club. The level of fine was set at less than the lower end of the guidelines. The points deduction was suspended. It cannot be said that such sanctions are excessive.
22. The unanimous decision of the Appeal Board is that the appeal is dismissed.

Costs

23. The Appeal Board has considered the submissions made by the parties in respect of costs. The suggestion by both parties 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.

24. In our judgment it is appropriate for the losing party in these proceedings to pay the costs of the Appeal Board. The Club is therefore ordered to pay the sum of £1600 within 30 days of the date of this decision.

25. The appeal fee is retained.

A handwritten signature in black ink, appearing to read 'David Casement', with a long horizontal stroke extending to the right.

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