

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

KETTERING TOWN FC

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD

Hearing: 7 June 2021

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Matt Wild Independent Football Panel Member

Andrew Adie Independent Football Panel Member

John Edmunds Judicial Services Coordinator - Secretary

Club:

David Mahoney Chairman

Ritchie Jeune Owner

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 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 Step 1 and/or Step 2 clubs would continue the season or whether the season would 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. Kettering Town FC (“the Club”) was charged with one breach of Rule 8.39 of the National League Rules (“the Rules”) for failing to fulfil one fixtures namely, on 6 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 for the breach. A further sanction of a two points 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 9 April 2021 the Club has appealed the Decision on the grounds that:
 - 6.1 the Panel came to a decision that no reasonable body could have come;
 - 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 appeals on the basis that the League came to a decision that no reasonable such body could have come. The Club states that its sole basis not to play the fixture was based upon its own financial predicament. The Club had "just cause" not to play the fixture and the Panel failed to take into account a number of important facts as set out in the Notice of Appeal. In particular:

- 13.1 the Panel appeared to accept that there was a misunderstanding in respect of the start of the season as to the funding that would be available. Even though it was a genuine misunderstanding, the Panel failed to take into account the financial hardship that caused to the Club;
- 13.2 the Club agreed to start the season only as a result of the representation that funding would be available by way of grants to make up for the lack of fan attendance;
- 13.3 the pitch would not have been playable in any event due to it being water-logged;
- 13.4 the Club had made its financial problems clear to the League prior to the fixture;
- 13.5 the Panel did not take into account the impact of the financial penalty on the Club;
- 13.6 the Panel failed to take into account matters which it should have taken into account and the Decision was therefore such that no reasonable body could have come to that Decision.

14. The Club also appeals on the basis that the sanction imposed was excessive in all the circumstances including the financial position of the Club.

Summary of the National League's Response and Submissions

15. The position of the League is as follows:
 - 15.1 the League maintains that the question of what amounts to just cause was a matter for the Panel to decide on the material before it;
 - 15.2 the Club did not place any detailed financial information or report before the Panel. Given that was the only basis advanced by the Club to contend there was just cause, the Panel was entitled to find that there was no evidence to support the Club's defence that it had just cause;
 - 15.3 it was for the Club to place all materials before the Panel that it wished to have included in its response to the charges. The obligation was not upon the League let alone the independent Panel to decide what materials the Club might want to rely upon. There is no justification for any criticism of the League or the Panel for the Club's failure in this respect;
 - 15.4 the meaning of "just cause" is limited to those matters that are entirely outside the control of a club. In the present case the Club acted not upon just cause but because it was its preference not to fulfil the fixtures. Put another way it was convinced the season would be declared null and void and therefore it decided it would not play;
 - 15.5 the Club, as with other clubs, was aware that the suspension declared in January was temporary and the final outcome of the resolutions that were put to the vote by clubs depended upon the counting of those votes;
 - 15.6 the Panel was not obliged under the Rules to provide detailed reasons. Reasons were in fact provided;
 - 15.7 the League had given permission for clubs to obtain loans on certain terms;
 - 15.8 the League reminds the Appeal Board that the test for unreasonableness under the Rules is a high hurdle;

15.9 protocols were approved by the Government and The FA so as to enable games to be played in the League without testing. That was the same basis upon Clubs had played since the start of the season;

15.10 the sanctions imposed represented a reduction on the lowest end of the guideline sanctions. As such and having taken into account all of the mitigation referred to by the Club, those sanctions cannot be said to be excessive.

16. 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

17. 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.

18. The Club did not provide, with its response to charge notice, the financial information and documentation that it says was provided to the League in the normal course. It contends that it did not realise that it had to do so. That however is a mistake that the Club made and does not amount to a proper explanation as to why the Panel's Decision is challenged on the basis of information that the Club could and should have provided. It was not for the League or the Panel to decide what information, previously supplied by the Club, should be placed before the Panel. That was for the Club to decide. On the basis of the information and documentation before the Panel at the time it made the Decision the Panel was entitled to reach the decision that it did. The grounds of appeal advanced by the Club therefore fails.

19. Further and for the avoidance of doubt 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.

20. The sanctions cannot be said to be excessive. The level of fine imposed was less than the guidelines. The Panel took into account the general financial environment created by the pandemic and the effect of clubs having to play behind closed doors. The deduction of points was suspended so as to act as an incentive to the Club to meet its fixtures next season in accordance with the rules.
21. It is the unanimous decision of the Appeal Board that this appeal is dismissed.

Costs

22. 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.
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 £1600.



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