

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

On 1st June 2022

Jonathan Rennie (Chair), Stuart Ripley, Gordon Mellis

BETWEEN:

**FRANK DENNIS
(Appellant)**

And

**MIDDLESEX FA
(Respondent)**

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The Appeal Board (“the Board”) was appointed in accordance with The Football Association’s (“The FA”) Disciplinary Regulations- Appeals 2021/22 (“the Appeal Regulations”) to determine an appeal brought by Frank Dennis (“the Appellant”) by Notice of Appeal undated but bearing to be lodged after 28 April 2022.

2. By the Notice the Appellant appealed the decision of the Middlesex FA (“the Respondent”), notified to the Appellant and Celtic Under 11 Red team (“Celtic”) on 28th April 2022, that Mr Dennis be suspended for 2 games and be fined £45 in consequence of being found to have breached FA Rule E3 by removing players from the field of play and causing the abandonment of a fixture.

3. As part of the appeal there was submitted to the Board additional new witness statements and evidence from 3 parents and 1 coach who were present at the fixture in question being Brook House Under 11 Red against Celtic on 3rd April 2022.

4. The appeal was heard on 1 June 2022 by way of MS Teams. There was no attendance from any parties and so the Hearing was determined on the basis of the comprehensive papers provided.

5. The Board had before it:

- a. The Notice and the supporting materials of the Appellant;
- b. The Respondent’s Response with supporting documents;
- c. An application, on the part of the Appellant to adduce new evidence; and
- d. An email from Patrick McDonagh from Celtic dated 24 May 2022.

Preliminary Point – Admissibility of New Evidence

6. The determination of the admissibility of the new evidence was in the Board’s view of critical importance to the determination of matters and accordingly was managed as a preliminary point.

7. Regulation 10 of the Disciplinary Regulations at page 167 of the FA Handbook 2021/22 sets out the test for new evidence:

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.

8. The Board were mindful that it can only be in "exceptional circumstances" that new evidence be admitted and that it must be relevant evidence. It follows that there had to be some assessment of the quality of the new evidence presented together with a question as to how it might impact on the fairness of the original decision making.

9. The Board considered the new evidence to be compelling. There are 2 elements to the new evidence:

- a. Firstly, Patrick McDonagh from Celtic's email dated 24 May 2022 detailed that acting as the Celtic Club Secretary he had incorrectly responded to the Charge. It sees that he erroneously populated the electronic form to accept the charge when he had intended to enter "Not Guilty". Whilst on the face of it this administrative error might appear a little implausible it does significantly impact how the case might have been managed and of itself is sufficiently relevant to require that new evidence to be admitted.
- b. Secondly, the witness statements appear to reveal that the fixture in question was not abandoned. There is testimony from attendees that the game was played out in full. The witness evidence appeared potentially compelling and certainly highly relevant to the proceedings. On greater inspection of the original disciplinary papers it did not appear that the actual fact of abandonment was very well described or evidenced and this caused the Board some concern as to the degree of initial investigation and potential accuracy of the original disciplinary findings.

10. The Board determined that the new evidence should be admitted. It is exceptional and relevant. Whilst disappointing that the new evidence was presented late, that was entirely understandable given the Cub Secretary explanation that he had not responded correctly to the charge and accordingly the Respondent had proceeded as an undefended case.

11. The Board considered whether it should exercise its powers to re-determine the original decision itself. However, this clearly could impact on the Respondent who were not present and could not be heard. The Board therefore decided that the correct course of action was to remit the matter back to the Respondent to re-examine the issue in light of the newly admitted evidence.

12. As noted the matter was considered on the documents alone. The reasoning for the Board decision is brief and in essence that is because the new evidence is so material that it necessitates the Respondent to look again at why charges were raised in the first place and whether indeed any further procedure is necessary.

Conclusion

13. The Board therefore determines that the existing decision be set aside. The matter is remitted back for fresh consideration by the Respondent who shall have regard to the newly admitted evidence before determining whether any further charge will be raised.

14. The Board considers that in all the circumstances an order for costs is appropriate against the Respondent in the sum of £300 given their failings in the original investigation. Furthermore, the appeal fee will be returned to the appellant.

15. The Board's decision is final and binding on all parties.

**Jonathan Rennie
Stuart Ripley
Gordon Mellis**

Wednesday 8 June 2022