

**IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL
ASSOCIATION**

BETWEEN:

FELIXSTOWE & WALTON UNITED FC

Appellant

and

THURLOW NUNN FOOTBALL LEAGUE

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The appeal board (the “**Appeal Board**”) was appointed by The Football Association (“**The FA**”) to determine an appeal in accordance with the Disciplinary Regulations – Appeals 2022/23 (the “**Regulations**”)¹ to determine an appeal brought by the Appellant by Notice of Appeal Letter to The FA dated 6 December 2022 (the “**Notice**”), against the decision of the Thurlow Nunn Football League (the “**Respondent**”) dated 29 November 2022.
2. The appeal was heard by way of a paper hearing only at the request of the Appellant on 9 January 2023 by way of MS Teams.
3. The Appeal Board had before it (1) the Notice; (2) the Respondent’s response to the Notice; (3) the original correspondence; (4) the charge letter; (5) the response to charge (6) the opposition club expenses claim; (7) Minutes of the first instance hearing of the Respondent’s Management Committee; (8) the Respondent’s Results Letter; (9) the results letter from the Respondent’s Secretary, dated 29 November 2022, (collectively, the “**Bundle**”)

The Appeal Board

4. The members of the Board were:
 - David Winnie (Chair);

¹ The FA Handbook 2022/23

- Paul Tompkins;
 - Daniel Mole.
5. The Secretary of the Appeal Board was Conrad Gibbons, the Judicial Services Officer and whose assistance was greatly appreciated.

Brief Background

6. The Appellant was due to play a league fixture against Leiston in the Youth League on Tuesday 4 October 2022 (the “**Fixture**”). However, the Appellant alleged that a serious incident occurred on the Orwell bridge, which caused it to close for a period. The Appellant’s ground is located at the end of the A14 East of the Orwell bridge.
7. The Appeal Board noted that the Appellant had stated in its appeal submissions at page 4 of the Bundle that:

“Our two responsible personnel on that day were not in Felixstowe & were attempting to travel from Ipswich & Nacton, respectively”.

8. The Appeal Board also noted that the Appellant stated at page 4 of the Bundle that:

“Attempts to navigate the gridlock to get to Felixstowe to collect the transport & the players were thwarted by the sheer volume of traffic that was at a standstill & remained so for a number of hours. The FWUFC DOF was unable to get Felixstowe from Nacton in sufficient time to pick up the transport & the players & get to Leiston F.C. in time for a reasonable KO.”

9. As a consequence of the above, the Appellant submitted, as part of its paper submissions that it was:

“A duty of care & safeguarding issue prevailed & the decision was taken that FWUFC could not get to the venue to KO at a reasonable time.”

First Instance Decision

10. The Appeal Board considered minutes of a meeting of the Management Committee (the “**Committee**”) of the Respondent held on Sunday 27th November 2022 (the “**Minutes**”) and as set out at pages 34-38 of the Bundle.
11. The Committee found the matter proven and passed the following sanction against the Appellant:
 - *Felixstowe & Walton United FC – breach of Rule 20 (B) failing to fulfil fixture vs Leiston on 4th October – fine £75 plus expenses claimed by Leiston - match to be rescheduled.*
12. The Appellant was notified of the above decision in a Results Letter (the “**Decision**”) dated 29th November 2022 and as set out at page 40 of the Bundle.
13. The Appellant appealed the Decision and submitted the Notice on 6 December 2022.
14. The Appellant, in the Notice, appealed the Decision on the ground that the Committee came to a decision to which no reasonable such body could have come.

The Appeal Regulations

15. In essence, there are four grounds upon which upon which the Appellant could seek to make an appeal against the decision of the Respondent.
16. Regulation 2², of the Regulations, sets out four 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.”*

² FA Handbook 2022/2023, p.186

17. Regulation 12³ states:
“An appeal shall be by way of a review on documents only. 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.”

Paper Submissions

18. The Appeal Board was asked to consider the paper submissions of the parties.
19. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point should not imply that the Appeal Board did not take such point into consideration when it considered the matter.
20. For the avoidance of doubt, the Appeal Board carefully considered all the materials provided with regard to this case.

Parties Submissions

21. The Appeal Board carefully considered the Notice and its covering correspondence as set out in page 4 of the Bundle.
22. The Appeal Board also considered an email from the Respondent to the FA, dated 19 December 2022, which stated that:

“The Committee took the view that it was clear that Felixstowe had no intention of fulfilling the fixture as evidenced by the correspondence. There were travel issues that evening but everyone else (Leiston players and match officials) made it to the game.”
23. The Appeal Board then reviewed email correspondence passing between the Appellant and the Respondent, dated 1 October 2022, and timed from 09:21am to 3:38:30pm.
24. It was noted by the Appeal Board that the Appellant was unable to raise a team for the game against Leiston on 4 October 2022. In particular the email thread stated, amongst other things that:

³ Ibid, p. 188.

“I have confirmed with our DOF & U18's manager that there is no possibility of raising a team for Tuesday. Therefore, I will be contacting Leiston to postpone the match scheduled Tuesday 04/10/2022”.

25. Furthermore, the email thread states that:

“I have been tasked by our DOF & our U18's manager to address the issue of the above fixture. They are both requesting a postponement of the fixture until a more suitable Tuesday can be found.”

26. An email from the Appellant's secretary, Mike Titchener, goes on to state that:

“We are ill prepared for the game for this Tuesday & will be very short on players due to the late notice of the fixture.”

Legal test for all grounds of appeal

27. As is clear from Regulation 12⁴, the task of the Appeal Board is to conduct a review of the first instance decision, and not a de novo hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

28. 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

⁴ The FA Handbook 2022/2023 at p.188

(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 of 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’.”

29. 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 Respondent. 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 Respondent simply because the Appeal Board might themselves have reached a different decision at first instance;
- If the Respondent has reached findings of fact which it was reasonably open to the Respondent 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 Respondent. Evidential assessments of the Respondent 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 Respondent 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 Respondent acted irrationally and/or perversely and/or “Wednesbury” unreasonably, or came to a 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.

Discussions on the ground submitted

30. In accordance with the principles set out immediately above, the Appeal Board considered the parties’ paper submissions.
31. It was clear from correspondence passing between the Appellant and the Respondent some 3 days before the Fixture that the Appellant was unwilling or unable to fulfil the Fixture due to a lack of players.
32. Furthermore, and even if the Appellant did have enough players, the Appellant contends in its paper submissions that it could not have played the Fixture in any event due to the unexpected closure of the Orwell Bridge.
33. However, the Appeal Board noted that Leiston’s players and the match officials had managed to make it safely to the game in time, despite the closure of Orwell bridge. This is evidenced by correspondence, dated 19 December 2022, passing between the Respondent’s secretary and the FA’s judicial services and as set out on page 6 of the Bundle.
34. It was further noted by the Appeal Board that the reasons presented by the Appellant to the Committee for non-fulfilment of the Fixture were at odds with the reason provided to the league secretary some two days earlier. This suggested a lack of sincerity on the Appellant’s part and a degree of opportunism too - by seizing on the closure of the Orwell bridge as a reason not to travel.

Appeal Ground

34. The Appeal Board then considered whether the Respondent had come a decision to which no such reasonable body could have come.

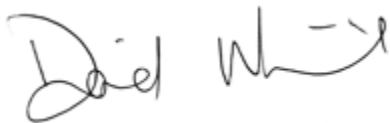
35. Having given due consideration to the Appellant's submissions on this ground, it was unsustainable to suggest that the Respondent had come to a decision to which no reasonable such body could have come.

Conclusion

36. In summary, the Appeal Board unanimously dismissed the Appeal on the ground raised
37. The Appeal Board made no order as to costs and the appeal fee is to be forfeited.
38. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

Signed:

12 January 2023

A handwritten signature in black ink, appearing to read 'David Winnie', with a stylized flourish at the end.

David Winnie

[for and on behalf of the Appeal Board]