

IN THE MATTER OF AN APPEAL

BEFORE THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN

ASHLEY DAVIES (Appellant)

And

GLOUCESTERSHIRE FOOTBALL ASSOCIATION (Respondent)

Introduction

1. The Appeal Board (the 'Tribunal') was appointed under The Football Association's (the 'FA') Disciplinary Regulations – Appeals 2023/24 (the 'Appeal Regulations') to determine an appeal brought by Ashley Davies (the 'Appellant') by a Notice of Appeal (the 'Notice') in the form of a letter dated 29 November 2023.
2. By way of the Notice, the Appellant appealed against the decision of the Disciplinary Commission (the 'Commission') dated 6 November 2023, to sanction the Appellant to a 126 days ban from all football activities and a fine in the sum of £50.00 (fifty pounds) and a requirement to attend an online education programme, together with a Club penalty of 7 (seven) penalty points.
3. The appeal was heard at 11am on 13 December 2023 online (the 'Appeal Hearing'). The Appellant requested that the Appeal be heard by correspondence. Mr. Conrad Gibbons, the Senior Judicial Services Manager for the FA, acted as the Secretary for the Appeal Hearing.
4. The Tribunal had before it (1) the papers before the Commission; (2) the Commission's written reasons (3) the Appellant's grounds of appeal plus numerous supporting letters; and (4) the Respondent's response to the appeal.
5. This document constitutes the written reasons for the Tribunal's decision. The Tribunal considered the entirety of the materials that the parties put before it. If it did not explicitly refer to a particular point, document, or submission, it should not be inferred that it had overlooked or ignored it; as mentioned, the Tribunal considered the entirety of the materials put before it.

Background

6. On 11 October 2023, the Respondent charged the Appellant, a player of Tuffley Rovers AFC with; *Charge: Misconduct for a breach of FA Rule E3.1 Improper Conduct – Improper Conduct against a Match Official (Including threatening and/or abusive language/behaviour).*
7. It was alleged that the Appellant at the end of the match approached the Match Officials and acted in an aggressive and/or threatening manner and directed the comments, "you were a fucking disgrace ref, a fucking disgrace" and/or "you don't need my fucking shirt number, you're a fucking disgrace ref, a fucking disgrace, you want some do ya, you want some?" or similar towards the Match Official.
8. The Appellant denied the charge and requested that the matter was dealt with by correspondence.
9. A Commission, with a Chair sitting alone, was convened to adjudicate this case on 8 November 2023 as a correspondence hearing.
10. The Commission determined that that the charge against the Appellant was proven.
11. The Commission decided that the appropriate sanction was as follows: *a) The Appellant was suspended from all football activity for 126 days; b) The Appellant is fined £50.00 (fifty Pounds); c) the Appellant required to complete an online education course within 28 days of tis decision or before the expiration of the suspension, whichever is later, failing which he will be suspended indefinitely until completion of the course; d) 7 Club penalty points shall be credited to the Club's Disciplinary Record.*
12. The Appellant appealed the Commission's decision in Notice of Appeal dated 19 November 2023.

13. The Appellant set out 1 ground of appeal, this being - the sanction imposed was excessive. The Notice stated:

“For the sake of clarity, we do not seek to appeal the sum fined (ii), the imposition of the 7 disciplinary points against Tuffley Rovers AFC (iv), nor the requirement for completion of the online education course (iii). The appeal focuses solely on (i), namely the length of the suspension and the scope of that suspension.”

The Parties’ Submissions

14. The Appellant began his submissions by identifying that the sanction guidance applicable to the proven charge was *“suspension from all football activity for a period of between 56 days and 182 days”*. The recommended entry point, prior to considering any mitigation or aggravating factors, is 112 days; a fine of up to £100, with a mandatory minimum of £50; and a mandatory education programme.

15. The Appellant argued that the recommended starting point is 112 days, with due consideration to be given to *“any mitigating or aggravating factors”*. At paragraphs 14 and 15 of the Commission’s written reasons, it sets out the Commission’s consideration of those 2 factors. The Commission held that the Appellant’s previously clean record and written apology as mitigating factors. The Commission then identified the following aggravating factors: *“The fact that the threat was made after the sin bin and sending off was an aggravating factor. The player should have used these as an opportunity to calm down.”*

16. The Appellant argued that the sanction imposed was excessive on the grounds that insufficient weight appeared to have been attached to those mitigating factors identified, whilst other aspects of the information presented in his defence have also not been taken into account by the Commission.

17. The Appellant suggested that the aggravating factors could potentially have been given undue weight and did not reflect the specific circumstances of the case. He further argued that it was difficult to understand how a sanction in excess of the recommended starting point had been reached because no explanation was provided in the Commission’s written reasons as to how these factors have been weighted.

18. Regarding the scope of the 126 days sanction, rather than the duration, the Appellant argued that his suspension from all football activities for a period of 126 days had been misapplied and was excessive. The Appellant referred to the Decision Letter issued 9 November 2023 as applying a ‘ground ban’ . The letter stated that :*“126 days Ground Ban from 12/11/2023 to 16/3/2024 (All Football CFA Only) Suspended from all football for the following categories - Playing, Refereeing, Coaching, Touchline, Ground/Venue, Administration.”* which was in excess of the Commission’s written reasons which only referred to suspension from all football activities.

19. The Respondent submitted that the Commission had applied the correct sanction guidelines and started the length of days for the sanction by correctly using the recommended starting point of 112 days. It noted that the Commission had referenced mitigation and aggravating factors, highlighting that the Appellant had denied the charge so did not received credit for accepting the charge, before determining the sanction would be for 126 days duration.

20. The Respondent responded to the second limb of the appeal, that the scope listed in the 9 November letter was not excessive because the scope did not prevent the Appellant from attending matches when his team was not involved.

21. The Respondent closed by referencing that the sanction, being its duration and scope, was not excessive as it was within the sanction guidelines and reflected the mitigating and aggravating factors, even if the Tribunal might have arrived at a different decision were they the Commission.

Determination

22. The Tribunal considered the Appellant's and Respondent's submissions at length.

23. The Tribunal noted that the Commission had commenced the duration of the ban from the recommended starting point and that the 126 days was the result of the Commission applying the relevant mitigation and aggravating factors. The Commission had some sympathy with the Appellant's argument that the Commission did not explicitly identify the weighting to each mitigating and aggravating factors before it arrived at 126 days.

24. Reminding itself that the role of the Tribunal is not to re-hear the claim, the Tribunal determined that the 126 days duration was not excessive.

25. On the second limb of the appeal, the Tribunal was persuaded that the scope of the suspension as set out on the 9 November 2023 letter was excessive.

26. The Tribunal noted that it had the power to exercise any power which the body against whose decision the appeal was made could have exercised whether the effect is to increase or decrease any penalty, award, order or sanction originally imposed.

27. The Tribunal ordered the removal of the imposition of the touchline and ground /venue terms of the 126 days suspension. The remainder of the orders of the Commission and terms of suspension remain as originally imposed.

28. The Tribunal did not make any order for costs and the appeal fee was to be returned.

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

Tribunal

Mr J Murphy – Chair

Mr I Stephenson

Mr D Crick

8 January 2024