

THE FOOTBALL ASSOCIATION

APPEAL BOARD

NON-PERSONAL HEARING

of

BEDFONT SPORTS CLUB (Appellant)

&

COMBINED COUNTIES FOOTBALL LEAGUE (Respondent)

REASONS OF THE APPEAL BOARD

These are the written reasons of the decision of an appeal board (the “Appeal Board”), having considered the matter as a personal hearing held online via the video platform MS Teams on 19th March 2024.

Introduction

1. The Football Association (“The FA”) had received an appeal against a decision of the Combined Counties Football League (“CCL”) relating to the rescheduling of a league fixture due to be played during Ramadan (“the Decision”).
2. The Decision had concerned the Respondent rearranging the time of a fixture between Hilltop FC and the Appellant, originally scheduled to be played at 3pm on Saturday 23rd March 2024 (“the Match”).
3. The Decision had been taken by the League Management Committee of the CCL and communicated to the Appellant by a letter of 30th January 2024.
4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The Appeal Board convened on 19th March 2024 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)

Keith Allen (Football Panel Member)

Laura McCallum (Legal Panel Member)

The Appeal Board was assisted by Conrad Gibbons of FA Judicial Services acting as secretary to the Appeal Board.

6. No parties were in attendance as the Appellant had opted for a non-personal hearing; in other words the appeal was to proceed on consideration of the papers alone.

The Appeal Documentation:

7. The Appeal Board had before it the full appeal bundle comprising:

- Notice of Appeal
- Response to Notice of Appeal
- Email from Hilltop requesting change of fixtures (25-12-2023)
- Decision email to Hilltop about their Ramadan request
- Email to FA Equality & Inclusion Dept (15th January 2024)
- Response from James Earl at the FA (23rd January 2024)
- Confirmation of guidance email from the FA (23rd January 2024)
- FA-ramadan-2023-guidance-notes-v6
- Email from League Fixtures Secretary confirming Hilltop v Bedfont Sports on 23rd March 2024 at 7-30pm
- Extract from Minutes of Management Committee Meeting held on Monday 15th January 2024
- Bedfont Sports Ramadan Fixtures Letter 30th January 2024
- League Rules 2023-2024
- The FA Handbook 2023-24 Update (31-10-2023) Page 116
- Decision email sent to Bedfont Sports (30th January 2024)
- Follow up email to Bedfont Sports with directions upon how to lodge an appeal (7th February 2024)
- FA FOOTBALL-BELIEF IN THE GAME

- Sunset times for March 2024
 - Email to Hilltop requesting that they find a ground for Saturday 23rd March 2024 (16th February 2024)
 - Supplementary Correspondence
8. The Appeal Board had before it the full appeal bundle, including all papers of first instance, with which all members of the Appeal Board were fully conversant. Absence of specific reference to any part of the appeal bundle in these written reasons does not mean they were not considered; they were considered in full.

Submissions by the Appellant:

9. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle.
10. The Appellant was appealing against the Decision on the grounds that the Respondent:
- Came to a decision to which no reasonable such party could have come,
 - Failed to give the Appellant a fair hearing,
 - Imposed the penalty, award, order or sanction that was excessive,
11. The Appellant claimed that no reasonable body would have come to the decision of the Respondent. The Decision had been to rearrange the Match along with other matches due to be played by Hilltop FC during Ramadan. Rearranging the Match had been in response to a formal request from Hilltop FC but the Appellant submitted that it had never been consulted before the Decision had been taken. The Appellant submitted that the Decision was one to which no reasonable such body could have come because:
- Moving the Match to a Friday evening was impractical because this also clashed with Muslim congregational prayers. There had been no clarification why the request had not been made by Hilltop FC at the start of the season. The dates of Ramadan were known well in advance.
 - They were not consulted before the fixture change was ordered
 - Sunset on the day in question would have clashed with evening congregational prayer
12. It was further claimed that the Respondent had not given the Appellant a fair hearing. The Appellant submitted:

- Though an email had been sent to them on 30th January notifying them of the change of date and time the formal decision letter was not received until some two weeks later
- They had never been given the opportunity to appeal or test the Decision but had simply been told that their only line of appeal was to the FA
- They were not consulted before the fixture change was ordered
- They had originally offered to play the fixture midweek or at a later kick-off time on the original fixture date of 23rd March but this offer had met with no response
- The Respondent had not treated their part in the process seriously. Before submitting their appeal they had requested a conversation with the Respondent at which only one league official had attended, someone who was not currently part of the league management committee.
- The Respondent had ordered the Appellant to move the fixture without consultation.

14. The Appellant claimed that the Respondent imposed a penalty, award, order or sanction that was excessive. While not specifically addressed in the appeal notice and correspondence, the Appellant considered the burden imposed upon it by the Decision was disproportionately unfair and forced them to bear an excessive part of compliance with the Decision as they were playing away and an evening kick-off was inconvenient to them.

Submissions by the Respondent:

15. The Appeal Board considered the formal response to the notice of appeal as well as the written explanation as to how it had reached the Decision.

16. The Respondent explained in full the process it had adopted.

17. In its written submissions the Respondent submitted:

- The request of Hilltop FC asking for changes to their kick-off times for the Match and other fixtures during Ramadan had been received on 25th December 2023.
- That request had been placed before the Respondent's Management Committee on 15th January 2024. This committee comprised all members of the board plus additional appointed officers and club representatives. A copy of the management committee meeting minutes was included in the bundle.
- Meeting had considered the request as well as faith guidance on religious festivals.
- In particular the Respondent had considered FA rule B29, which reads:
“FOOTBALL AND RELIGIOUS OBSERVANCE

B29 A Participant cannot be compelled to play football on bona fide occasions where religious observance precludes such activity, save where the Participant:

B29.1 has consented to do so on such occasions; or

B29.2 is registered as a Player under written contract, which shall be taken as consent to play on such occasions unless otherwise provided for in the contract.

B29.3 Annually, when planning programmes, Competitions shall define and notify agreed dates of such occasions.”

- The Respondent had taken further notice of the FA’s guidance notes for Ramadan which states:
“As far as grassroots football is concerned, the rule means that any fixtures that fall within Ramadan can be played either after sunset or delayed until after Eid ul-Fitr (the celebration at the end of Ramadan).” And
“Muslims must be able to practise Ramadan safely and it is vital that those within football understand the importance of this holy month”.
- The Respondent was mindful of Standardised league rule 8.6 providing for Saturday matches to kick off at 3pm and therefore a later kick off could have been a breach of the rule.
- The Respondent had sought and taken guidance from the FA and had received clear advice that rule B29 supersedes Standardised Rules, in this case the applicable league rules.
- The League Management committee had authority, through the Board, to *“change competition fixtures during the season to suit the overall interests of the Competition”* pursuant to League Rule 8.7 but under the overriding effect of FA Regulation B29.
- There is no requirement in Rule 8.7 for the CCL to consult.
- The Respondent had encouraged the Appellant to negotiate an alternative kick off time with Hilltop FC.

Deliberation

Legal test for all grounds of appeal

18. As is clear from Regulation 12 of the Non- Fast Track Regulations¹, the task of the Appeal Board is to conduct a review of the first instance decision, and not a new hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

¹ The FA Handbook 2023/2024 at P.191

19. Guidance on how this review should be carried out is to be found in:

(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 was unreasonable.”

and

(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’.”

20. 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 or if the wrong legal principles were applied to the making of those factual findings;
- 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 grounds submitted

21. In accordance with the principles set out immediately above, the Appeal Board considered all the parties' submissions.

22. The Appeal Board considered whether the Appellant had received a fair hearing.

23. The Appeal Board noted:

The ground for appeal in Regulation 2 of the FA's Non-Fast Track Appeal Regulations² is that "*The body whose decision is appealed against failed to give that Participant a fair hearing.*" In other words, that the Respondent had failed to give the Appellant a fair hearing.

24. This was not a disciplinary case nor a matter in which any party had an entitlement to be heard. As the Respondent had pointed out, CCL league rule 8.7 empowers the board to change fixtures to suit the overall interests of the competition and does not provide that any decision should be taken in consultation with any third party. The CCL league rules are based on FA Standardised rules and are not customised to suit the Respondent's needs. Therefore, the power to change fixtures rests entirely with the CCL board.

25. Although the Decision of 30th January had been taken without consultation, the Respondent had engaged extensively with the Appellant and Hilltop FC after the Decision had been taken, in other words once the Respondent's policy had been made clear. The Appeal Board considered that that engagement had been collaborative with a view to try to find a mutually acceptable solution but that ultimate responsibility for setting a fixture's time and date rested

² The FA Handbook 2023/2024 at P.189

with the Respondent.

26. The Appeal Board decided that the appeal failed on this ground.
27. The Appeal Board then considered whether the Appellant had come to a decision to which no reasonable such party could have come.
28. The Appeal Board was in no doubt that the Respondent had striven as much as possible to identify the correct rules, to apply them and to ensure that they were in line with the FA's advice. Specific advice had been sought from the FA, advice had been given, appropriate documentation and literature had been obtained and this had been explained to the parties.
29. Bearing in mind the Respondent's duty to the competition, the overall interests of the competition were not served by postponing matches until after Ramadan. To postpone all of Hilltop's fixtures during Ramadan until after Eid would have meant postponing them beyond 1st April, which would have created an impossible fixture backlog, notwithstanding the already existing fixture pile up Hilltop FC already has. It was in the interests of the competition to have the fixtures played as close to the original fixture dates as possible, always bearing in mind FA rule B29. This was exactly what the Respondent had striven to do.
30. Not only was this a decision falling within the spectrum of reasonable decisions which the Respondent could have taken, the Appeal Board considered the Decision had been taken carefully, after appropriate consultation and after conscientious application of all the applicable rules and was therefore well within the scope of decisions open to the Respondent to have made.
31. Therefore the Respondent had not come to a decision to which no reasonable such body could have come and this ground of appeal also fails.
32. The Appeal Board took note of the third ground of appeal, namely that the Respondent had imposed an award, penalty or sanction which was excessive. This argument was not made out in the appeal notice and correspondence but the Appeal Board considered any such situation required an element of compromise, which had been achieved, and any burden falling upon the Appellant was not excessive.

Conclusion

33. In summary, the Appeal Board unanimously dismissed the Appeal on all grounds:

- The appeal fails
- The appeal fee is retained
- There is no order as to costs

34. This decision of the Appeal Board is final and binding and there shall be no right of further challenge.

Paul Tompkins

Laura McCallum

Keith Allen

21st March 2024