

**In the Matter of the Appeal Board of  
The Football Association (the FA)**

**BETWEEN**

BEN DEAR (APPELLANT)

v

NORFOLK FA (RESPONDENT)

---

**WRITTEN REASONS OF THE APPEAL BOARD  
FOLLOWING THE HEARING ON 16 JULY 2024**

---

1. These are the written reasons for the decision made by an FA Appeal Board that heard the above mentioned case by “Teams” video conference on Tuesday 16 July 2024.
2. The Appeal Board members were Chris Reeves (Chair and FA Council Member), Daniel Mole and Glenn Moulton (both Football Panel Members).
3. Shane Comb Wiltshire FA, FA National Secretary acted as Secretary to the hearing.
4. The Appellant represented himself.

The Respondent was represented by Matthew Lemmon Head of Football Services Norfolk FA.

**INTRODUCTION**

5. (a) The Respondent on 21 March 2024 charged the Appellant with a breach of FA Rule E3 – Improper Conduct against a Match Official (including physical contact or attempted physical conduct and threatening and/or abusive language/behaviour).
  - (b) Following a personal hearing convened online on the 16 April 2024 at which the Appellant denied the charge the Respondent by written reasons dated 16 April 2024 found the charge proven and imposed a 149 day suspension, an £80 fine, 8 Club penalty points and ordered the Appellant to complete a face to face education programme.
6. The Appellant is a registered player with Heacham FC.

7. In a fixture against Sheringham FC on 2 March 2024 the Appellant received a red card and was sent from the field of play.
8. The Assistant Referee stated in his Extraordinary Incident Report Form dated 4 March 2024 “After being sent from the field of play Heacham 8 named as Ben Dear, proceeded to kick mud over me and the Sheringham staff. This went all up the front of my kit and went on my face.”
9. The Referee further reported his Extraordinary Incident Report dated 4 March 2024 “After being booked and sent from the field of play, Ben Dear kicked mud over the assistant referee.”
10. The Appellant in his statement stated “I did not kick the mud at the official, I kicked it in frustration that we was 5-0 down. The team had an extremely bad day and I was annoyed. I did not mean to hurt anyone or anger the officials at all. In no way would I do that to the officials as I know how much they give to the game.”
11. The Sheringham manager inter alia in his statement stated “BD (the Appellant) then kicked mud in the direction of the SFC dugout which caught myself . . . and the lino myside. I am unsure who the intended target was.”
12. There were two statements from Sheringham FC players denying that the Appellant kicked mud at the official.
13. (a) In the written reasons of the first instance commission hearing at paragraph 8 referring to the oral evidence given at the hearing the assistant referee is said to have stated that the Appellant “booted” a puddle just off the side of the pitch close to the technical area. He stated that the mud hit him around the chest area and below. He stated it did not really hit his face though it was possible a tiny speck of mud did. He was certain that the mud on his kit was exclusively from the Appellant’s kick.

The Appeal Board noted the photograph of a mud splattered kit that was included in the bundle.

(b) In reference to the oral evidence at the first instance Commission hearing the written reasons of the Commission referred to evidence from the Sheringham manager that “he would be surprised if BD (the Appellant) had intended to hit TA (the assistant referee) as TA wasn’t involved in the decision to send off BD”. He went on to say “it may well have just been a kick in general frustration.”

14. The Commission as recited in paragraph 5 above found the case proven on the balance of probabilities and imposed the sanction as previously recited.

#### APPLICATION TO BE ALLOWED TO APPEAL OUT OF TIME

15. On 14 June 2024 the Judicial Panel Chair considered an application of the Appellant to appeal outside of the time frames. The Chair referred the matter to be heard by a full Appeal Board at an oral hearing.
16. Having considered the submissions of the parties contained with the bundle in respect of the Appellant’s application for leave to appeal out of time and having heard from the Respondent that there was no objection to the Application the Appeal Board accepted that the Appellant had acted in good faith and should be allowed to pursue his appeal.

#### APPEAL HEARING

17. The Appeal Board noted that the Appellant was appealing on the following grounds:
  - Failed to give the Appellant a fair hearing
  - Came to a decision that no reasonable such body could have come

The Appeal Board having first established that the Respondent did not wish to raise any objections, invited the Appellant to include an additional ground to his appeal namely that the Commission had imposed an award, order or any other sanction that is excessive.

That ground was then added to the Appellant’s grounds of appeal.

18. The Appellant in his submissions argued that at the first instance hearing “everyone agreed it was not intentional”. He repeated that the act was born out of frustration and he had no intent to hit anyone. He could not accept that anything that had happened could warrant a 149 day ban.

He leant emphasis to the fact that no one mentioned the alleged assault on the day and said that he had been so affected by the charge that he was contemplating giving up the game.

He referred to the fact that he had never been booked for dissent and had never previously been sent off and had always respected match officials.

19. On being asked by the Chair of the Appeal Board, the Appellant said that “as I kicked out at the puddle I was looking towards the goal. The assistant referee asked me to leave the pitch and said nothing to me about the mud on his kit.”

20. In his response to the Appeal, Matthew Lemmon on behalf of the Respondent urged on the Appeal Board that there was nothing in the written reasons which suggested that the hearing had been unfair. He referred the Appeal Board to the evidence before the Commission as to the basis on which the finding had been made and as to the sanction being excessive he referred the Appeal Board to the fact that the sanction imposed was lower than the recommended entry point.

21. In summing up the Appellant stressed that there was no intent behind his kicking the puddle and that it was born out of frustration.

22. The matters recited in paragraphs 18-21 above are a summary of the principal submissions provided to the Appeal Board by the parties. The summary does not purport to contain reference to all the points made. For the avoidance of doubt the Appeal Board considered carefully all the evidence and material provided to it both in the Appeal Bundles and at the Appeal hearing.

23. The Appeal Board noted paragraph 11 of the written reasons of the Commission where it stated “The Commission found that there was no intent to cause “injury” to TA (the assistant referee on BD’s (the Appellant) part and that he kicked out purely in frustration without giving any real thought as to the consequences of his actions”.
24. The Appeal Board further noted that in paragraph 13 of the written reasons of the Commission it stated “the Commission noted that BD (the Appellant) did not intend to cause injury or insult to TA (the assistant referee) with his actions and that in some part they happened due to the appalling weather conditions on the day.”

## CONCLUSION

25. The Appeal Board were not satisfied that any satisfactory evidence had been submitted to the first instance Commission as to any intent on the part of the Appellant to commit improper conduct and accepted the Appellant’s position that he had no awareness that kicking a puddle in frustration would have occasioned an allegation worthy of a charge pursuant to FA Rule E3. The Appeal Board were further satisfied that the actions of the Appellant that gave rise to the charge were not “confrontational” for the purposes of regulation 96.2.
26.
  - (a) Having carefully considered all the evidence and material submitted to it both in the Appeal Bundles and at the hearing the Appeal Board unanimously decided that the appeal should be allowed on the ground that the first instance commission came to a decision to which no reasonable such body could have come.
  - (b) The Appeal Board unanimously found that the Commission had given the Appellant a fair hearing and as to the excessive penalty found the Appeal Board did not need to consider that in the light of its decision to allow the appeal.
  - (c) The sanction imposed by the Commission as to the suspension, the fine, the Club penalty points and the requirement to complete a face-to-face education programme is rescinded and the appeal fee is to be returned.

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

Christopher Reeves (Chairman)

Daniel Mole

Glenn Moulton

19 July 2024