

IN THE MATTER OF AN APPEAL BOARD HEARING

BETWEEN

MR DARREN ROSEVEARE

and

CORNWALL FA

**WRITTEN REASONS AND DECISION OF THE APPEAL BOARD HEARING HELD ON 22
MARCH 2024**

- 1) These are the written reasons for a decision made by an Appeal Board (the “Board”) which sat via videoconference on 22 March 2024.
- 2) The Appeal Board was appointed to determine an appeal brought by Mr Darren Roseveare (the “Appellant”) against a decision imposed by a Commission appointed by the Cornwall FA (the “Respondent”). The members of the Appeal Board were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), Mr Ian Stephenson (Independent Football Panel Member) and Ms Christine Harrop-Griffiths (Independent Football Panel Member).
- 3) Mr Jack Mason of the West Riding FA acted as Secretary to the Appeal Board.
- 4) The following is a summary of the principal issues and matters considered by the Appeal Board. It does not purport to contain reference to all the issues or matters considered, and the absence in these reasons of reference to any particular point or submission made by any party should not be read as implying that it was not taken into consideration. For the avoidance of doubt, all the evidence and materials provided to the Appeal Board by both parties was taken into consideration during our deliberations.

Background

- 5) By letter dated 08 February 2024, the Respondent charged the Appellant with a breach of FA Rule E3 for improper conduct. It was alleged that the Appellant acted in an improper manner towards the referee when he made inappropriate comments such as “*absolutely shocking ref that was awful play*”, or similar.
- 6) In bringing the Charge, the Respondent relied on the extraordinary incident report form of the Referee along with a statement from the Referee’s mother.
- 7) The Appellant denied the Charge and submitted his own statement for consideration which contested the information supplied by the Referee. and her mother He stressed that his comments were merely of the enquiring nature and there was nothing within his comments to suggest aggression, insulting, or anything that might upset or intimidate the Referee. He submitted that he would never want to upset any match official, especially young match officials, and that he is in fact supportive of those match officials still in development.
- 8) The Appellant also submitted, for consideration, a statement of support from his Club Chairman.
- 9) The case at first instance was determined ‘on the papers’ at the request of the Appellant. At the paper hearing, the Commission found the Charge against the Appellant proven on the balance of probability. The Commission set out several considerations that led them to this decision, namely:
 - a) Mr Roseveare and the Referee agreed on almost all the key points. Mr Roseveare did question decisions of the Referee. The only discrepancy was the use of the word “shocking”. Both parties agreed that following the conversation at the end of the game the referee was upset.
 - b) Mr Roseveare stated that he was calm but did question the Referee’s decisions.

- c) The Referee states she felt intimidated during the game and after the game at having her decisions questioned.
 - d) Mr Roseveare believes the Referee was upset because the decision was wrong. The Commission stated that this opinion was subjective.
 - e) The Commission accepted the Referee was upset because Mr Roseveare was questioning her decisions and made her feel intimidated. And this conduct was improper in nature.
 - f) The Commission believed Mr Roseveare acted in a disproportionate manner towards the Referee. His comments were considered unacceptable and challenged the integrity of the Referee and were therefore improper.
- 10) Having found the Charge proven, the Commission issued a ground ban of two matches, fined the Appellant £30, and ordered that he attend a Respect course of education. In coming to this decision, it appears that the Commission considered the Appellant's good disciplinary record and character statement from the Appellant's Chairman to be mitigating factors. However, they also considered the age of the Referee to be an aggravating factor (the "Decision").

The Appeal

- 11) The Appellant lodged an appeal against the Decision. The Appellant did so on four grounds:
- a) The Commission failed to give the Appellant a fair hearing;
 - b) The Commission misinterpreted or failed to comply its own rules and regulations;
 - c) The Commission came to a decision which no reasonable body could have come to; and
 - d) The Commission imposed a penalty, award, order or sanction that was excessive.
- 12) The Appellant provided detailed written submissions in respect of each ground which were considered in full prior to the Appeal Hearing. Along with the verbal submissions, the Appellant's case can be summarised as follows:
- a) Failed to provide the Appellant with a fair hearing

The Appellant stated that he was not given a fair hearing because he was advised by his Club Chairman not to opt for a personal hearing. He also advised that he was not provided with all relevant information by the Club Chairman to allow him to present a detailed defence at first instance. It was the Appellant's opinion that more witnesses should have been interviewed by the Cornwall FA which would have provided more balanced evidence.

Further, the Appellant advised that he was not provided with any written reasons for the Decision.

- b) Misinterpreted the rules and regulations of the Cornwall FA or the FA

The Appellant withdrew this ground of appeal at the Appeal Hearing on the basis that he had misunderstood the nature of this ground and could not point to any rules and/or regulations that had been breached or misapplied by the Cornwall FA or the Commission.

- c) Came to a decision to which no reasonable body could have come to

The Appellant stated that it was not possible to arrive at the Decision based only on the information provided by the Referee, the Referee's mother, the Appellant himself, and the Appellant's Chairman. The evidence amounted to a 50/50 situation at best, and it was necessary for other witness evidence to be admitted to achieve any sense of clarity.

The Appellant pointed to a statement made by the Commission which stated that the Appellant and the Referee agreed on "*almost all the key points*" and the only discrepancy was the use of the word "*shocking*." The Appellant stated that this was factually incorrect when you read his statement and there were several points of discrepancy.

The Appellant submitted, again, that he was not given a personal hearing and an opportunity to effectively test the evidence of the Referee and the Referee's mother.

d) Imposed a penalty, award, order or sanction that was excessive

The Appellant argued that the sanction was excessive because the Commission failed to apply appropriate weight to his mitigation. The Appellant provided the Appeal Board with examples of what he considered amounted to mitigation including potential bias against him where the Referee and the Referee's mother was concerned due to the Referee's father working at the Appellant's child's school and there having been a historical incident.

13) The Respondent's case, in defence of the Appeal, can be summarised as follows:

a) Failed to provide the Appellant with a fair hearing

In response to Ground 1, the Respondent submitted that any failure of the Appellant to receive a personal hearing at first instance was not the fault of the Cornwall FA nor the Commission. All documentation that was provided by the Respondent was submitted to the Commission for consideration. The Respondent could have submitted additional third-party witness statements if he wanted but failed to do so. The Respondent was firm in their view that the Commission was entitled to arrive at the Decision based on the information before it.

b) Came to a decision that no reasonable body could have come to

The Respondent submitted that much of the information heard before the Appeal Board was new information that would not have been before the Commission at first instance. The Commission was entitled to arrive at the Decision based on the information before it. The Appellant cannot have a re-hearing and the basis of the appeal must be to make a determination based on the same documents and information that was before the Commission at first instance.

It was the Respondent's position that the Decision was reasonable when considered with the information before the Commission at first instance, and it was not possible to conclude that no other body, acting reasonably, would have arrived at the same decision with reference to the Wednesbury test.

c) Imposed a penalty, award, order or sanction that was excessive

The Respondent submitted that the sanction imposed was consistent with the County FA Guidelines and that the Commission applied the aggravating and mitigating factors appropriately.

Decision of the Appeal Board

14) The Appeal Board reminded itself of the limitations on an appeal before it. It is not permitted to effectively rehear the matter and provide the Appellant with a '*second bite of the cherry*'. The Appeal takes the form of a review of the original decision, based on the documents that were originally before the Commission. The Appeal Board's remit is restricted, and its powers limited.

15) The Appeal Board carefully considered both the written and verbal submissions lodged by both parties in determining the appeal.

16) On the question of a fair hearing, the Appeal Board noted the Appellant's assertion that he did not get the opportunity to opt for a personal hearing.

The Commission noted that the Appellant's club appeared to have handled this matter on behalf of the Appellant, albeit with some input from the Appellant. The Appellant admitted during the appeal hearing that he had been notified of the Charge and that he had provided a written statement in support of his case. The Appellant could have submitted additional witness statements from others present at the match if he so wished, but he did not.

The Appeal Board were of the view that, having considered the submissions in relation to this ground, it could not be said that the Appellant was not given a fair hearing by the Commission. Any perception that the Appellant failed to be treated fairly cannot be said to be at the fault of the Commission.

It was also noted that there was no evidence submitted to suggest that the Appellant had been given the 'wrong' advice by his Chairman regarding a personal hearing.

17) With regards to the second ground of appeal in that the Commission reached a decision that no reasonable body could have come to - the Appeal Board was not persuaded that the Appellant met the high bar in this regard.

The Appeal Board reminded itself of the test where this ground of appeal is concerned – the Wednesbury Test. The Wednesbury test is that a reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no person acting reasonably could have made it. The test is a different (and stricter) test than merely showing that the decision was unreasonable. The fact that a Commission came to a different decision or did come to a different decision in a case with similar circumstances, is not the test.

Given the above, we cannot say with reference to the Wednesbury Test that no other body acting reasonably on the information before it, would have come to the same decision as the Commission did in this case.

18) Turning lastly to the third ground of appeal, the Appeal Board considered whether the sanction imposed was excessive. The Appellant was sanctioned with a two-match suspension and a £30 fine which were all in line with the County FA Sanctioning Guidelines. The Appellant submitted that the Commission had failed to consider his mitigating factors. In doing so, he provided a list of what he considered to be mitigation which included the fact that he has previously supported young referees (to which no

evidence was provided in the first instance) as well as relationships in connection with his child's school.

Having considered the Appellant's submissions in that regard, the Appeal Board were unanimous that the Commission considered aggravating and mitigating factors appropriately and arrived at a fair and proportionate sanction.

19) To conclude, having considered the grounds of appeal, the Appeal Board unanimously finds the appeal dismissed for the reasons we have articulated.

20) The Appeal Board considered that it would not be appropriate to award costs in this matter, but the appeal fee shall be forfeited.

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

Appeal Board

Ms Laura McCallum (Chair)

Mr Ian Stephenson

Ms Christine Harrop-Griffiths

04 April 2024