

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

BETWEEN:

DUNSTON F.C. (Appellant)

-and-

NORTHERN PREMIER LEAGUE (Respondent)

WRITTEN REASONS

1. The Appeal Board conducted a paper hearing on Tuesday 23 April 2024 to determine an appeal by Dunston F.C. (“**the Appellant**”) against the decision of the Northern Premier League (“**the Respondent**”) made on 28 February 2024.
2. The Respondent’s Board determined on 28 February 2024 that:

“..... Dunston FC must now make arrangements to play all HOME games for the month of March at an alternative venue, which must carry the appropriate grade to host Step 4 football.”

The point is emboldened because that is how it appeared in the email sent to the Appellant.

3. The relevant rule pursuant to which this decision was made is Rule 8.7 of the Standardised Rules, which states:

“The Board may change any Competition fixtures during the season to suit the overall interests of the Competition and shall have the power to decide whether a ground is suitable for Competition matches and to order a Club whose ground is deemed unsuitable to play its home matches at an alternative suitable ground.”

4. The appeal hearing was a paper hearing. The Appeal Board comprising Mr Christopher Stoner KC (Chair), Mr Daniel Mole and Mr Roger Burden met by MS Teams. Mr Shane Comb of Wiltshire FA acted as secretary to the Appeal Board. We are most grateful to Mr Comb for his assistance.
5. The Appeal Board has carefully considered all documentation in the Appeal Bundle. Simply because any particular document is not referred to in these Written Reasons should not be equated to a failure on the part of the Appeal Board to consider that document. As stated, all documentation has been carefully considered. The Appeal Board, however, wishes to place on record its thanks to those who on behalf of both the Appellant and the Respondent prepared the various submissions and collated the relevant documents. It was of considerable assistance to the Appeal Board.
6. When considering the documents, the Appeal Board was mindful that matters were not all agreed. Indeed, for example, in an email of 4 April, the Appellant referred to some facts remaining contentious and that it adopted an 'agree to disagree' approach. In this regard, if not clearly accepted or agreed, the Appeal Board proceeded on the basis that all statements were challenged. Equally, reference was made at one point in correspondence to a recording of a meeting. We formally note that we have not been provided with any recording and have, accordingly, not considered it in any way. Indeed, rules and regulations aside we have not considered any document not in the Appeal Bundle.
7. The outcome of the Appeal was communicated to the parties by a Decision Letter dated 23 April sent by Mr Comb on behalf of the Appeal Board. That Decision Letter identified that the Appeal Board had dismissed the appeal, as well as confirming that the Appellant would forfeit the appeal fee, but that there would be no other order as to costs.
8. As it is entitled to, pursuant to 26 of the Appeal Board Regulations the Appellant has requested written reasons for the Appeal Board's decision. This document contains those written reasons.

Preliminary Matters

9. Firstly, the Appeal Board noted from the chronology of events appended to the Response to the Notice of Appeal, that the Appellant informed the Respondent on 1

March 2024 of its intention to appeal. The Appeal Board were not satisfied this complied with the requirements of Rule 5.1. of the Appeal Board Regulations and was not entirely sure whether the Appellant subsequently notified The FA of its intention in time. It appears from an email at page 18 of the bundle this was done within time on 6 March 2024, but this is not altogether clear. In such circumstances, however, the Appeal Board were emphatically of the view this had not caused any prejudice and that in so far as it was necessary to do so, it was appropriate to dispense with this requirement and/or extend time in the Appellant's favour, in either case pursuant to its powers contained in Rule 14 of the Appeal Board Regulations.

10. Secondly, the Appeal Board notes that there was no application for a stay made by the Appellant, pending the outcome of this appeal. The Appeal Board also notes that in its email dated 12 March 2024, following receipt of the Notice of Appeal dated 11 March 2024, Judicial Services stated:

“Appellant – Lastly please note:

To [have] the sanction stayed pending the appeal outcome for this matter, an application must be made to the Judicial Panel Chair to determine – this must be an application that fully sets out why such an application should be accepted, details concerning missed or to be missed matches and must address the Judicial Panel Chair specifically. The Judicial Panel Chair will not consider an application until a full Notice of Appeal has been submitted, including payment of the appeal fee. Please note that any such application must be received before 5pm on the Thursday before the next relevant weekend”

11. That no application was made by the Appellant means the Appeal Board's consideration of this matter is entirely academic because by the time of the Appeal Board meeting the Appellant has served the entire sanction appealed against. However, having recorded that fact, it did not affect the Appeal Board's consideration of the merits of the appeal and has had no effect on the ultimate dismissal of the appeal for the reasons stated below.
12. However, in so far as one of the arguments in the Notice of Appeal supporting the grounds of appeal was advanced as being *“to knowingly impose a sanction whereby we will have served most or all of our punishment before the outcome of the appeal process is concluded”* the Appeal Board considered this was disingenuous. It is for the

Appellant to be aware of the relevant regulations and, when they are specifically told what steps to take, to take them as opposed to complain about the consequences of failing to act.

13. Finally, by way of preliminary points, in correspondence the Appellant indicated that it wished to claim compensation arising from the decision to Order the Appellant to play its home games in Match at a different venue(s). As a consequence of dismissing the Appeal this point does not arise, but the Appeal Board's preliminary view was that it would not have had jurisdiction to consider such a compensation claim and, in any event, even if it had it would have been dismissed as no evidence had been presented in support of the claim. The Appeal Board did understand, however, that the Appellant was simply indicating it would seek compensation in a different forum in the event of the appeal succeeding.

Background and the documents submitted.

14. The Appellant competes in the Northern Premier League. It is based in Gateshead in the North-East of England, with its home ground being The UTS Stadium.
15. It is evident from the papers that there had been a number of postponements of games at the Appellant's ground during the 2023/24 season. These are more fully detailed below.
16. On 24 February 2024 the Appellant played Pontefract Collieries at The UTS Stadium. A few days before, on 21 February 2024, it had asked for permission to move a subsequent game due to be played on Tuesday 27 February back 24 hours to Wednesday 28 February, to "*allow an extra day to prepare the pitch after our home game against Pontefract Collieries on Saturday.*" In its Notice of Appeal, the Appellant asserts this was a miscommunication and the actual reason for the delay was a clash with the Newcastle United v Blackburn Rovers FA Cup tie, which was being shown on TV.
17. In any event, the Respondent considered the request actually made and granted the permission sought, albeit on the basis that if the match was postponed the rearranged game would have to be at an alternative venue. It was then faced on the evening of the 28 February 2024 with the reality of the game being postponed. The Referee's

Postponement form reveals that the match was postponed after an inspection at 18:20, ahead of a 19:45 kick off time, the reason being waterlogging.

18. It is fair to note that in its Notice of Appeal the Appellant records how it asked a local referee to consider the pitch at 12 noon on 28 February and he passed the pitch as being fit. However, the Match Referee was the final decision maker after his arrival in the evening. The Appeal Board understands the Appellant's frustration at this turn of events and its steps in arranging an early inspection, but equally notes that the final outcome was a further postponement.

19. The decision appealed against was taken on the same night as the postponed match just referred to. At just before midnight the Respondent sent the Appellant the following email:

"It is very disappointing that tonight [sic] game v Sheffield was again postponed due to the condition of the pitch at Dunston, despite delaying KO by 24 hrs.

The game must now be re-arranged to be played at an alternative venue, we will not permit a further re-schedule at The UTS whatever date is agreed, as previously advised 22/02.

On Monday via email correspondence, the LMC considered the report provided by Pitch Power following the recent inspection at the ground. A copy of the report is attached herewith for ease of reference.

- *The league board rule that Dunston FC be instructed to provide a detailed plan of emergency remedial works to repair the problem area.*
- *The board also require the club to submit a diarised Schedule of Works and a detailed maintenance programme for the remainder of this season with a monthly timetable for Season 2024-2025. This should include all works (mowing, scarifying etc) whether performed by the club staff or outside contractors.*
- ***Dunston FC must now make arrangements to play all HOME games for the month of March at an alternative venue, which must carry the appropriate grade to host Step 4 football.***

The pitch at the UTS will be assessed again at the end of March following the emergency repair works, and hopefully that will permit the games scheduled for April to be played back at Dunston FC.

Please acknowledge receipt of this email notice and give this matter your most urgent attention.”

20. Although the decision appealed against was taken and communicated on 28 February, the Respondent provided some reasons in an email from the Respondent’s League Manager, Angie Frith, dated 7 March 2024, of which the Appellant has provided a detailed critique in its Notice of Appeal. Although the Appellant advanced a number of arguments in section 2.1 of its Notice of Appeal, it was its critique of the Respondent’s email that the Appeal Board found of the most assistance, although the Appeal Board also considered all the individual points advanced in section 2.1.

21. In its email dated 7 March 2024, having recited Rule 8.7 of the Standardised Rules the Respondent stated:

“The League has been in dialogue with Dunstan FC since December 23, when it became clear that the Club was struggling to host home fixtures due to a damaged area of the pitch. Some of this damage was caused by a hearse being driven onto it during a pre-season fixture as part of some protest.”

22. In the Notice of Appeal, the Appellant does not dispute the suggestion of dialogue since December 23, or that the Appellant was struggling to host home games due to a damaged area of the pitch. Rather, the point taken was that following the hearse incident the Appellant had sought professional assistance and the damage was considered superficial, but it was accepted that it may be that the underground drainage system may have been damaged, but that would be the subject of intrusive inspections during the close season. Later in its Notice of Appeal, in section 3.3 entitled ‘Pitch Condition and Maintenance’, the Appellant is clear in placing the blame at the postponements on the weather, as opposed to any issue with the pitch.

23. The Respondent’s email of 7 March having referred to support offered by the Respondent and detailing the mileage to be travelled by the clubs visiting the UTS, then stated:

“Between August and October 2023, Dunston FC fulfilled just 7 home fixtures.”

24. The Appellant’s position on this comment, as identified in the Notice of Appeal, was as follows:

“During the period 12th August 2023 to 14th October 2023, Dunston had played seven home fixtures. This was due to Dunston’s involvement in FA Cup and Trophy competitions away from home on 19th August, 2nd September and 23rd September. Again, during this period, no scheduled home games were postponed (see Appendix B for Dunston FC fixtures/results 2023/4)

25. The Appeal Board considered the fixture list, but as it did not show postponements it was of limited assistance. It did, however, confirm that Dunston F.C. played 7 home games in the period 12 August – 14 October.

26. The Respondent’s email of 7 March 2024 then continues:

“The pitch was not played on between 14th Oct, not once in November, only twice in December and not again until 27th January. Some of these games were postponed from Saturdays, which means long and tiring midweek trips for opposing teams when the games were re-scheduled. As we were running short of free nominated midweek dates, the League was, and remains very concerned that some teams may need to travel to Dunson on a Thursday evening to fulfil their fixtures thereby impacting sporting integrity should those teams have to play three games a week as a result.”

27. The Appeal Board considered this was a key issue and was central to the Respondent’s decision. Furthermore, the Appeal Board notes that at the end of its email dated 7 March 2024 the Respondent states:

“This decision was made taking all the relevant factors into consideration, chief amongst which is the sporting integrity of the NPL.”

28. The Appellant’s response to the recitation at paragraph 26 above in its Notice of Appeal was as follows:

“As previously mentioned, when it comes to travel, the League do not seem to consider that there is probably only Ashington FC, who have to travel more miles in a season to away matches than Dunston. Dunston will have made the same length of travel at some point in the season as the opposition and vice versa, albeit the accumulated Dunston travel will be considerably more than most.

There is also no consideration of mention about the possibility of Dunston also having to travel away, midweek on a Thursday, or play three games in a week if the current schedule needs to be rearranged at the behest of the League.”

29. The Appeal Board noted that the Appellant provided Match Referee postponement forms for matches that had been due to be played on 28 October 2023 (when the inspection took place at 08:00 for a 15:00 kick off); 2 December 2023 (when the inspection took place at 14:15, the time of kick off not being identified); 5 December 2023 (when the inspection took place at 18:00 for a 19:45 kick off); 6 January 2024 (when the inspection took place at 14:00 for a 15:00 kick off); 9 January 2023 (when the inspection took place at 11:00 for a 19:45 kick off) 16 January 2024 (when the inspection took place at 10:30 for a 19:45 kick off) and 28 February 2024 (when the inspection took place at 18:20 for a 19:45 kick off). In every instance save for that on 16 January 2024 when the pitch was frozen, the reason for the postponement was waterlogging.
30. Further, in its Response to the Notice of Appeal, the Respondent states that *“by 15 December the Club had had 7 consecutive postponements at the home ground and their last home fixture was 14th October.”* This appears to be supported by the list of fixtures and results found at Appendix B to the Notice of Appeal. Although it appears games were played at the UTS Stadium between 15 December and the date of the decision (namely, based on the fixture and results page at Appendix B to the Notice of Appeal, on 16 and 23 December 2023, 27 and 30 January 2024 and 3 and 24 February), the postponement sheets referred to in the preceding paragraph showed that matches were still regularly postponed.
31. In the context of the foregoing, the Appeal Board were firmly of the view the Appellant’s comments in its Notice of Appeal, recited at paragraph 28 above, failed to grasp or deal with the Respondent’s rationale in the above cited extract (at paragraph 26 above) from its email dated 7 March 2024, by concentrating solely on the distance of travel.

32. This reflects an earlier statement made by the Appellant in the Notice of Appeal, which asserts that the Appellant had been penalised because of its then current league position (in the play-off positions) and the club's location.
33. The Appeal Board considers the Respondent's rationale was clear and plain: it was concerned as to the number of postponements. Given the stage of the season it was also concerned there was a shortage of free nominated midweek dates for the postponed games to be rearranged and that may cause some teams to have to play 3 games in a week to get the games played before the end of the season. The fact this necessitated a long journey mid-week was clearly a factor (namely the reference to "*long and tiring*" midweek trips) but was not in the Appeal Board's view the central factor.
34. Rather the concern relating to sporting-integrity was the more games that were postponed, the higher the chance of teams having to play 3 games a week to fulfil postponed fixtures. It was this which was said to impact sporting integrity.
35. Whilst the Respondent's email of 7 March 2024 clearly sets out the distance to be travelled to Dunston FC by all remaining opponents due to visit the UTS, the Appeal Board understands this falls to be considered in the context of the concern of limited free nominated midweek dates, allied to the higher chance of teams being asked to play 3 games in a week, including on a Thursday. In that respect, having to travel a long distance was, in the Appeal Board's view, a reasonable matter to which to have regard.
36. The Appeal Board notes that in section 3.3. of the Notice of Appeal, entitled 'Pitch Condition and Maintenance', the Appellant accepts there have been issues with its pitch and ongoing correspondence with the Respondent. They ascribe the difficulties to the exceptionally high levels of rainfall. The Appeal Board also notes the report from Pitch Power, which we have read, which states that "*The pitch was graded as advanced which is a credit to the club*" as well as the details of the Appellant's 'Pitch Maintenance Programme' and 'Pitch Maintenance Report'.
37. In its Response to the Notice of Appeal, unsurprisingly the Respondent highlights the history of issues with postponements. In addition to what has already been highlighted, the Appeal Board was informed that in January, following 3 postponements, the Appellant was instructed to source an alternative venue for its last remaining 2 home games in January.

38. After receiving representations from the Appellant, the Respondent sought to mitigate the impact on the Appellant by allowing it to play the games at the UTS, but with observers in place. The Respondent's documentation states that during the first of those games the pitch was damaged resulting in a request being made by the Appellant to play the following game at Consett's all-weather pitch, which request was accepted.
39. The Respondent's email dated 7 March 2024 also refers to the fact "*Dunston is in a play-off position and the number of home games they must play in the run in to the end of the season could be deemed by other members as giving them an unfair advantage.*"
40. The Appellant, in its Notice of Appeal, complains that it appears by this statement that the Respondent is penalising it for its success, as if it were not in a play-off position the decision may not have been made. The Appeal Board rejects this. It is satisfied the Respondent would have made the decision irrespective of where the Appellant was in the league. The Appeal Board considers that what was said was no more than that if something was not done about the continuing postponements, other members may perceive the Appellant to be at an advantage if its final season run in consisted of mainly home games, which was exacerbated by the Appellant being in a play-off position. In the Appeal Board's view, that is a perfectly reasonable and logical observation.
41. The Response document filed on behalf of the Respondent asserts that the Respondent took a number of factors into account when making their decision '*not all of which were mentioned in the correspondence with the Club.*'
42. In such circumstances the Appeal Board has given greater weight to those points raised in the email dated 7 March 2024, which was the initial explanation of the rationale of the decision, as opposed to arguments raised for the first time in response to the Notice of Appeal.
43. The first point advanced is that of the 'Integrity of the Competition' in respect of which the Respondent says: "*various factors were involved with this point.*" One of those points remains:

“... the Club state that there were still midweek dates available at the point where the decision was made. With the long-range weather forecast available, and multiple seasons of experience in fixture re-arrangements, it was felt by the Officers of the League that there was a strong possibility that these would be exhausted in the usual run of weather-related postponements. We now have other clubs facing two games in a midweek period, which the Board were trying to avoid in this case.”

44. Additional points raised are:

- (1) “Impact on travelling clubs”, where the point taken again concentrates on having to make journeys midweek;
- (2) “The pitch power report” which refers to a covering email (which we have not seen) referring to one patch causing the postponements, which requires some dry weather to recover, which dry weather the Respondent says was not forecast. Given we have not seen the covering email, we have given little weight to this point.
- (3) “The possibility of a season extension”, which the Respondent says its board knew was highly unlikely to be granted at the date it made its decision (which subsequently proved to be so in the case of clubs who were promotion or relegation contenders). Again, we have given this little weight as this was not a point which was raised in the 7 March 2024 email.
- (4) “Historical issues with the ground”, although the Appeal Board notes that the correspondence at the time of the decision concentrated on events in the current season which the Appeal Board has also concentrated upon; and
- (5) “The Club was not treated differently to other Member Clubs”, noting that other clubs have also had rulings made against them pursuant to Rule 8.7. However, the Appeal Board is only aware of the circumstances of the Appellant and therefore does not place very much weight on this point.

Decision

45. This was a decision made by the Respondent’s Board pursuant to rule 8.7 of the Standardised Rules, which affords the Respondent a clear discretion, albeit one that must be exercised lawfully.

46. In the view of the Appeal Board, Rule 8.7 clearly vests in the Respondent's Board a power to decide whether a ground is suitable for Competition matches and if in the view of the Board the ground is unsuitable to require a club to play its home matches at an alternative suitable ground. This power is to be exercised in the overall interests of the Competition.
47. Before considering the exercise of the power in this instance, the Appeal Board reminded itself that pursuant to Rule 12 of the Appeals – Non – Fast Track regulations:
- “An appeal shall be by way of a review on documents only and shall not involve a rehearing of the evidence considered by the body appealed against.”*
48. The Appellant, through this appeal, seeks to meet this threshold by saying the Respondent's Board came to a decision which no reasonable such body could have come to, and also arguing that it imposed a penalty, award, order or sanction that was excessive.
49. The Appeal Board has no hesitation in rejecting these arguments. In the view of the Appeal Board the Appellant's arguments fell well short of establishing either ground.
50. As to the suggestion the decision was one which no reasonable body could have reached, given the history of postponements during the 2023/2024 season prior to the date of the decision, in the view of the Appeal Board it was an entirely reasonable and logical stance for the Respondent to consider that the UTS was unsuitable, at that time, given the number of postponements for waterlogging, whatever the precise reason for that waterlogging.
51. The rationality of the decision is in the Appeal Board's view plain, given the end of the season was approaching and the desire to avoid clubs having to play 3 games in a week toward the end of the season to make up to the postponements that had occurred.
52. In the context of clubs having to potentially play 3 games a week and the desire to avoid that, the distance other clubs have to travel to play at Dunston is, in the Appeal Board, a relevant consideration. Furthermore, the fact the Appellant was in the play off position meant it was also relevant to take into account the potential perception of an advantage if, come the end of the season, the Appellant had a disproportionate number

of home games to play because of postponements, if that situation had not been addressed at an earlier date.

53. The Appeal Board accepts, as it must, the findings of the pitch power report and also the fact the documentation shows that the Appellant had been highly active in seeking to get games played. However, that does not alter the reality that waterlogging was beyond its immediate control and postponements were, accordingly, inevitable.
54. The Appeal Board also considered the other arguments raised in the Notice of Appeal, in particular in section 2.1, including the financial consequences of the decision. Those are plainly unfortunate from the Appellant's perspective, but do not, in our view, affect the reasonableness of the decision made in all the circumstances.
55. Given the Appeal Board is completely satisfied the decision was one which was squarely within the proper exercise of the discretion vested in the Respondent's Board by Rule 8.7, it is arguable that the issue as to whether the sanction was excessive does not arise.
56. However, in the view of the Appeal Board the sanction also has to be reasonable. If the Respondent's Board had imposed a manifestly excessive 'ban' on playing games at the UTS that would strike at the heart of the reasonableness of the decision.
57. However, on the facts facing the Respondent's Board on 28 February, especially the history of postponements and the previous dialogue between the parties, in the Appeal Board's view the decision to require the Appellant to play all games away from the UTS for the whole of March was one which was an entirely reasonable exercise of the Board's power.
58. Whilst not relevant to the decision taken on 28 February 2024, we note the Respondent says it reacted to a request made on the 24 March to allow the Appellant to play its fixture on 30 March at the UTS. Unfortunately, however, the pitch failed an inspection on the 27 March due to waterlogging. If correct, then this plainly provides some vindication for the Respondent's decision.
59. Accordingly, having carefully considered all the papers in the Appeal Bundle, the Appeal Board orders that:
 - (1) The Appeal is dismissed.

(2) The Appellant shall forfeit the appeal fee; and

(3) There be no other order as to costs.

60. Pursuant to Regulation 22 of the Appeals – Non-Fast Track regulations, the decision of the Appeal Board is final and binding.

Christopher Stoner KC

As Chair, for and on behalf of the Appeal Board



.....
26 April 2024.