

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

**GOOLE AFC (Appellant)
-and-
WEST RIDING FA (Respondent)**

Appeal Board: Kristian Jones (Chair)
Dennis Strudwick (Football Panel Member)
Keith Allen (Football Panel Member)

Date: 13th March 2024 (Microsoft Teams)

WRITTEN REASONS OF THE APPEAL BOARD

INTRODUCTION

1. The Appeal Board ('the Tribunal') was appointed under the Football Association's ('FA') Disciplinary Regulations – Appeals 2023/2024 ('the Appeal Regulations') to determine Goole AFC's ('the Appellant') appeal brought by an undated Notice of Appeal ('the Notice').

BACKGROUND

2. By way of the Notice, the Appellant appealed against the decision of the Disciplinary Commission (the Commission") dated 26th January 2024, to sanction the Appellant to a fine in the sum of £400.00.
3. By letter dated 30th November 2023 the FA charged the Appellant with misconduct for a breach of FA Rule E21, failing to ensure its spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion and refrain from improper, offensive, violent, threatening, abusive, indecent, insulting or provocative words and/or behaviour contrary to rule E21.1 It was alleged that throughout the fixture spectators used insulting and/or indecent language towards opposition spectators by reference to comments such as "nonce", "Paedo", "inbreds", or similar.

4. The said charges were determined at non-personal hearing. The FA Disciplinary Commission ('the Commission') convened on 26 January 2024. The Commission found the charges proven and fined the Appellant the sum of £400. The Appellant was informed of the Commission's findings by way of a letter from the FA dated 26 January 2024.
5. The Appellant appeals the Commission's decision on the following grounds:
 - a. The Commission reached a decision which no reasonable body could have reached; and
 - b. The Commission imposed a penalty that was excessive.

THE BUNDLE

6. The Tribunal had before it and considered the following written evidence in respect of the appeal:
 - a. The Appellant's Notice of Appeal;
 - b. Response to Notice of Appeal;
 - c. Papers of First Instance;
 - d. Participant Offence History; and
 - e. Results Letter and Written Reasons.
7. 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. Even if this document does not explicitly refer to a particular point, document, or submission, the Tribunal considered the entirety of the materials put before it.

REGULATIONS

8. FA Rule E21(1) provides:

"A Club must ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending any Match do not use words or otherwise behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting, or provocative.
9. So far as is material Regulation 2 of the Disciplinary Regulations for FA Appeals 2023-2024 ('the Regulations') provides:

"The grounds of appeal available to Participants shall be that the body whose decision is appealed against:

- (1) failed to give the appellant a fair hearing and/or
- (2) misinterpreted or failed to comply with the rules or regulations relevant to its decision; and/or
- (3) came to a decision to which no reasonable such body could have come and/or
- (4) imposed a penalty, award, order or sanction that was excessive..."

10. So far as the proceedings is concerned, Regulation 12 states:

"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. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under 10 above."

HEARING

The Appellant's written submissions.

11. The Tribunal Chair summarised the submissions made by the Appellant in the Notice of Appeal as follows:

- a. The officials initially described the incident as banter but then only reported the incident because a Hallam FC "official" made a complaint.
- b. The person who reported the incident was not authorised to speak on behalf of Hallam FC.
- c. The incident took place at the opposite side of the ground away from the majority of spectators.
- d. The Appellant was not made aware of any incident until after the game finished.
- e. When the first instance Commission considered the defence, there had been a failure to consider why a small group of Hallam FC fans had made their way from one side of the ground to the area where the Goole fans were.
- f. The throwing of cans was not a deliberate act of aggression, the spectators were trying to lob the empty cans into a bin.
- g. Nobody has been identified as having been hit by the cans that were thrown.
- h. The officials only added the allegation of can throwing to pad out the complaint.
- i. The chanting between the fans only affected those involved.
- j. There is only the evidence from the Hallam FC official and the Assistant referee to support the allegation relating to the chanting.

- k. The Commission took into account charges that they should not have when considering the Appellant's previous disciplinary record.
12. Mr Wilson on behalf of the Appellant confirmed within the appeal hearing that the above was a fair summary of the Notice of Appeal.

The Respondent's written submissions

13. The Tribunal Chair summarised the submissions made by the Respondent in the Response to the Notice of Appeal as follows:
- a. It is not open to the Appeal Board to substitute its decision for that of the first instance Commission simply because the Appeal Board may have reached a different decision.
 - b. It is not for the Appeal Board to second guess the first instance Commission.
 - c. The Appeal Board should only interfere with the findings of the first instance Commission if they were clearly wrong or if wrong principles were applied, for example if there was no evidential basis for a finding of fact or that the evidence was overwhelmingly to the contrary.
 - d. The County submit that neither of these apply in this case.
 - e. The test to be applied is the Wednesbury Reasonableness Test which provides a high hurdle for the Appellant to clear.
 - f. The Appeal Board ought to afford the first instance Commission a significant margin of appreciation when considering matters of evidential assessments, factual findings and the exercise of the first instance Commissions discretion.
 - g. The challenge to the manner in which the incident was reported on the day is contrary to the evidence of the referee and assistant referee who confirm that the allegation of misconduct was reported to a steward at half time.
 - h. That this particular strand of challenge was not progressed in the original hearing.
 - i. The sanction imposed was within the sanction guidelines set by the County FA.
 - j. The sanction was Fair and Proportionate when taking into account the aggravating factors and that the first instance Commission only refrained from deviating from the sanction guidelines when the mitigation was taken into account.
14. Mr Mason on behalf of the Respondent confirmed within the appeal hearing that the above was a fair summary of the Response to the Notice of Appeal.

Oral Submissions of the Appellant

15. Mr Wilson on behalf of the Appellant was invited to make any further submissions that he wished to make and made the following oral submissions:
- a. A group of Hallam FC fans had made their way from the main stand all the way to the small stand and therefore it was the Hallam FC supporters who were the aggressors not the Goole AFC fans.
 - b. Had the assistant referee, been doing his job properly, he could not have possibly been able to determine who was making comments and who those comments were aimed at, particularly from the distance that the assistant referee was from both sets of fans.
 - c. There were no Hallam FC staff amongst the fans in question and it was simply a case of both sets of supporters haranguing each other.
 - d. There were no cans thrown by the fans at each other and there was no encroachment or violence. The cans were thrown at a bin and were not used as a weapon.
 - e. The West Riding FA have serious problems with their assistant referees and their assistant referee's interpretation of incidents and that they have a habit of assuming incidents have happened rather than having actually witnessed such incidents.
 - f. The referee said that the assistant referee (WC) had told him that he had heard the spectators calling players and team officials the terms alleged, but that there were no team officials in the vicinity of (WC) and that (WC) had misreported the incident.
 - g. Nobody had charged over the walls as there are no barriers and that the reports made against the Appellant were fictitious.
 - h. After the game when Mr Wilson went to see the referee, he was told that had there not have been a report from a Hallam FC official the chanting would have been considered as banter, however it transpires that the person from Hallam FC who reported the words spoken and chanting was not an official of Hallam FC, although Mr Wilson accepted that there was no evidence to support this assertion.
 - i. There was only one other incident that should have been taken into account when considering the Appellant's disciplinary record, as the Appellant is in the process of appealing a further proven charge, and only the last seasons record should be considered, not the previous five seasons, as personnel within clubs change.
 - j. The Appellant is hard strapped for funds and have limited resources to employ staff to pre-empt incidents they only have enough staff to react to incidents.

- k. Included within the disciplinary history there was one charge relating to racist language being used that had been successfully appealed and should not have been taken into account, but other than that the five-year disciplinary history was correct.
- l. The fines that had been given to the Appellant previously were disproportionate to the size of the Appellant club.

Oral submissions of the Respondent

16. Mr Mason wished to add nothing further to the written submissions that were already before the Tribunal and the summary of the Chair, other than to say that in terms of the submissions made within the Appeal hearing:

- a. The fine imposed was £400 not £465 as referenced in the case papers, as £50 had been incorrectly added to the £400 fine, but had been subsequently credited back to the Appellant and the additional £15 was a standard administration fee.
- b. One person's interpretation of banter could be considered by another person as offensive and that the alleged comments were improper.
- c. The first instance Commission did consider the issue of whether the assistant referee could have been aware of the incident in the crowd and who was making comments, and this is confirmed at paragraph 18 of the written reasons.

FINDINGS

Finding contrary to FA Rule E21

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

18. The Tribunal reminded itself of the fact that an appeal such as this one proceeds by way of a review of the decision of the Commission; it is not a rehearing. It is not open to the Tribunal to substitute their decision for that of the Commission simply because the Tribunal might themselves have reached a different decision. If the Commission has reached a decision which it was open to them to reach, the fact that the Tribunal (or a different Commission) might have reached a different decision is irrelevant; it is not for the Tribunal to 'second guess' the Commission. It should only be interfered with if they are clearly wrong or if wrong principles were applied. This is likely to be where there was no evidential basis whatsoever for a finding of fact that had been made, and/or where the evidence was overwhelmingly contrary to the finding of fact that had been made.

19. The test for the Tribunal to apply is whether the Commission 'came to a decision to which no reasonable body could have come'. The Tribunal unanimously concluded that was not the case here. Any appellant who pursues an appeal on the ground that a 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 pass.
20. The assessment of the evidence is entirely a matter for the Commission members. It is for the Commission to test and determine the credibility of any witness. The Tribunal concluded the Commission had properly undertaken that assessment and had evidenced that thought process clearly, the Commission correctly identified corroborative evidence of the assistant referee and the Hallam FC media staff.
21. The Tribunal considered that the Commission had considered the opposing position but preferred the evidence of the assistant referee, (WC), who it deemed to have provided credible evidence. The Tribunal must consider the rationality of the decision-making process. This process can be clearly identified at paragraphs 17 – 20 iii of the Commission Written Reasons. The Tribunal did not consider that the Commission had 'plainly got it wrong'. Evidential assessments, and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. The Tribunal was satisfied from its reading of the written reasons and their review of the papers of First Instance, that such were not clearly wrong. The Tribunal were of the view that the Commission had correctly dismissed any defence under FA Rule E21.5 particularly when considering the extent to which similar issues had occurred previously.
22. Accordingly, the Tribunal dismissed the appeal so far as the breach of Rule E21 was concerned.

Sanction

23. With regards to Sanction, the Tribunal concluded that it could not be considered as excessive. It appeared to the Tribunal that given the five-year disciplinary of the Appellant club, even when disregarding the charge that the Appellant maintains was taken into account in error, the first instance Commission could quite well have imposed an order of ground closure and that the Appellant was fortunate to have only received a fine. Further, the Tribunal were of the view that when considering the previous disciplinary history of the Appellant club, the fine of £400 was not disproportionate. The Tribunal reminded itself of the discretion available to the Commission. Accordingly, The Tribunal dismissed this ground of appeal.

24. The FA did not apply for costs and accordingly we make no such order.

25. The Tribunal's decision is final and binding on all parties.

Kristian Jones

Chair

15 March 2024