

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

JEFFREY CALEY (Appellant)

-and-

ESSEX FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member

Greg Fee – Independent Football Panel Member

Roy Schafer – FA Council Member

Secretary: Shane Comb – FA National Secretary

Date: 6 February 2024

Venue: Held remotely via Microsoft Teams

Attending: Jeffrey Caley – Appellant, representing himself
Robert Craven (“RC”) - Football Services Manager, Essex FA,
representing Essex FA

INTRODUCTION

1. The Appeal Board was appointed under The Football Association’s Disciplinary Regulations – Appeals (“the Appeal Regulations”). No objection was raised concerning the composition of the Appeal Board.
2. The Appeal Board conducted a hearing on 6 February 2024 to determine an appeal by Jeffrey Caley (“the Appellant”) against the decision of a Disciplinary Commission (“the Commission”) sitting on behalf of Essex FA (“the Respondent”).
3. The Appellant submitted a Notice of Appeal on 5 January 2024 (“the Notice”).
4. The Respondent submitted a Response on 25 January 2024 (“the Response”), together with various documents requested by The FA, including written reasons of the Commission dated 18 January 2023 (“the Written Reasons”).
5. The Appeal Board had before it a bundle (“the Appeal Bundle”) containing the following:
 - Notice of Appeal
 - Response to Notice of Appeal
 - Papers of First Instance
 - Appellant’s Offence History
 - Results Letter and Written Reasons
6. In response to questions from the Chair sent to the Respondent ahead of the hearing, which were aimed at clarifying the timeline, the Appeal Board also had before it a supplementary bundle (“the Addendum Bundle”) containing the following:
 - Supplementary correspondence
 - Email trail with the Appellant
 - Email trail with May & Baker
 - Additional evidence from Hackney Wick

7. The Appellant attended the appeal hearing and presented his own case. The Respondent was represented by RC. The Appeal Board is grateful to both parties for their submissions and assistance.
8. This document constitutes the written reasons for the Appeal Board's decision. The Appeal Board considered the entirety of the materials that the parties put before it. If this document does not explicitly refer to a particular point, document or submission, it should not be inferred that the Appeal Board overlooked or ignored it.
9. As far as the Addendum Bundle was concerned, the Chair had originally asked for a response to her request for information by 4pm on 5 February 2024. The Respondent replied by the deadline but did not attach the documents to which it referred in its original email. They were provided the following morning. The Appellant queried whether the documents should be admitted, given the failure to respond by the deadline. The Chair was satisfied that there was no prejudice to the Appellant as a result of the slight delay and that in the interests of fairness the documents should be admitted.

BRIEF BACKGROUND FACTS

10. The Appellant is a referee.
11. On 8 October 2023 the Appellant refereed a match ("the Match") between May & Baker Eastbrook Community FC U18s ("May & Baker") and Hackney Wick FC U18s ("Hackney Wick").
12. On 9 November 2023 the Respondent charged the Appellant with Improper Conduct (including foul and abusive language), contrary to Rule E3.1 of the Rules of the Football Association. Specifically the Appellant was alleged to have been abusive towards players from Hackney Wick, telling them to "shut up" and/or "f**k off", or similar.

13. The Appellant denied the charge and asked for a personal hearing. The case was consolidated with other charges arising out of the Match against a player and manager from Hackney Wick and the club itself.

FIRST INSTANCE DECISION

14. A Disciplinary Commission consisting of members of the National Serious Panel heard the case on 18 December 2023, along with the consolidated charges. Mr Caley attended the hearing and gave evidence, as did the two participants from Hackney Wick who faced charges. The Hackney Wick Discipline Officer represented the club and the two participants and another Hackney Wick club official also attended as an observer. Following the hearing the Commission produced the Written Reasons. They did not deal with the charges against the other parties and did not detail the outcome of those charges.

15. The Written Reasons referred to the oral evidence that the Commission heard and also to a number of written statements that the Commission had before it and considered, including the Appellant's own statement. One statement was from a spectator associated with May & Baker. The others were from individuals associated with Hackney Wick.

16. The Written Reasons recorded that the Commission found the case against the Appellant proven and imposed the following sanctions:

(a) A suspension from all football activity for 42 days;

(b) A fine of £30.

(c) A report to be submitted to the League's Referees' Committee

THE APPEAL REGULATIONS

17. Regulation 2 of the Appeals - Non-Fast Track Regulations ("the Appeal Regulations") sets out the grounds upon which a participant may appeal a first instance decision. They are:

“... the body whose decision is appealed against:

2.1 failed to give that Participant a fair hearing; and/or

2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or

2.3 came to a decision to which no reasonable such body could have come; and/or

2.4 imposed a penalty, award, order or sanction that was excessive.”

18. Regulation 10 deals with the circumstances in which new evidence may be admitted on appeal. It states:

The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Such application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied with the reason given as to why it was not, or could not have been, presented at the original hearing and that such evidence is relevant. The Appeal Board’s decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given an opportunity to respond.

19. Regulation 12 of the Appeal Regulations states:

“An appeal shall be by way of a review on documents only. 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 paragraph 10 above.”

20. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal.

SUBMISSIONS (INTRODUCTION)

21. As stated in paragraph 9 above, the following is a summary of the principal submissions made to the Appeal Board. It does not purport to contain reference to all the points made.

The absence of a particular point or submission should not imply that the Appeal Board did not take that point or submission into consideration when reaching its decision.

THE APPELLANT'S SUBMISSIONS

22. In the Notice, the Appellant stated that he relied on one of the grounds of appeal cited in paragraph 16 above, namely that the Commission had failed to give him a fair hearing.

23. The Notice identified three principal reasons for the Appellant's contention that he had not had a fair hearing:

- The case papers were incomplete due to witness statements in his defence not being included in the case pack.
- He had asked for six witnesses to be included in the hearing, but none were invited to attend.
- Evidence from Hackney Wick was allowed to be put in and used less than 24 hours before the hearing and he was not made aware of it before the hearing.

24. The Appeal Board also noted that the Appellant made reference to the VEO evidence not having been used.

25. In his oral submissions, the Appellant stated that the Respondent had received a statement from Ade Odogiyon of May & Baker ahead of the hearing, but it had not been sent to him. He did not identify any other statements in the Respondent's possession that had not been provided to him.

26. The Appellant accepted that he had been told by the Respondent that he could contact witnesses and ask them to attend the hearing. He also accepted that he had not queried whether any statements had been received and that he had not told the Commission that he had wanted witnesses from May & Baker to attend the hearing. When asked by the Appeal Board why he had not contacted the May & Baker secretary following his discussion with the Respondent and a follow-up email with her contact details, the Appellant suggested that he

had not received the email. He was directed to a reply to that email from him, but said that he could not have sent it because it had been sent too early in the morning.

27. In terms of late evidence, the Appellant clarified that the hearing had originally been scheduled for 23 November 2023, but had been postponed due to the late provision of witness statements and video footage. He accepted that he had received two of the three additional statements and the footage several days before the hearing. According to the Appellant, the third statement, a short statement from one of the participants that attended the hearing and gave evidence, was only provided the day before the hearing.

28. As far as the video footage was concerned, the Appellant accepted that the Commission had viewed the footage and specifically referenced it in the Written Reasons, but stated for the first time before the Appeal Board that, contrary to what was stated in the Written Reasons, it did have sound. The Appellant accepted that he had not drawn the Commission's attention to this.

29. In response to questions as to why he had not raised any of the above issues at the hearing, the Appellant stated that he had been taken aback that there had been a representative talking for the club, player and manager, and it had thrown him when he was asked questions.

THE RESPONDENT'S SUBMISSIONS

30. In the Response, the Respondent confirmed that the statement provided by Ade Odogiyon had been sent to it, but that due to an oversight it had not been included in the case pack that was sent to the Appellant and put before the Commission. The Respondent also confirmed that the Appellant had been told that it was his responsibility to arrange for the attendance of any witnesses whom he wished to call and that the Respondent had provided contact details for the May & Baker secretary.

31. In his oral submissions RC again confirmed that the Respondent had spoken to the Appellant about the need to make arrangements with his witnesses and had provided contact details for May & Baker.

LEGAL TEST

32. Regulation 12, cited in paragraph 19 above, makes it clear that the task of the Appeal Board is to conduct a review of the first instance decision rather than a *de novo* hearing. In other words, the Appeal Board is not considering the matter afresh.
33. In this case the Appeal Board was focusing solely on the issue of whether or not the Appellant had had a fair hearing.

DETERMINATION

34. The Appeal Board carefully considered the parties' submissions on the question of a fair hearing.
35. The Appeal Board did not consider that the late provision of the witness statement from the Hackney Wick player had prejudiced the Appellant. It was a short statement, the Appellant had had the statement ahead of the hearing and the player had attended the hearing, meaning that the Appellant had had the opportunity to question him.
36. On the evidence before it, the Appeal Board was satisfied that the Appellant had been made aware that it was his responsibility to contact any witnesses whom he thought could have relevant evidence and ask them to provide a statement and/or attend the hearing. It noted that in his original report the Appellant had identified six potential witnesses from May & Baker and that when he was first notified of the investigation on 20 October 2023, he responded by email saying that he would be contacting those witnesses in due course if he was charged with anything.
37. Based on the email thread in the Addendum Bundle, the Appeal Board was also satisfied that the Appellant had been provided with the contact details for the May & Baker secretary on 7 December 2023.

38. As far as the video evidence was concerned, contrary to the assertion in the Notice, the Appeal Board was satisfied that it had been viewed by the Commission, because detailed references were made to it in the Written Reasons. Furthermore, the Appeal Board was surprised that the suggestion that there was in fact audio on the footage was made so late in the day. It considered that if the Appellant thought that there was audio, and that the audio would have disproved the allegations against him, he could and should have raised this before the Commission. It reminded itself that an appeal hearing is not the opportunity for an unhappy party to have a “second bite of the cherry”.
39. The Appeal Board focused particular attention on the statement from Ade Odogiyon. It considered whether the absence of this statement from the hearing pack, which the Respondent had conceded was an error on its part, meant that the Commission had failed to give the Appellant a fair hearing. Its conclusion was that it did not. In reaching that decision, the Appeal Board noted that the Appellant had not made an application to it to introduce the statement as new evidence. But for the request for clarification of the timeline, which resulted in the statement being included in an email thread that was provided by the Respondent, the Appeal Board would not have known what that statement said. The Appeal Board also noted that on 5 January 2024, The FA specifically advised the Appellant of his right to make an application to adduce new evidence in respect of any statements that he said were omitted from the case pack. The Appellant did not do that. Although not strictly obliged to do so, in the absence of any application to it, the Appeal Board did look at the statement in question and decided that it was unlikely that it would have made a material difference to the outcome of the case, particularly as the maker of the statement had not been asked by the Appellant to attend the original hearing to give evidence. Taking all these factors into consideration, the Appeal Board decided that the omission of Ade Odogiyon’s statement, while regrettable, did not render the hearing unfair.

CONCLUSION

40. The Appeal Board dismissed the Appellant’s appeal.

41. The Appeal Board made no order as to costs.

42. The Appeal Board ordered that the appeal fee be forfeited.

43. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport

Greg Fee

Roy Schafer

14 February 2024