

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

**BETWEEN:**

**ROBERT BRADFORD (“RB”)**

**Appellant**

**and**

**LINCOLNSHIRE FA**

**Respondent**

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**WRITTEN REASONS OF THE APPEAL BOARD**

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**Introduction**

1. The appeal board (**‘the Appeal Board’**) was appointed to consider an appeal under The Football Association’s (**‘The FA’**) Disciplinary Regulations – Appeals 2023/24 (**‘the Appeal Regulations’**) brought by the Appellant against the decision of the Lincolnshire FA.
2. The appeal was heard on 09 April 2024 by way of MS Teams.
3. The Appeal Board had before it the appeal bundle which included, (1) the original charge details and evidence (2) results letter and written reasons for both appellants, (3) the Appellants’ Grounds of Appeal (4) the Lincolnshire FA response and (5) emails between the appellants’ club and the FA in respect of an application to have the sanction set aside pending determination of the appeal.

**The Appeal Board**

4. The members of the Board were:
  - Yunus Lunat (Chair).
  - Ellie Menezes.
  - Leon Bird.

5. No objection was raised concerning the composition of the Appeal Board.
6. The Secretary of the Appeal Board was Jack Mason of the West Riding FA whose assistance was greatly appreciated.

#### **Attendees**

7. The Appellant was represented at the hearing by his club manager Martyn Cundy.
8. The Respondent was represented by Hayley Gregory, its Business Support Officer.
9. The Appeal Board is grateful to all parties for their submissions and assistance both during the appeal hearing, and in the documents within the Appeal Bundle.

#### **First Instance Decision**

10. On 25 November 2023 Moulton Harrox U16 Girls played Crowland Juniors U16 Girls in the Lincolnshire Women and Girls County Football League (“the match”).
11. On 16 January 2024 the Lincolnshire FA charged the RB with a breach of FA Rule E3.1 - Improper Conduct (Including foul and abusive language). The basis for the charge was that RB called a player a “*wanker*” or similar and showed his middle finger to her.
12. RB defended the Charge and requested a non-personal hearing. He denied using the offensive word and alleged conduct and disputed there was sufficient evidence.
13. The Charges were considered by a Disciplinary Commission who found each Charge proven (*‘the Findings of Breach’*). The Disciplinary Commission. suspended RB for 3 matches from 17 March 2024 and fined him £35 (*‘the Sanction’*).
14. The Appellant appealed the decision on the ground that the Respondent came to a decision which no reasonable such body could have come to and also that he was denied a fair hearing.

#### **The Appeal Regulations**

15. Regulation 2 of the Regulations, sets out the grounds upon which the Appellant may appeal the first instance decision(s) – 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.”*

16. Regulation 12 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.”*

### **Submissions**

17. The following is a summary of the principal submissions made to the Appeal Board.

18. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that the Appeal Board did not take such point, or submission, into consideration when it considered the matter.

19. For the avoidance of doubt, the Appeal Board carefully considered all the materials provided, and submissions made, with regard to this case.

20. On behalf of the Appellants Mr Cundy submitted that there was insufficient evidence to find the charge proven and that the charge was simply based on the word of the complainant.

21. On enquiry from the Appeal Board it became apparent that the denial of a fair hearing ground was not relevant or being pursued. The sole ground of appeal was that that the Disciplinary Commission came to a decision which no reasonable such body could have come to.

22. Mrs Gregory did not make any oral submissions on behalf of the Respondent and relied upon the written response to the appeal.

### **The Legal Test**

23. As is clear from Regulation 12, the task of the Appeal Board is to conduct a review of the first instance decision, and not a de novo hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.
24. It is not open to the Appeal Board to substitute their decision for that of the Disciplinary Commission simply because the Appeal Board might themselves have reached a different decision.
25. The test for the Board to apply in determining whether the Disciplinary Commission acted '*irrationally*' or '*perversely*' or '*came to a decision to which no reasonable body could have come*' is essentially the *Wednesbury* test<sup>1</sup> applied in public law in cases of judicial review.
26. 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.
27. An Appeal Board should be slow to interfere with evidential assessments and factual findings made by the Disciplinary 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.
28. In accordance with the above the Appeal Board retired to consider the parties' submissions.
29. The Appeal Board considered the Regulations and the submissions made.

## **Conclusion**

30. The Appeal Board unanimously allowed the Appeal. The Appeal Board was particularly disturbed by the finding of the Disciplinary Commission that by RB "choosing not to defend himself made it more likely than not that words were exchanged between him and some of the Crossland players." This was an error on the part of the Commission because RB had in fact defended the charge and a statement in response was filed on his behalf by his club secretary Stuart Manning (page 62 of the appeal bundle).
31. It seems that the Commission was referring to RB requesting a Correspondence hearing. RB was at liberty to request a correspondence hearing, that was his right within the

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<sup>1</sup> Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223

Disciplinary Regulations. Therefore, it was inappropriate for the Commission to draw an adverse inference due the RB exercising this right.

32. In addition to the above, the Appeal Board were also concerned that the Commission had not weighed up the following defects in the evidence in support of the charge:

- The referee's report does not make any reference to RB nor the details of the charge being brought to his attention (page 41).
- The complainant's manager James Cook (page 42 – 45) also does not make any reference to the complaint. He refers to other aspects of misconduct by players and various comments from the side but does not corroborate the complaint against RB. It would be reasonable to expect the complainant to have mentioned the offending words and conduct to her manager.
- The other witness statement relied upon by Sara Smith (page 47 -50) is also silent on the central issues that the charge relies upon against RB.

33. The charge simply relies upon the word of the complainant. The Commission failed to weigh up the weaknesses in the evidence and carry out a balancing exercise to determine whether the threshold to sustain the charge was met *before* it was obliged to take into consideration the response submitted on behalf of RB.

34. For the above reasons, the Appeal Board concluded that the Commission came to a decision which no reasonable such body could have come to.

35. The Appeal Board made no order as to costs and the appeal fee was ordered to be returned. to be forfeited.

36. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

12 April 2024

Yunus Lunat (Appeal Board Chair)

Ellie Menezes

Leon Bird

