

THE FOOTBALL ASSOCIATION

APPEAL BOARD

NON-PERSONAL HEARING

of

SAFFRON DYNAMO FC (Appellant)

&

UNITED COUNTIES FOOTBALL LEAGUE (Respondent)

REASONS OF THE APPEAL BOARD

These are the written reasons of the decision of an appeal board (the “Appeal Board”), having considered the matter as a non-personal hearing held online via the video platform MS Teams on 26th April 2024.

Introduction

1. The Football Association (“The FA”) had received an appeal against a decision of the United Counties Football League (“UCFL”) finding a charge proven against the Appellant.
2. The charge had concerned an alleged breach of UCFL Cup Rule 5. If the Competition(s) are arranged on a knockout basis then no player shall play for more than one Club in the same KO competition during the same season. The alleged rule breach had occurred in two matches played by the Appellant in the UCFL League Knockout Cup, those played on 24th February 2024 against Wellingborough Town FC and on 10th April 2024 against Ashby Ivanhoe FC (“the Matches”).
3. The charge had been dealt with by a Disciplinary Sub-committee of the UCFL sitting on 17th April 2024 where the charged had been proven and the Appellant was removed from the

competition and fined £50 (“the Decision”). The Decision was communicated to the Appellant by a letter of 17th April 2024.

4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The Appeal Board convened on 26th April 2024 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)

Glenn Moulton (Football Panel Member)

Gordon Mellis (Football Panel Member)

The Appeal Board was assisted by Conrad Gibbons of FA Judicial Services acting as secretary to the Appeal Board.

6. No parties were in attendance as the Appellant had opted for a non-personal hearing; in other words the appeal was to proceed on consideration of the papers alone.

New Evidence:

7. There was the possibility that in the appeal notice and the submissions from the Appellant that new evidence was being introduced to the appeal. The Appeal Board was familiar with the entirety of the appeal bundle including the Appellant’s submissions and was of the opinion that much of what might have been considered new evidence was in fact argument and submission in support of the appeal. Such new evidence has might have appeared in the appeal notice was so interwoven with the rest of the documentation as to be difficult to separate. Mindful of the need to hear the appeal expeditiously, because of the impending end to the current season and the necessity of concluding the cup competition, the Appeal Board was content to accept the appeal notice and the additional documentation unredacted.

The Appeal Documentation:

8. The Appeal Board had before it the full appeal bundle comprising:

- The Appellant’s Notice of Appeal & Submissions
- The Appellant’s supplementary submissions
- Response to Notice of Appeal
- Charge Letter and Response
- Minutes of the Respondent’s Disciplinary Committee meeting of 17th April 2024

- Decision Letter
 - UCFL Competition Rules
 - Expedited Timelines Application and Outcome
9. The Appeal Board had before it the full appeal bundle, including all papers of first instance, with which all members of the Appeal Board were fully conversant. Absence of specific reference to any part of the appeal bundle in these written reasons does not mean they were not considered; they were considered in full.

Submissions by the Appellant:

10. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle.
11. The Appellant was appealing against the decision on the grounds that the Respondent:
- Came to a decision to which no reasonable such party could have come,
 - Failed to give the appellant a fair hearing,
 - Imposed the penalty, award, order or sanction that was excessive,
12. The Appellant claimed that no reasonable body would have come to the decision of the Respondent. The Appellant submitted that they had been unaware of the alleged rule breach until receipt of the charge letter on 15th April. There was an allegation that the Respondent had been aware of the breach earlier but, even if it had not, the Respondent should have picked up the error of the Appellant playing an ineligible player in the match against Wellingborough Town before the match against Ashby Ivanhoe had been played. The Appellant was alleging a mutual mistake by both the club and the league but for which only the club was having to bear responsibility and punishment. For this reason the Decision was one which no reasonable such a body could have come.
13. It was further claimed that the Appellant had not had a fair hearing. The Appellant submitted that the Respondent had wrongly abridged the time allowed for the Appellant to respond to the original charge. The Appellant claimed that the Respondent had issued the charge letter on 15th April 2024 and on 16th April had asked that they respond “as soon as possible”, claiming this was a severely restricted timeline which prevented them from preparing full mitigation. The claim of the Appellant was that, had they been afforded the full seven days, they could have prepared a better response and plea in mitigation.

14. The Appellant claimed that the sanction of removal from the knockout cup competition and a fifty pounds fine was excessive. The argument was that the Respondent was not bound by the rules to remove the Appellant from the competition, this was only a possible punishment and it was unfair for the Appellant to be removed in this way given what the Appellant claimed was a mutual mistake. The Appellant was not aware it was fielding and ineligible player in the Matches and there was fault on both sides. Therefore, this mitigation should have been taken into account and should have resulted in the Appellant remaining in the competition.

Submissions by the Respondent:

15. The Appeal Board considered the formal response to the notice of appeal as well the written explanation as to how it had reached the Decision.

16. The Respondent explained in full its disciplinary process.

17. In its written submissions the Respondent submitted:

- The Charge had been accepted by the Appellant so there was no question that Rule 5 had been breached and an ineligible player fielded by the Appellant in the Matches.
- Rule 6 states *“Any Club playing an unregistered or otherwise ineligible player or players shall be liable to a fine in accordance with the Fines Tariff. The Club will also be removed from the competition unless able to satisfy the Board that the Club (or any of its officers) did not know and could not reasonably have known, even if it had made every reasonable enquiry (with the exercise of the utmost caution), that the player was ineligible.”*
- The player in question, Jamie Hoyland, had played in a previous round of the cup for Leicester St Andrews on 5th September 2023
- The breach had been identified by the Respondent on 15th of April 2024.
- The Appellant had been charged on the same day under Cup Rules 5 and 6.
- On 16th April 2024 the Appellant had accepted the charge and submitted mitigation
- On 17th April 2024 the discipline subcommittee had sat to hear league discipline cases, including this one.
- The Appellant had signed Jamie Hoyland from Leicester St Andrews FC on 18th December 2023 at which point the Appellant should have undertaken due diligence to establish whether the player was cup tied.

- The Appellant had not approached the Respondent's registration secretary at any time to check the player's eligibility.
- Player statistics are available on the FA's Full Time platform where Jamie Hoyland is listed as having played for Leicester St Andrews in the knockout Cup tie on 5th September 2023.
- It could not be claimed that the Appellant had exercised the utmost caution before fielding a player they state they had not known was cup tied. Therefore the exception in Rule 6 is not met and Rule 6 requires any club in breach to be removed from the competition.
- The Respondent was satisfied the Appellant did not intentionally try to deceive but neither had they made reasonable inquiry (with the exercise of the utmost caution) to check if the player was ineligible.
- As this was an unintentional mistake the maximum fine had been reduced from £250 to £50.
- The fine had been in accordance with the UCFL Rules fines tariff.

18. As to the specific grounds for appeal, the Respondent had not come to a decision to which no reasonable such body could have come. The Appellant had accepted the charge so the breach, whether inadvertent or not, was a question of fact. Although inextricably linked to the sanction which was imposed, the decision to remove the Appellant from the competition was also not a decision to which no reason such body could have come. There was no evidence that the Appellant or its officers had exercised the utmost caution in checking the player's eligibility.

19. As to whether the Respondent had given the Appellant a fair hearing, the Respondent had followed the correct procedure in accordance with the Rules. The Appellant had been informed of its right to respond within seven days but had been requested to respond sooner if that were possible. The Respondent had not abridged the time limits but it simply sought the cooperation of the Appellant in allowing the matter to be determined as soon as possible in the interests of the competition. The Appellant was also given the opportunity to attend a meeting at which the charge would be heard but chose not to attend and asked for a non-personal hearing. Also, the Appellant had accepted the charge.

20. Claims that the penalty imposed was excessive: the Respondent noted that the Appellant did not deny that the player had been ineligible and was only challenging removal from the competition. The Appellant had requested a severe financial punishment as an alternative but

to leave the club in the cup competition. The Respondent's discipline subcommittee had acted entirely in accordance with the Rules in removing the Appellant from the cup competition.

Deliberation

Legal test for all grounds of appeal

21. As is clear from Regulation 12 of the Non- Fast Track Regulations¹, the task of the Appeal Board is to conduct a review of the first instance decision, and not a new hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

22. Guidance on how this review should be carried out is to be found in:

(a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

“When considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission's decision was unreasonable.”

and

(b) The FA v José Mourinho, 18 November 18, which states, at paragraph 54:

“It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to ‘second guess’ the Commission; ...

... We are permitted to ‘intervene’ only when there has been an error of principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone ‘plainly wrong’.”

¹ The FA Handbook 2023/2024 at P.191

23. Accordingly, the Appeal Board applied the following principles in its approach to the grounds of appeal:

- An appeal such as this proceeds by way of review of the decision of the Respondent. It is not a rehearing of the evidence and arguments at first instance;
- It is not open to the Appeal Board to substitute its own decision for that of the Respondent simply because the Appeal Board might themselves have reached a different decision at first instance;
- If the Respondent has reached findings of fact which it was reasonably open to the Respondent to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant;
- The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Respondent. Evidential assessments of the Respondent should only be interfered with if they are clearly wrong or if the wrong legal principles were applied to the making of those factual findings;
- Any Appellant who pursues an appeal on the ground that a Disciplinary 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 overcome.

Discussions on the grounds submitted

24. In accordance with the principles set out immediately above, the Appeal Board considered all the parties' submissions.

25. In charging the Appellant and reaching the Decision, the Respondent had relied exclusively on UCFL Knockout Cup Rules 5 & 6. Rule 5 deals with fielding an ineligible player, which was not denied, and the charge had been admitted. Therefore, the matter before the Appeal Board related to Rule 6. Verbatim, this Rule reads:

“Any Club playing an unregistered or otherwise ineligible player or players shall be liable to a fine in accordance with the Fines Tariff. The Club will also be removed from the competition unless able to satisfy the Board that the Club (or any of its officers) did not know and could not reasonably have known, even if it had made every reasonable enquiry (with the exercise of the utmost caution), that the player was ineligible.”

26. As for the suggestion by the Appellant that the Respondent was proceeding in an incorrect manner in failing to allow the Appellant sufficient time to respond to the charge, the Appeal Board interpreted the correspondence as nothing more than an attempt by the Respondent to expedite the process. There was never any indication that the time limit for a response had been shortened nor that the Appellant would not be allowed the full seven days had it required it. The Respondent had also ensured the Appellant was aware of the procedure, the Respondent had offered the Appellant a personal hearing and had notified the Appellant of the Decision in a timely manner.

27. The Appeal Board noted:

The ground for appeal in Regulation 2 of the FA's Non-Fast Track Appeal Regulations² is that "The body whose decision is appealed against failed to give that Participant a fair hearing." In other words, that the Respondent had failed to give the Appellant a fair hearing.

- The Respondent's charge letter was accurate and allowed seven days to respond.
- The email of 16th April had sought to speed up the process but had not denied the Appellant the full time to respond, had it been required.
- There was no departure from the proper process, the UCFL Rules or FA Regulations.

28. Having considered the question of whether the Respondent had given the Appellant a fair hearing, the Appeal Board concluded that the appeal fails on this ground.

29. Whether the Respondent had come to a decision to which no reasonable such body could have come, the Appeal Board considered the Respondent had come to the only decision that was open to it to take. The Rules did not permit a different decision to be taken as the Appellant had accepted the charge.

30. The Appeal Board was aware that the most significant ground for appeal is that the penalty award or sanction imposed was excessive. The Appellant submitted that the fact that Jamie Hoyland had played two minutes as substitute in an earlier round of the Cup competition was de minimis and that they had not been able to find evidence of him being cup tied. However, the Appellant provided no evidence of the steps they had taken to establish whether the player was cup tied or not. The Respondent was not aware of any approach being made to their registrations officer, it was not clear whether any due diligence was undertaken with the player's former club and the evidence of Mr Hoyland having played for Leicester St Andrews

² The FA Handbook 2023/2024 at P.189

was available publicly on Full Time.

31. The only exception to expulsion from the competition afforded by Rule 6 is where the Appellant has exercised “*the utmost caution*”. No evidence was provided as to what steps had been taken to establish the player’s eligibility and no evidence had been produced to the original discipline subcommittee, nor to the Appeal Board, that the obvious steps referred to in the paragraph above had been undertaken. It was not clear whether any caution had been exercised at all in this matter.

32. The Appeal Board was not persuaded by the Appellant’s arguments that the Respondent was equally culpable. Establishing a player’s eligibility is the responsibility of the club, not the organising body unless asked to do so. In any event, the Appellant’s argument seemed to be that the mistake should have been identified after the earlier Wellingborough Town match. Even if it had been, the Appellant would still have been expelled from the competition albeit at an earlier time.

33. In the absence of sufficient evidence to establish the one exception available to expulsion in Rule 6, the Appeal Board finds that the Respondent had acted properly and the sanction was not excessive.

Conclusion

34. In summary, the Appeal Board unanimously dismiss the Appeal on all three grounds.

35. In order to give effect to this decision, the Appeal Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations³, orders that:

- i. The appeal fails on all three grounds.
- ii. The appeal fee is retained.
- iii. There is no order for costs.

36. This decision of the Appeal Board is final and binding and there shall be no right of further challenge.

Paul Tompkins

Glenn Moulton

Gordon Mellis

29th April 2024

³ The FA Handbook 2023/2024 at P.192