

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

ON 29<sup>th</sup> MAY 2024

David Reade KC, Sally Davenport, Roger Burden

BETWEEN:

THE FA

Appellant

And

CHRISTOPHER HAYCOCK

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The Appeal Board (“the Board”) was appointed in accordance with The Football Association’s (“The FA”) Disciplinary Regulations- Appeals 2023/24 (“the Appeal Regulations”) to determine an appeal brought by Football Association (“the Appellant”) by Notice of Appeal dated 15th March 2024.
2. By the Notice the Appellant appealed the decision of a Disciplinary Commission, held on 20<sup>th</sup> February 2024, convened on behalf of Kent FA, to hear two charges that the Respondent was in breach of FA Rule E3 - Improper Conduct (including foul and abusive language) (“Charge 1”) and FA Rule E3.2 - Improper Conduct - aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability (“Charge 2”).

3. The Disciplinary Commission, by written reasons dated 23 February 2024, found Charge 1 proven and imposed a 4-match suspension and a £40 fine. The Disciplinary Commission found that Charge 2 was not proven.
4. The appeal was heard on 29<sup>th</sup> May 2024 by way of MS Teams. The Appellant attended through Counsel, Mr Harry Laidlaw. The Respondent appeared and represented himself.
5. The Board had before it:
  - a. The Notice, with supporting materials,
  - b. The Respondent's Responses,
  - c. The papers before the original Commission and
  - d. The Decision appealed and its' reasons.
6. The Appellant, through Mr Laidlaw, made submissions and these were responded to by the Respondent.
7. The Board considered the entirety of the materials which the parties put before us, and the submissions made. If we do not explicitly refer a particular point, document or submission, it should not be inferred that we have overlooked or ignored it. We have considered all of the matters placed before us.

#### Background

8. The Respondent was subject to disciplinary charges which arose out of an incident which occurred during a match played between Macies and Lesters Athletic in the Thanet Sunday League on Sunday 26<sup>th</sup> November 2023. The Match Official was William Sanderson.
9. The Respondent played for Macies and was dismissed from the field by the Match Official. The charges then related to allegations about language directed at the Match Official by the Respondent which led to the Match Official submitting an Extraordinary Incident Report Form to Kent FA.

10. Charge 1 particularised the abusive language which was alleged to have been directed at the Match Official. The particulars of the charge included the allegation that the words used included the phrase “I bet you take it up the arse you gay prick”, that was alleged to be an aggravated breach as defined by FA Rule E3.2 because it included a reference to sexual orientation. Charge 2 referred to a breach of FA Rule E3.2 but included no further separate particulars of the Charge.
11. The Respondent admitted a breach of Charge 1 although he appears not to have admitted the use of the aggravated language alleged.
12. The Commission approached the hearing on the basis that the issue to be determined, Charge 1 having been admitted, was whether the aggravated language alleged had been used and whether it had been directed at the Match Official. The Commission held an in person hearing and heard evidence from the Match Official, the Respondent and witnesses called on behalf of the Respondent. The Commission’s findings on the language used by the Respondent are not entirely clear but they do conclude that Charge 2 was not proven on the basis that they were not satisfied that, on the balance of probabilities, the Respondent had directed the alleged aggravated phrase at the Match Official. They do not make a clear finding as to whether the words were said.
13. The Appellant appealed, the grounds of appeal being relied upon being that the Commission had a) Misinterpreted or failed to comply with the Rules and/or Regulations of The Association relevant to its decision, and/or b) had come to a decision to which no reasonable body could have come.

#### Grounds of Appeal

14. As developed through his oral argument and in the written grounds of appeal there were three arguments being advanced by Mr Laidlaw in support of the grounds of Appeal.

#### Ground 1

15. The Appellant argued that under the FA Rules, Rule E3.2 was a separate offence to Rule E3 and the Commission misinterpreted or failed to comply with the Rules and/or Regulations in that it failed to treat it as a separate offence. As a separate offence it was not charged as being conduct directed at the Match Official and the Commission had imposed an element of the charge which was not present.

## Ground 2

16. As developed, this advanced two separate arguments.

17. Firstly that, regardless of Ground 1, when one considered the notes of evidence of the Commission as recorded in their Decision the failure to find the Second Charge proven was a decision which no reasonable body could have reached.

18. The Second Argument advanced was reliant, as Mr Laidlaw accepted, on the first Ground of Appeal succeeding. He submitted that if the Commission had erred in reading Charge 2 as requiring a finding that the language was directed at the Match Official, on the Commission's own findings of fact Charge 2 was made out.

## The Board's Reasoning

19. We address Ground 1 first.

20. Mr Laidlaw argued that FA Rule E3.2. is a separate offence to E3. We remind ourselves of the wording of the Rules:

### F.A. Rule E3

“(1) A participant shall at all times act in the best interest of the game and shall not act in any manner which is improper or brings the game into disrepute or use anyone, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.’

“(2) A breach of E3 (1) is an “Aggravated Breach” where it includes a reference whether express or implied, to and one or more of the following: - ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability”.

21. We do not read E3.2 as being disconnected from E3 but read it as being parasitic in that it presupposes a breach of E3 in which there are aggravating factors such that it is, under Rule E3.2, an aggravated breach of E3. Unless there is a breach of E3 there can be no breach of E3.2.
22. We see confirmation of that in the way the Charges were set out here. No separate particulars were set out for the breach of E3.2 but reference was made to the alleged aggravating feature, and to Rule E3.2 itself, in the particulars of Charge 1. When one looked for the particulars of the conduct alleged as engaging E3.2 one found it only in the particulars of Charge 1.
23. Charge 1 made clear that the conduct alleged was directed at the Match Official. On a fair reading of the Charges then the alleged aggravated breach of E3, so as to engage Rule E3.2, was the allegation that the phrase “I bet you take it up the arse you gay prick” was directed at the Match Official.
24. The Respondent had admitted Charge 1 but not the aggravating language directed at the Match Official.
25. The Commission then, the Board concludes, had properly directed itself that the questions it had to determine, on Charge 2, was whether that language had been used and whether it had been directed at the Match Official. As the charges were drafted and brought by Kent FA both elements had to be present for the Aggravated Breach of E3 alleged to be found.
26. There was no error or misinterpretation of the Rules and/or Regulations by the Commission. Had the Kent FA wanted to broaden the Charges so that they embraced the use of language or aggravating language more generally and not sought to limit the charges to conduct directed at the Match Official the Charges should have been more clearly drafted to that effect.

Ground 2

Second Argument

27. Mr Laidlaw fairly accepted that his third argument, that on the Commission's findings as recorded Charge 2 was proven, could not be maintained unless the argument on Ground 1 succeeded. This argument then fails.

#### First Argument

28. This was a free standing argument that even if Ground 1 had failed the conclusion of the Commission was one which no reasonable body could have reached. That argument was advanced with skill and force on the basis of the Commission's own notes of the evidence that it heard.

29. The Board found this argument more vexing, but the Commission hearing was an in person hearing and the Commission had the benefit of hearing the witnesses. Whilst the Respondent did not seek to question the Match Official, he represented himself, it appears clear that he was denying that he directed the words alleged at the Match Official. There was some uncertainty about what language was being used on the evidence and there was the evidence of the Match Official that they had been used and had been directed at him.

30. Having carefully considered the materials the Board reminded itself that the issue is not whether this Board would have come to a different decision. To allow the appeal we have to be satisfied that no reasonable Commission could have reached the decision which it did. Having so directed ourselves, and with a little hesitation over the adequacy of the Commission's findings, we have reached the conclusion that we are not so satisfied. That ground is also then dismissed.

#### Conclusion

31. The Board therefore dismisses the appeal.

32. The Board considers that in all the circumstances no order for costs is appropriate.

33. The Board's decision is final and binding on all parties.

David Reade KC

Sally Davenport

Roger Burden

29<sup>th</sup> May 2024