

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

THREEMILESTONE TIGERS (Appellant)

-and-

CORNWALL FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

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

Alec Berry – Former FA Council Member

Tony Rock – Independent Football Panel Member

Secretary: Alastair Kay – FA National Secretary

Date: 31 July 2024

Venue: Held remotely via Microsoft Teams

INTRODUCTION

1. The Appeal Board was appointed to determine an appeal by Threemilestone Tigers (“the Appellant”) against the decision of a Disciplinary Commission (“the Commission”) sitting on

behalf of Cornwall FA (“the Respondent”). No objection was raised concerning the composition of the Appeal Board.

2. The Appeal Board conducted a hearing on the papers only on 31 July 2024. It 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
 - Supplementary Submissions
3. This document constitutes the written reasons for the Appeal Board’s decision. The Appeal Board considered the entirety of the Appeal Bundle. If this document does not explicitly refer to a particular document, point or submission, it should not be inferred that the Appeal Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

4. The Appellant is an U14 team that plays in the Cornwall Youth Football League. On 7 April 2024 the Appellant played a match (“the Match”) against Penzance AFC Youth U14 Apollos.
5. On 3 May 2024 the Respondent charged the Appellant with a breach of FA Rule E21 on the ground that it failed to ensure spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match (“the Charge”). Specifically, it was alleged that at half time the brother of the Appellant’s linesperson said to the Referee that he would beat him to a pulp, crush his skull and chop him up and put him in the boot of his car, or similar.
6. The Appellant did not respond to the Charge, although it did have contact with the Respondent following receipt of it, as detailed below.

FIRST INSTANCE DECISION

7. The Commission, consisting of a Chair of the National Serious Case Panel sitting alone, dealt with the case on 13 June 2024. The Commission considered the Charge on the basis of the documentary evidence before it, which is referred to and quoted in its written reasons dated 13 June 2024 (“the Written Reasons”). The Commission found the charge proven and decided to impose a fine of £100.

THE APPEAL REGULATIONS

8. 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.”

9. 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.”

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

THE APPELLANT'S CASE

11. In its Notice of Appeal, the Appellant indicated that it relied on one of the four grounds of appeal cited in paragraph 8 above, namely that the Commission had failed to give it a fair hearing. In essence the Appellant's case was that it had asked for advice on the process, had been promised a call from the Respondent's Football Services Manager, but had not received that call. It also stated that it felt that the Charge was harsh. The Appellant provided copies of emails exchanged with the Respondent between 11 April and 19 June 2024 in support of its appeal.

THE RESPONDENT'S RESPONSE

12. In its Response, the Respondent stated that following receipt of an Extraordinary Incident Report Form from the Referee, it had contacted the Appellant for observations and statements, which had been provided. Having considered the paperwork it had then issued the Charge. The Appellant did not respond to the Charge by the deadline of 17 May 2024, although it obtained advice from the Respondent on 7 May 2024. The hearing did not take place until 13 June 2024 and there was no further contact from the Appellant after 15 May 2024.

LEGAL TEST

13. Regulation 12, cited in paragraph 9 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.

DECISION

14. The Appeal Board carefully considered the parties' submissions on the question of a fair hearing.

15. The Appeal Board noted that there was a dispute as to whether or not the Respondent's Football Services Manager had tried to call the Appellant's Secretary. It noted the email from the Respondent dated 13 May 2024 saying that the writer would ask the Respondent's Football Services Manager to call him. It accepted that the Respondent's Football Services Manager did not speak with the Appellant's Secretary, but had no evidence before it beyond the conflicting statements of the two parties as to whether the Respondent's Football Services Manager had in fact attempted to call the Appellant's Secretary. It did not consider that this point was crucial to its determination of the appeal. It was satisfied that the Appellant had been provided with all relevant paperwork and was aware of the deadline for responding to the Charge. It took the view that the Appellant could and should have submitted a response within the allotted timeframe, irrespective of whether or not it had been able to speak with the Respondent's Football Services Manager. The Appellant could then have pursued its queries with the Respondent ahead of the hearing and had ample time in which to do so.
16. The Appeal Board also took into account that the Appellant had provided statements ahead of the Charge, that the hearing before the Commission had proceeded on the basis that the Charge had been denied, and that the Appellant had accepted in its supplementary submissions that it could not contest the inappropriateness of the spectator's behaviour. It was satisfied that the Commission had been entitled to come to the conclusion that the Charge was proven on the evidence before it.
17. Taking all these factors into consideration, the Appeal Board concluded that the Appellant had not been deprived of a fair hearing.
18. The Appeal Board dismissed the Appellant's appeal. It made no order as to costs. It ordered that the appeal fee be forfeited.
19. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport

Alec Berry

Tony Rock

5 August 2024