

THE FOOTBALL ASSOCIATION

APPEAL BOARD

NON-PERSONAL HEARING

of

TREVOR THOMAS (Appellant)

&

LANCASHIRE FOOTBALL ASSOCIATION (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 15th November 2024.

Introduction

1. The Football Association (“The FA”) had received an appeal against a decision of the Lancashire Football Association (“LFA”) finding a charge proven against the Appellant.
2. The charge had concerned an alleged breach of FA Rule E3.1 Improper Conduct (including threatening and/or abusive language/behaviour) The alleged rule breach had occurred in a match played on 6th July 2024 in the British League Cup between MU Supporters v PNE Supporters (“the Match”) The Appellant had been the referee in the Match.
3. The charge had been dealt with by a personal hearing of a Disciplinary Commission of the FA’s National Serious Cases Panel sitting on 26th September and 8th October 2024 (“the Commission”) where the charge had been found proven.

4. The charge against the Appellant had been consolidated with other charges arising out of incidents at the Match, namely charges under FA Rules E3 against a player, CB. CB had been a player for MU Supporters in the Match, a team based in Manchester, and he had been charged by Manchester Football Association (“MFA”).
5. The Commission had found the charge against the Appellant proven and had imposed the following sanctions (“the Decision”):
 - i. a suspension of 182 days from refereeing and mentoring (suspension not applicable to administrative duties)
 - ii. a fine of £150.
 - iii. the Appellant was ordered to attend an online education course to be completed before the end of the suspension
6. The Appellant was appealing against the Decision.

The Appeal Hearing

7. The Appeal Board convened on 15th November 2024 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)

Dennis Strudwick (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.

8. The Appellant had opted for a non-personal hearing of the appeal; in other words the appeal was to proceed solely on consideration of the papers and written submissions by and on behalf of both the Appellant and the Respondent and there were no verbal representations to the Appeal Board.

The Appeal Documentation:

9. The appeal bundle of 91 pages in total comprised:

- The Appellant’s Notice of Appeal & Submissions
- Response to Notice of Appeal from LFA
- Full papers of First Instance

- Media submissions (video link)
- The Appellant's Offence History
- Results Letter and Written Reasons
- Sanction Stay Application and Outcome

10. 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.

11. Reference in the written reasons will be made to documents within the appeal bundle and will quote therefrom. The appeal bundle documents have been supplied to all parties, have not been disputed and are on record; therefore, these written reasons will not quote wholesale from statements, submissions and the like but will refer to salient points as they affect the deliberation of the Appeal Board and the outcome of this appeal.

Application to submit new evidence:

12. In his notice of appeal, the Appellant referred to the following:

- A statement from ST dated 25th August which had been submitted to the Football Association, addressed to the disciplinary department at LFA.
- That statement had read:

"I write with regards the Preston North End vs Manchester United Supporters Cup Final played on Saturday 6th July 2024 at Darwen FC.

A United player was sent off and refused to leave the field. After being cajoled by his team mates he eventually walked off and the game finished without any further incident. However once the game finished the player sent off came back onto the field to confront the referee. This carried on towards the dressing rooms as the united player continued to harras the referee, at this stage me and a friend walked over to help calm the situation.

At the mouth of the changing room we tried to difuse the situation but the United player continued to threaten the Referee. The Referees response was to 'come to da le salle tomorrow'. It was at this stage others including me and a friend kept the two apart and the situation calmed.

From my personal account the referee was completely innocent of any wrong doing

Regards

ST

[Note: This statement has been set out in full to assist understanding of these reasons.]

- This statement had not been presented to the Commission and the Appellant was contending that this had denied him a fair hearing.
- The only appearance of the statement either in the original papers or in the appeal bundle appeared in an email of 15th October sent by SO'D to the Appellant where it appeared to be a forwarded copy of an email from SO'D to the LFA.
- The Appellant averred that the LFA failed to disclose ST's statement to the Commission and therefore deprived the Appellant the opportunity to use it in support of his case.
- The Appellant had only become aware of the statement's existence after the hearing had concluded and after the Decision had been taken.

Response by the Respondent:

13. In response to the allegation that evidence provided by the Appellant in support of his case had not been disclosed to the Commission, the Respondent stated the following:

- No email from ST had been received on 25th August as alleged and as appeared to be disclosed in the email from SO'D.
- The email in question was clearly date stamped 25 August 2024 22:07.
- LFA had undertaken a search of the recipient email address's inbox and had received categorical responses both from the FA's own IT Department and from their consultants, Cognizant, that "*there are no emails from [redacted email address] (the apparent sender's email address as quoted by Mr O'D) as validated in the email gateway for the mentioned time frame.*"
- The Respondent denied the allegation that it had failed to disclose the witness statement of ST.
- SO'D had been made aware by the Respondent on 11th September that no statement from ST had been received. This was 15 days before the hearing date. SO'D had been advised that it was technically too late to add any more evidence but he was still given the choice of doing so and the Commission could make the ultimate decision.
- Had the statement being submitted on 11th September it would still have been sent to the Commission. A copy of the LFA email to SO'D of 11th September was produced.
- The Respondent had had no contact from ST himself.

- The Respondent had no duty to pursue witnesses for statements and it was up to the Appellant or those acting for him to have done so.
- Notwithstanding the allegation that the statement had not been submitted to the Commission, the Respondent denied the further allegation that ST's statement undermined the county's position.
- The statement stated "*The Referees response was to 'come to da le salle tomorrow'*" which formed a part of the charge letter. In the opinion of the Respondent, ST's statement reinforces the allegation in the charge letter and aids the County case, not the Appellant's.

Deliberation of the question ST's statement:

14. The Appeal Board concluded there was no clear evidence that the email of 25th August from ST had been sent. There had been adequate opportunity for proof to be provided that the email had been sent in good faith but the only evidence appeared at the foot of an email from SO'D to the Appellant on 15th October 2024. The purpose of that email had been to prove that the statement had been sent.

15. SO'D had been given 15 days' notice that the statement had not been received by the Respondent but chose to do nothing. There was no follow up by either the Appellant or his representatives, there was no attempt to identify an error, there was simply silence. No attempt had been made by the Appellant to rectify the position, having discovered an apparent error.

16. It was also intriguing that the Appellant claimed to have had no knowledge of ST's statement until after the Commission had sat and made its Decision.

17. If the Appellant had intended to rely on the statement of ST before the Commission why was he not aware of its existence?

18. The Appeal Board was faced with a situation where it was claimed that a statement had been sent on behalf of the Appellant which the Respondent stated had not been received. It was open to the Appellant to produce evidence of the email of 25th August having been sent, by reference to a "sent" box from the sending email account and by producing a copy of the sent email itself but this had not been produced. Conversely the Respondent had produced independent evidence from Cognizant confirming that no such email had been received. The inactivity of the Appellant and those advising him on 11th September was difficult to understand.

19. The Appeal Board reminded itself of the provisions of Regulation 10 of the FA’s general appeal regulations on the question of submission of new evidence to an appeal board:

“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. Any 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 (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) that such evidence is relevant. The Appeal Board’s decision shall be final.”¹

20. The Appeal Board was satisfied that, on the balance of probabilities, ST’s statement had not been received by the Respondent before the date the Commission sat and there were no satisfactory reasons from the Appellant as to why the statement was not presented at the original hearing. The Appeal Board consequently determined that:

- (i) to the extent that ST’s statement comprised new evidence, not having been presented at the original hearing, it did not meet the requirements of Appeal Regulation 10 and was therefore not admissible to the appeal
- (ii) applying the same discernment, the Appeal Board also dismissed the appeal so far as it related to ST’s statement not being before the Commission. The reason ST’s statement was not before the Commission was down to the Appellant and those representing him and could not substantiate an appeal on the grounds that the Respondent had failed to give him a fair hearing.

Submissions by the Appellant:

21. The Appeal Board then carefully considered the appeal notice and its covering correspondence as set out in the bundle.

22. The Appellant was appealing against the Decision on the grounds that the Respondent:

- Failed to give the Appellant a fair hearing
- Failed to comply with the Disciplinary Procedures relevant to the hearing of the charge

¹ The FA Handbook 2024/2025 at P.190

- Came to a decision on the facts of the case which no reasonable body could have reached
- Imposed an award, order or any other sanction that is excessive.

23. The paragraph 10 of the appeal notice the Appellant pleads:

“the witness statements of "BB" (paragraph 6) and "AU" (paragraph 7) were similarly withheld from the appellant throughout the proceedings. This lack of disclosure further compromised the appellant's ability to fully defend their case, as critical evidence that could have influenced the outcome was not made available for review or rebuttal. These significant failures in disclosure resulted in a hearing that was procedurally unfair.”

24. In paragraph 13 of the appeal notice the Appellant pleads:

“It is further submitted that The Commission came to a decision on the facts of the case which no reasonable body could have reached. Had the Commission considered ALL FACTS OF THE CASE, including the evidence which were submitted before the hearing but not included in the bundle and not presented at the hearing that the appellant is requesting to adduce as New Evidence, then we respectfully submit that the Commission came to a decision on the facts of the case which no reasonable body could have reached.”

25. The Appellant also made submissions on the sanction imposed by the Commission. The Appeal Board deferred considering this limb of the appeal until it had concluded its deliberations on whether the Appellant had been given a fair hearing and whether the Commission had come to a decision on the facts of the case to which no reasonable such body could have come.

26. The Appellant had also requested that his sanction be put on hold pending the outcome of the appeal and that request had been granted.

Submissions by the Respondent:

27. The Appeal Board considered the formal response to the notice of appeal as well as the written reasons as to how the Commission had reached the Decision.

28. The Respondent denied withholding any statements from the Appellant. The Respondent confirmed a statement had been received from AU and that the Respondent had spoken to AU who *“did not want his name released and would not be attending the hearing, because he was concerned that “there might be repercussions”*. He stated that he was happy for his statement to be released anonymously”.

29. The Respondent “*considered this. However, as a standard practice, we do not rely on anonymous witnesses, and I didn’t think it was fair to the Appellant to be presented with a statement without them knowing who it is from and having no chance to challenge it in a hearing.*” Further on, “*Lancashire FA did not use the statement from “AU” and the reason for this was exactly to ensure that the Appellant would have a fair hearing, so to be now accused of causing the opposite is frustrating to say the least*”.

30. “*Due to Manchester FA dealing with a serious case, and Lancashire FA dealing with a non-serious case, it was Manchester FA that took lead with the hearing. The fact that additional statements were supplied by their Participant Charged and relied upon by the disciplinary commission during the hearing is outside of Lancashire FA’s control.*”

31. “*Lancashire FA did not have any involvement in the handling of the charge for the other Participant Charged. Manchester FA handled his charge and hearing, and our communications with this individual were extremely limited. We did not see their case bundle and my involvement in the hearing arrangement was to ensure that Appellant, and those who provided witness statements we relied upon were available to attend on a date agreed between Manchester FA and their Participant Charged.*”

32. Additionally, the Respondent stated, “*we have checked with the hearing secretary, Jon Fancy, and he confirmed that the above statements were shared with the Appellant on 26 September 2024 21:50, 12 days before the second hearing date on 08/10/2024. In our view, the Appellant had ample time to consider the content of the statements*”. A screenshot of the Commission secretary sharing the statements of AU and BB late on the first evening on which the Commission sat was included in the appeal bundle.

33. On the question of whether the Commission had reached a decision on the facts of the case which no reasonable such body could have reached, the Respondent disputed that the Commission did not have the full facts. The Respondent stated that “*the disciplinary commission had full facts Lancashire FA had at the time of the hearing.*”

Deliberation

Legal test for all grounds of appeal

34. As is clear from Regulation 12 of the Non- Fast Track Regulations², the task of the Appeal Board is to conduct a review of the first instance decision, and not a new hearing. In other

² The FA Handbook 2024/2025 at P.191

words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

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

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.”

36 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;

Deliberations on the grounds submitted

37. In accordance with the principles set out above, the Appeal Board considered all the parties’ submissions.

38. The Appellant had appealed on the four grounds set out in paragraph 22 above.

39. The Appeal Board had already determined that the absence of ST’s statement before the Commission was not the responsibility of the Respondent and therefore that particular failure did not substantiate an appeal on the grounds that the Respondent had failed to give the

Appellant fair hearing. However, the absence of the statements of AU and BB from the original case bundle was significant on two grounds:

- Firstly, the bundle which had been produced by the Respondent was different from the one produced by or on behalf of MFA. In its response the Respondent stated of MFA that “*additional statements were supplied by their Participant Charged and relied upon by the disciplinary commission*”. As this was a consolidated hearing the full facts against both participants charged would have been heard and considered before the Commission reached the Decision. Therefore, the acceptance that additional statements were before the Commission of which the Appellant had not had notice placed him at a disadvantage.
- Secondly, it is clear from the written reasons at page 64 of the appeal bundle that AU had provided significant evidence in support of the charge against the Appellant even though the Respondent had determined that this evidence was not admissible, albeit in an attempt to be fair to the Appellant.

40. The Appeal Board noted at paragraph 13 of the written reasons on page 69 of the appeal bundle that “*Two witnesses found to be wholly credible under cross examination in AU and PL, attested that TT had threatened CB.*” Although a transcript of AU’s evidence to the Commission is missing from the written reasons this is a statement that AU attended the hearing to give evidence, although it was not clear to the Appeal Board that this was in fact the case. Nonetheless the written reasons indicate that credibility was attributed to AU’s evidence when reaching the Decision.

41. This reliance upon the evidence of AU came after the Respondent advised that, for fear of repercussions AU wished his name to be omitted from his statement. Furthermore, the Respondent stated it would not use anonymous statements. Therefore, the reliance by the Commission on evidence from AU was not only inconsistent but placed the Appellant at a disadvantage. Not having been aware of the statements of AU and BB, preparation by the Appellant would have been in ignorance of those statements and if either of them appeared to give evidence, as appears to have been the case, the Appellant would not have been prepared for cross examination of the witness.

42. There was no avoiding the conclusion that the bundle produced by the Respondent was different from the bundle produced by MFA for the same consolidated hearing. The papers of first instance included in the appeal bundle did not include the statements of AU and BB,

although it was clear from the written reasons that these had been relied upon by the Commission.

43. The sharing of the statements on 26th September, after the first sitting of the Commission had taken place, was not sufficient to rectify the position. The hearing had already started and the Appellant had not had sight of all the evidence against him.

44. The Appeal Board was therefore of the opinion that the Respondent had failed to give the Appellant a fair hearing and the appeal on this ground succeeds.

Conclusion

45. In summary, the Appeal Board unanimously allow the Appeal on the ground cited.

46. The Appeal Board considered its powers under the Non-fast track appeal Regulations of the FA. Regulation 21 is the applicable Regulation and this states:

“The Appeal Board shall have power to:

21.1 allow or dismiss the appeal;

21.2 exercise any power which the body against whose decision the appeal was made could have exercised, whether the effect is to increase or decrease any penalty, award, order or sanction originally imposed;

21.3 remit the matter for re-hearing;

21.4 order that any appeal fee be forfeited or returned as it considers appropriate;

21.5 make such further or other order as it considers appropriate, generally or for the purpose of giving effect to its decision.

21.6 order that any costs, or part thereof, incurred by the Appeal Board be paid by either party or be shared by both parties in a manner determined by the Appeal Board.”³

47. Although the charge against the Appellant was not categorised as a serious case, the alleged actions of the Appellant as a match official were in themselves serious and the Appeal Board considered it would be highly unsatisfactory to allow the decision of the charge against the

³ The FA Handbook 2024/2025 at P.192

Appellant to be decided on a technicality. For this reason the Appeal Board exercised its powers under regulation 21.3 and remitted the charge for rehearing by the LFA. The fact that the charge against CB had been determined did not prevent the charge against the Appellant proceeding as a stand-alone charge.

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

- i. The appeal succeeds on the ground that the Appellant was not afforded a fair hearing, considering that the bundles of written evidence considered for each of the consolidated charges were different. As such, the Appeal Board found that it need not consider the other grounds for appeal.
- ii. The matter is remitted to be reheard by a fresh Commission. It is the recommendation of the Appeal Board that the Commission for any new hearing should be convened from a different region from the Lancashire FA (subject to approval of this direction by the authority with the power to appoint the Commission, in view of the original jurisdiction).
- iii. The original charge is to be reissued. It is not open to the Respondent to amend the charge. The Appellant is afforded the opportunity to submit a new plea and any evidence it relied upon in its defence.
- iv. The appeal fee is retained.
- v. There is no order for costs.
- vi. The sanction currently imposed is expunged. The remitted hearing shall determine liability and, if applicable, any sanction.
- vii. There was no order as to costs and the appeal fee is to be returned.

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

Paul Tompkins

Dennis Strudwick

Gordon Mellis

23rd November 2024