

THE FOOTBALL ASSOCIATION

APPEAL BOARD

NON-PERSONAL HEARING

of

WYTHENSHAW FC (Appellant)

&

NORTH WEST WOMEN'S REGIONAL 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 personal hearing held online via the video platform MS Teams on 6th March 2024.

Introduction

1. The Football Association ("The FA") had received an appeal against a decision of the North West Women's Regional Football League ("NWWRFL") finding a charge proven against the Appellant.
2. The charge had concerned an alleged breach of NWWRFL Rule 21.B relating to a match due to be played on 28th January 2024 between Warrington Wolves and Wythenshawe FC ("the Match").
3. The charge had been dealt with by the NWWRFL secretary by way of letter dated 4th February 2024 ("the Decision Letter") when the charge had been found proven ("the Decision") and the Appellant fined £50.

4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The Appeal Board convened on 6th March 2024 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)

Alan Darfi (Panel Member)

Emma Vase (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.

The Appeal Documentation:

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

- The Appellant's Notice of Appeal
- The Respondent's Response to Notice of Appeal including:
 - Appendix 1 - Background to the postponement
 - Appendix 2 - SMS notes of how to postpone a match
 - Appendix 3 - SMS History for League
 - Appendix 4 - League charge letter (original)
 - Appendix 5 - Full set of League rules
 - Appendix 6 - League Rules specifically Rule 21.B
 - The Respondent's fines tariff
 - Appendix 7 - Amended charge letter
- Supplementary Observations

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

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

10. 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,
- Misinterpreted or failed to comply with the rules and/or regulations of the Association relevant to its decision.

11. The Appellant claimed that no reasonable body would have come to the decision of the NWWRFL as it had not complied with its own rules.

12. It was further claimed that the Appellant had not had a fair hearing. The Appellant submitted that it had not received a formal written charge alleging any breach of the NWWRFL rules and was not given an opportunity to present a defence nor was it given any kind of hearing either written or personal

13. The Appellant claimed that the fine of £50 was excessive bearing in mind the absence of any charge, plea, hearing or mitigation. The penalty was the maximum permitted under the Respondent's own fines tariff.

14. Finally, the Appellant submitted that the Respondent had not followed its own rules which, it submitted, bound the NWWRFL Management Committee to act as follows:

“With the exception of Rules 6.J, 8.H, and 9, for all alleged breaches of a Rule the Management Committee shall issue a formal written charge to the Club concerned. The Club charged shall be given 7 days from the date of notification of the charge to reply.”
(NWWRFL League Rule 6E). The Appellant was never charged with any purported breach.

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 the facts of 28th January as the Respondent saw them and its response to the events of the day.

17. In its written submissions the Respondent admitted:

- *“The Respondent admits they failed to give a fair hearing by not including the charge Rule 6.E.*
- *The Respondent admits there was a failure to comply with League rules but that has now been rectified by issuing a revised charge letter”.*

18. Further, the Respondent challenged the appeal by submitting:

- *“The Respondent disagrees with the Appellant and states that the League are the reasonable body to deal with this case despite failing to use Rule 6.E.*
- *A fine of £50 is standardly imposed by the League’s Management Committee which needs to be to the maximum level to act as both a deterrent and a method to deliver effective administration of result gathering.”*

Deliberation

Legal test for all grounds of appeal

19. As is clear from Regulation 12 of the Non- Fast Track Regulations, 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.

20. 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'."

21. 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 ("Wednesbury" unreasonable and/or irrational and/or perverse) or if the wrong legal principles were applied to the making of those factual findings;
- The only likely scenario for the Appeal Board to interfere with factual findings of the Respondent is where there is no proper evidential basis for a finding of fact that has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;
- The test for the Appeal Board in determining whether the Respondent acted irrationally and/or perversely and/or "Wednesbury" unreasonably, or came to a decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review;

- 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 ground submitted

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

23. The Appeal Board considered whether the Appellant had received a fair hearing.

24. The Appeal Board noted:

The ground for appeal in Regulation 2 of the FA's Non-Fast Track Appeal Regulations¹ is that "The body whose decision is appealed against failed to give that Participant a fair hearing." In other words, that NWWRFL had failed to give the Appellant a fair hearing.

- The Respondent's purported charge letter made no reference to Rule 6E.
- The Respondent's letter of 4th February purporting to be a charge letter was in fact notification of a decision.
- The Respondent had afforded the Appellant no opportunity to respond to any charge and the first indication of a charge was the Decision Letter.
- The Respondent specifically stated in its letter of response to the appeal, "*The Respondent admits they failed to give a fair hearing by not including the charge Rule 6.E.*"
- Following commencement of the appeal process the Respondent had recharged the Appellant by what it considered to be the correct process but had taken no steps to expunge or quash the original Decision.

25. Having considered the question of whether the Respondent had given the Appellant a fair hearing the Appeal Board concluded that by its own admission the Respondent had not given the Appellant any opportunity to be heard before reaching the Decision and the appeal succeeds on this ground.

¹ The FA Handbook 2023/2024 at P.189

26. The Appeal Board considered whether the Respondent had misinterpreted or failed to comply with the rules and/or regulations of the Association relevant to its decision.

27. The Appeal Board took note that:

- The Respondent's purported charge letter made no reference to Rule 6E, being the basis of charging for any alleged breach of the NWWRFL rules,
- The Respondent had admitted there was "*a failure to comply with League rules*",
- The Respondent submitted that any failure to comply with the NWWRFL rules had now been rectified by issuing a revised charge letter.

28. The Appeal Board was satisfied that on the facts as well as on the admission of the Respondent, the Respondent had misinterpreted or failed to comply with the rules relevant to the Decision and the appeal succeeds on this ground.

29. The Appeal Board also considered the charge letter 23rd February 2024, seeking to recharge the Appellant for the alleged breach of competition rules. The Appeal Board concluded that until it reached its own Decision on 6th March 2024 the original defective charge was still technically effective and therefore the charge letter of 23rd February 2024 was recharging for an offence which had already been determined. Procedurally this could not be correct, the charge letter of 23rd February was invalid and this process needed to be rectified.

30. Having determined that the Respondent had not given the Appellant a fair hearing and also that the Respondent had not complied with the rules relevant to the Decision, the Appeal Board did not need to consider whether the Decision was one to which any reasonable such body could have come.

31. The question of sanction became irrelevant as the charge was no longer proven.

Conclusion

32. In summary, the Appeal Board unanimously dismissed the Appeal the two grounds mentioned above. The Appeal Board did not need to consider the outstanding two grounds for appeal.

33. 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 sanction imposed is quashed.

ii. The charge letter of 23 February was procedurally invalid at the time it was served. The charge letter of 23rd February is of no effect and is formally withdrawn. As such, the Respondent must reconsider charging, at its own discretion.

Costs

34. Pursuant to its powers under Non Fast Track Appeal Regulation 21.6², the Appeal Board considered the question of costs: *“The Appeal Board shall have power to 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.”*

35. The Appeal Board took note of the admissions by the Respondent on two of the grounds of the appeal and in the light of those admissions there was no prospect of the Respondent successfully defending the appeal. The Respondent could have short-circuited the procedure by an early admission and cooperating with FA Judicial Services. The Respondent could also have acted sooner, admitted its error and used NWWRFL rule 6E to rectify the procedural errors. It had chosen not to do so but had put all parties, including the FA, to the trouble of an appeal hearing. Therefore the Appeal Board made a costs order against the Respondent.

36. While the Appeal Board could have chosen not to award costs at all, this would have sent the wrong message. Leagues, competitions and County Associations cannot view the appeal process as being risk free. They have a duty to their own competitions and their members to administer the rules impartially and fairly and failure to do so must carry some possible consequences. The Appeal Board was also conscious that any financial penalty would have an impact upon the competition as a whole and the league members whom the Respondent serves and for that reason costs were awarded against the Respondent but limited to one hundred pounds (£100).

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

Paul Tompkins

Alan Darfi

Emma Vase

11th March 2024

² The FA Handbook 2023/2024 at P.189