

RUGBY FOOTBALL UNION COMPETITION APPEAL HEARING

JUDGMENT

Governing Body:	Rugby Football Union ('RFU')
Club:	Scarborough RUFC ('Scarborough')
Panel:	Daniel Gore (Chair), John Vale, Charlotte Mitchell-Dunn
Secretary:	Rebecca Morgan-Scott
Match:	Malton and Norton RUFC v Scarborough RUFC ('Match')
Date of Match:	Saturday 9 December 2023

HEARING

Date:	Thursday 1 February 2024
Venue:	Zoom
Attending:	Nick Ingham, Director of Rugby, (Scarborough RUFC) Graeme Young, CEO (Scarborough RUFC) David Barnes (RFU Head of Discipline) Paul Astbury (RFU Competitions)
Available material:	Hearing Bundle

SUMMARY OF DECISION

1. The Appeal is dismissed. The appeal deposit is to be retained.

PRELIMINARY MATTERS

2. There was no objection to the composition of the panel.

THE APPEAL

3. This is an appeal of a decision by the RFU North Regional Organising Committee ('NROC') dated 10 January 2024 ('Decision') to dismiss a competition appeal by Scarborough for alteration of the final score of the Match and/or the addition of a league bonus point to Scarborough as a result of a breach of RFU Regulation 6.
4. On or around the 78th minute of the Match, Malton and Norton RUFC was awarded a penalty near the Scarborough 22m line and elected to attempt a kick for goal. Malton and Norton RUFC is then alleged to have competed a substitution to allow its usual goal kicker to come back onto the pitch and to be able to take the penalty kick for goal. It is alleged that this substitution took place without the permission of the

referee who, after being alerted to the potential situation and having considered the matter, allowed the player to take the penalty kick at goal.

- 5. The penalty kick for goal was successful and the score went from 12-6 to 15-6 in favour of Malton and Norton RUFC. This was the final score of the match and Scarborough were, therefore, denied a losing league bonus point for finishing within 7 match points of their opponent's score.
- 6. Scarborough originally sought the removal of the 3 match points from the League Secretary of Regional 2 North East but did so outside of the 48-hour window in which such action must take place and so the League Secretary, on 15 December 2023, concluded that he could *'take no action'*.
- 7. Scarborough appealed that decision to NROC who issued the Decision which is the subject of this appeal which was to take no further action on the basis that this was, essentially, a matter which the referee had managed.

THE RELEVANT REGULATIONS

- 8. World Rugby Law 3 states as follows:

'6. Replacements are made only when the ball is dead and only with the permission of the referee.

7. If a player re-joins or a replacement joins the match without the referee's permission and the referee believes the player did so to gain an advantage, the player is guilty of misconduct. Sanction: Penalty.'

.....

34. A match organiser may implement rolling tactical replacements at defined levels of the game within its jurisdiction. The number of interchanges must not exceed 12. The administration and rules relating to rolling replacements are the responsibility of the match organiser.'

- 9. The RFU's implementation of World Rugby Law 3.34 is set out in RFU Regulation 6 which contains the following provisions:

Rolling Replacements

60. Organising Committees may, in their discretion, permit rolling replacements in League Matches at men's National League and below (formerly Level 3 and below) and women's Level 1 (Cup only) and below as set out below:

.....

e) A Player must enter the field of play from the half-way line under the agreement of the Match Official.

f) A Player, who is a replacement, shall not be entitled to take a kick at goal until a passage of play has taken place since that Player took to the field of play.

10. RFU Regulation 6 also contains the process for dealing with breaches of those Regulations and some of the key provisions are as follows:

Disciplinary action in respect of breaches

84. The Organising Committee and the RFU has the power to investigate, bring disciplinary action and determine sanctions in respect of any alleged or actual breaches of these Regulations and may impose such sanction as it deems appropriate, unless a fixed sanction is stipulated in Appendix 4.

Review by Organising Committee

.....

89. If the Club or Player or either the complaining Club, or the other party to the complaint or dispute, or the Club or Player against whom the complaint is made, wishes for an oral hearing, it must be requested in writing at the time the application is made (or in the case of the other party within 5 days of being made aware of the application being made).

Sanctions

94. Where the Organising Committee finds there has been a breach of RFU Regulation 6, it may impose such sanction as it deems appropriate. Sanctions available to the Organising Committee may include:

- loss of match or League points.*
- transfer of League points.*
- review of result.*
- deduction of League points to be effective at the commencement of the following Season.*
- deletion of Club's results from its League table.*
- placing a Club at the bottom of its League.*
- relegation of a Club by one or more Leagues.*
- a financial sanction, including monetary fine or compensation award payable to any third party, sponsor, or Club.*
- expelling or suspending any Club from participation of a Competition.*
- or any such other penalty as the Organising Committee deems appropriate.*

ANALYSIS

11. Scarborough has brought its appeal under RFU Regulation 19.13.1 and in order to succeed it has to establish one of the grounds in RFU Regulation 19.13.1(ii) which are that NROC:

'(a) came to a decision to which no reasonable body could have come; or

(b) made an error of law in reaching its decision; or
(c) failed to act fairly in a procedural sense; or
(d) the sanction imposed was so excessive/lenient as to be unreasonable, save where a fixed sanction has been imposed.'

12. The Appeal Panel's powers contained in RFU Regulation 19.13.4 are wide reaching such that the relief being sought by Scarborough is one which the Appeal Panel has the power to grant. However, Scarborough first has to establish that one of the grounds in 19.13.1(ii) has been engaged.

13. Scarborough provided a clear and concise written submission contained in an email from Mr Ingham dated 21 January 2024. Scarborough brought this appeal on the basis of RFU Regulation 19.13.1(ii)(a) saying that NROC's decision was one which no reasonable body could have come to. It raised the following key points as the basis for its appeal:

'Nature of the Mistake: Unlike routine on-field errors related to the application of playing laws, this instance represents a game management mistake. If a team were to be denied a try due to an in-play mistake, we acknowledge and respect the referee's sole authority. However, in this case, the mistake occurred at a penalty when a substitution was allowed to be utilised to take a penalty kick prior to a passage of play taking place thereby influencing a penalty kick enabling the opposition to score.

Communication with Referee: The player/coach on the pitch recognised the replacement player's intention to take the penalty kick and informed the referee multiple times that the replacement player was not entitled to do so. The exchange between the player/coach and the referee occurred before play commenced, making it a critical and preventable error.

Intent of the Substitution: The substitution was made at a penalty, and the replacement player was brought on with a clear intention to take the penalty kick, as evidenced by the player being left-footed. This strategic decision further emphasizes the need for a closer examination of the circumstances.'

14. Scarborough's position was that these were *'nuanced circumstances'*, and that a *'comprehensive and impartial review'* of the Decision was necessary in order to avoid potentially serious adverse consequences to Scarborough. They reiterate the argument that this matter could be differentiated from a challenge to a referee's decision on the basis that this was a game management decision as opposed to a question of the laws of the game (such as a forward pass or knock on).

15. In addition, Scarborough, through Mr Ingham, provided a very helpful and well-presented oral statement at the beginning of the hearing which expanded upon the points in the written statement. Mr Ingham was very patient with the Appeal Panel as we asked additional questions to explore the situation in more detail and we were grateful for his, and Mr Young's, helpful input throughout the hearing.

16. There was a written statement in the bundle from the referee on the day, Steve Penfold, which was by way of email dated 26 December 2023 and was clearly written after the referee had reviewed the video footage of, at least, the incident in question. The statement confirmed the penalty being awarded and then stated that: *'The M pitch side management did not request permission to make the substitution*

shown on the video, which clearly took place after the penalty had been awarded. I was not aware that a substitution had taken place.'

17. The referee provided additional commentary over his own process and approach to refereeing in general, as well as some commentary about the regulations themselves and their operation. The Appeal Panel was reminded of the provisions in RFU Regulation 12.4, that such comments have no bearing on this process, and, in accordance with that regulation, disregarded the remaining comments from the referee.
18. Email correspondence with Russel Stead, the Chairman of Malton and Norton RUFC, on 4 January 2024 was also included in the bundle following a clear request from the League Secretary for comment on whether a substitution had taken place. Instead of answering the question, Mr Stead referred to an entirely different incident and then proceeded to say that the allegation was '*absurd*' and '*sour grapes*'. Mr Stead failed to properly address the question put to his club and did not provide a denial that the substitution had taken place. This was quite revealing.
19. Moving onto the decision which is the subject of this appeal, the key part of NROC's Decision stated that:

'Decision of the Appeal Panel

The RFU North ROC Appeal Panel unanimously decided that the Appeal by Scarborough RUFC should not be upheld.

The panel are aware of the sanction for a player not authorised to enter field of play, but considered that it could not apply in this instance, the player was authorised to go on to the field of play. Subsequent actions were managed by the match referee, the sole arbiter of on field decisions.'

20. Scarborough argued for an interpretation of this wording in the Decision which was that NROC had determined that the substitution was legal and that NROC was, therefore, wrong in its decision. Scarborough argued that this was a ground in itself to overturn the Decision but also added that it was not seeking to undermine the referee's authority.
21. It was a feature of this appeal that arguments were raised by Scarborough which were potentially focussed on a different ground of appeal in RFU Regulation 19.13.1(ii) than the ground upon which Scarborough had relied, and arguments were sometime put forward on a slightly different basis to those which had previously been made to NROC. The Appeal Panel acknowledge that parties engage in this process with no legal training or legal expertise and that we have to be appropriately flexible. We did our best to accommodate Scarborough's appeal, and to consider all of the points raised by Scarborough, while being careful to ensure that we followed the correct process and procedure.
22. As well as potentially moving arguments, there was an additional complicating factor raised by this appeal in so far as Scarborough's written submissions to the League Secretary and NROC sought relief by way of the alteration of the final match score to remove the 3 match points recorded by the successful penalty kick. Before the Appeal Panel, in oral submissions, Scarborough made it clear that it's position had

changed and that it was seeking relief of the addition of a league bonus point. This change was highly unusual given the role of the Appeal Panel being that of a review of NROC's decision and the assessment of whether its decision was one which no reasonable body would have made. The two different forms of relief being sought by Scarborough (alteration of the score or league points being added) and the analysis of whether one or the other is a reasonable outcome following a breach of the regulations and the form of that alleged breach, might not necessarily be the same. Both forms of relief being sought by Scarborough would appear to be within the powers of NROC to grant and so the Appeal Panel felt that we could hear the appeal and consider either form of relief. However, we had to ensure that we maintained the overarching duty of undertaking an analysis of the underlying decision.

23. Scarborough admitted in oral submissions that it had changed its position in its appeal after receiving the NROC Decision and the various submissions from the RFU (accepting that the previous Judgments referred to by the RFU would stand as good precedent in the circumstances). Mr Ingham accepted that he had changed the relief being sought, and some of the assertions being made, on the day of the hearing or subsequent to receiving the bundle for this hearing (for example, having not seen the referee's email report until the bundle was circulated). This Appeal Panel was conscious that it was not being asked to look at this case from fresh, nor did it feel as though that was an appropriate exercise to undertake in the circumstances, but, as has been mentioned before, we were prepared to accommodate as far as we could the slightly moving nature of Scarborough's submissions and appeal and felt that we had a duty and right to undertake a full and proper enquiry and analysis.
24. Finally, the Appeal Panel was informed that Scarborough is currently near the bottom of the table and that the additional league point might assist the challenge of avoiding relegation at the end of the season. Mr Ingham, in fact, accepted orally that this appeal may not have been pursued to this extent if the team's standing in the league was closer to mid-table or higher. It should be noted that this match took place on 9 December 2023 which appeared from a review of the fixture list to leave 11 league matches remaining for Scarborough to play (half the season), with its seasons ending on 6 April 2024.

DECISION

25. The Appeal Panel considered the full content of the 44-page bundle and considered all of the submissions made by both Scarborough and the RFU as well as the valuable input from Paul Astbury following questions by the Appeal Panel. If any specific matter is not expressly referred to in this Judgment, it does not mean that we did not consider it fully. The Appeal Panel was unable to view the video of the incident in question but that does not impact the assessment in any way.
26. As a starting point, the Appeal Panel made it clear that we were prepared to proceed on the basis that the substitution by Malton and Norton RUFC should not have taken place. The referee, having rewatched the incident himself, clearly accepted that it had taken place and without his knowledge or authorisation. This was a breach of the RFU Regulation 6, but this Appeal Panel was not concerned over the actions of Malton and Norton RUFC from the point of view of that rugby club and makes no findings as to Malton and Norton RUFC's conduct. Should the RFU wish to investigate this further, then Malton and Norton RUFC will no doubt be placed under greater scrutiny over its behaviour. This Appeal Panel was not particularly impressed by the email correspondence from Mr Stead given the serious allegation which had been made against his club that it had deceived a referee to gain an unfair tactical advantage.

27. Having agreed that there was a breach of the RFU Regulations, the Appeal Panel then had to consider whether NROC had come to a decision which no other body would have come to by making the decision not to take further action. There is a wide discretion granted to Organising Committees such as NROC in determining the appropriate sanction or relief to be granted following a breach of the RFU Regulations, but those outcomes must be proportionate.
28. The Appeal Panel, in particular, noted that World Rugby in its Laws only assigned a penalty kick as the sanction for breach of this substitution Law which, while not binding, gives any regulatory body considering a breach such as this some guidance as to the seriousness of the breach. The fixed sanction regime in Appendix 4 to RFU regulation 6 also mostly contains situations where a punishment is put in place; a fine or a points deduction. There is a reference to a sanction in respect of ineligible players, but we considered that reference to relate to players who were not registered to play, which was not the case here.
29. Interfering with the score of a match is a significant action and one which any regulatory body must be especially cautious when asked to do. The usual scenarios where one might expect such action to be taken is where the totting up of the score was incorrect (for example, the two teams calculated all the points differently). This case would have involved amending a score which a referee had awarded before the end of the match.
30. That is a critical differentiation to make. While the penalty kick did take place towards the end of the match, it was not the last play of the match. There was still an opportunity for play to continue and for Scarborough to launch another attack, which we were informed came close to scoring. The incident in question must be considered one of the many incidents throughout a rugby match which led to the final result and one of the many decision or game management actions taken by the referee which impacted the course of the game. It was difficult for the Appeal Panel to see this as such an exceptional matter that it should have stepped in to interfere with the score and so we did not feel that NROC's decision was unusual. In fact, we considered this to be an action which most governing bodies would have taken in the circumstances. For the avoidance of doubt, had this action, in fact, been the last action of the match it would not have altered this analysis in these circumstances.
31. The Appeal Panel felt that the authorities provided by the RFU did support that assessment as well. The decision from the match between Luctonians and Rotherham in 2022 showed that the RFU would impose a score which the match official team has suggested was wrong (when an unsuccessful conversion was wrongly recorded in the score and not corrected after the event because the referee had blown the final whistle).
32. The Appeal Panel was also provided a decision by HHJ J Blackett in *re Torquay Athletic RFC* where HHJ Blackett confirmed that the discretion of this Appeal Panel is one which '*must only be exercised in exceptional circumstances*'.

33. In relation to the Decision itself, the Appeal Panel considered that use of the phrase: '*the player was authorised to go on to the field of play*' meant that he was an eligible player who was allowed to take part in the match, as opposed to being a comment relating to whether the referee permitted the substitution. NROC also decided that this was a matter which was '*managed by the match referee*' at the time. The Appeal Panel considered that to be a correct analysis and there was no error of law which might also have led to accepting the appeal.
34. The Appeal Panel did have some concern with the content of the Decision itself and in particular that fact that there was no reference to the materials which had been considered by the NROC panel or real clarity as to what factors NROC considered when coming to the Decision. It was not clear if the referee's report, for example, was considered or factored into the assessment. The Decision contains limited detail and provided scope for Scarborough to raise the arguments which it did in its appeal, but this Appeal Panel did not consider that to be sufficient or strong enough grounds to overturn the Decision.
35. The process followed by NROC for a matter such as this was also not entirely clear and might have benefited from more involvement of both clubs before the Decision has made. We do understand from the regulations that it is the appealing club's duty to request an oral hearing but, for a matter such as this, it seems as though an oral hearing is certainly helpful to understand all of the arguments being raised and to enable an accessible process for all parties. This Appeal Panel did consider whether the process itself could be a ground to accept the appeal, but we were satisfied that the process technically followed the regulations and that it did not interfere with the outcome which, as we have said, appears to be the most appropriate.
36. Taking an overall view of the situation, the Appeal Panel did not consider that the outcome to take no further action was not one which a reasonable body would have taken. On the contrary, this Appeal Panel felt that the decision taken by NROC was the decision which most other regulatory bodies / organising committees would have taken in the similar or the same circumstances.
37. This was a game management decision which rests in the hands of the referee and was a decision which had to be taken in the moment of the match, not by a regulatory body some weeks or months after the event. An unfortunate error has occurred in this instance but that is the nature of rugby and other sports and the particular error in this case is not one which is so exceptional that an organising committee or regulatory body should step in to take action. While this Appeal Panel has great sympathy with Scarborough's position, and concern by the action taken by Malton and Norton RUFC, it did not consider that NROC came to a decision which no other body would have taken and, as such, this appeal is dismissed.
38. As a final point, Scarborough raised an interesting point of interpretation of the RFU Regulations through its appeal and made some good although unsuccessful arguments in its favour. The inclusion of the provisions in regulations 6.60e) and f) in the section of the RFU Regulations in which they appear, or at all, may be something to consider to avoid any further arguments over potential sanctions for breaches of a similar nature.

COSTS

39. Any appeal fee paid by Scarborough shall be retained by the RFU.

RIGHT OF APPEAL

40. Pursuant to regulation 19.13.5 of the RFU Regulations, there is no right of appeal from this decision.

Daniel Gore

Chairman

06 February 2024