

**IN THE MATTER OF
AN INDEPENDENT APPEAL BOARD**

**KESTUTIS TRAKELIS
(APPELLANT)**

-v-

**BASKETBALL ENGLAND
(RESPONDENT)**

INTRODUCTION

1. These are written reasons for the findings of an Independent Appeal Board which met via videoconference (Microsoft Teams) on Friday 4th August 2023. The Appeal Board considered an appeal brought by Kestutis Trakelis (KT) against a decision of Basketball England (BE).
2. The Appeal Board, all independent members appointed by BE, was Anthony Rock (Chair), Alex Francis and Martin Shaw.
3. Rachel Scase, the Discipline Manager of BE, acted as Secretary to the Appeal Board.
4. This is the decision and written reasons of the Appeal Board. By necessity it is a summary document and is not intended to be a record of all submissions and evidence adduced. For the avoidance of doubt, the Board carefully considered all the evidence in the appeal bundle. Due to the serious nature of the Charges against KT, BE requested written reasons.

BACKGROUND

5. On 18th April 2023, KT played in a basketball game (“the game/match”) for Bristol Hurricanes against Spartans. By BE Misconduct Charge Notification dated 4th May 2023, KT was charged contrary to Rule E5.2 of the Disciplinary Code (inappropriate behaviour, falling below the standard expected). It was alleged that he used inappropriate language/behaviour that constitutes violent conduct towards a Match Official (basis of “the Charge”). He was also charged in the alternative, in that the language/behaviour he used constituted threatening behaviour towards a Match Official (basis of “the Alternate Charge”).
6. On 18th May 2023, KT pleaded guilty to the Charge (Option 2 of the BE Response to Charge Form - Charge Number D182), and requested the opportunity to appear before a Disciplinary Commission to present a plea in mitigation. Such an option is subject to a £100 fee. Despite reminders from BE on 22nd and 31st May 2023, KT did not pay the fee. As such, on 19th June 2023,

the case was heard by a Disciplinary Commission as a 'deny by correspondence' case. The Disciplinary Commission, based on the evidence available to them at the time, found the Charge proven, and sanctioned KT to a 2-year suspension from all basketball activity, backdated to the imposition of his Interim Suspension Order (4th May 2023) and imposed a fine of £150. Having found the Charge proven, the Alternate Charge was not considered.

APPEAL GROUNDS/APPEAL BUNDLE

7. On 12th July 2023, KT appealed the sanction. Although, in parts, his Notice of Appeal was not aligned to specific grounds of appeal, the Appeal Board accepted that KT lodged his appeal on three grounds; the Disciplinary Commission: (1) failed to give the Appellant a fair hear, (2) imposed a penalty, award, order or sanction that was excessive and (3) came to a decision to which no reasonable such body could have come.
8. The bundle of documents before the Appeal Board included the original papers considered by the Disciplinary Commission, KT's Notice of Appeal and a response to the Notice of Appeal by the Respondent (Chair of the Disciplinary Commission). A detailed list of documents considered by the Appeal Board is not reproduced in these written reasons, but is available from BE if required.

THE APPELLANT'S WRITTEN SUBMISSION - NOTICE OF APPEAL

9. KT accepted full culpability in regard to what happened, acknowledging that his behaviour was not acceptable. He expressed extreme remorse and declared that he was willing to undergo any process that supported BE's decision to reconsider the outcome. KT submitted that BE/the Disciplinary Commission failed to provide the support required for an individual who was not fully conversant with English as a first language. They also failed to consider and identify how the mitigating and aggravating factors, including his background, previous behaviour and context of the incident, justified a 2-year suspension as opposed to alternative and/or shorter sanctions. Additionally, they failed to consider or explore alternative and/or restorative solutions such as a suspended sanction, designed to ensure positive behaviour in the future.
10. KT requested a personal hearing in order to present a plea in mitigation, but then failed to pay the £100 associated fee. Whilst he accepts and apologies for that, he stated a number of reasons for consideration. Both KT and his assistant, Konrad Stefaniec (Polish National), have a limited understanding of what the BE communication was requesting and therefore what action he was required to take. That lack of understanding led to confusion relating to payment and attendance at the hearing. KT was also confused as to whether the case was being led by the West of England Basketball Association (WEBBA) or BE, plus other confusions relating to process and consequences, including the fact that WEBBA had already held a disciplinary hearing and imposed sanctions.

11. In regard to the sanction, KT submitted that it was excessive and that the Disciplinary Commission did not fully consider or reflect on the context of what actually happened. In effect, KT suffered a momentary loss of control in a highly charged, physical and very competitive league decider. Other mitigating factors that might have been considered were KT's full acceptance of culpability, his guilty plea, his action to immediately contact the WEBBA Chair to apologise, his character references and his willingness to take action to ensure there is no repeat of such behaviour.
12. In respect of fairness, KT requested the Appeal Board consider consistency of such action when comparing similar incidents in both basketball and other sports. He included details of his background in coaching, playing basketball and developing the game, both in Lithuania and the over the past 10 years in the UK. In summary, whilst accepting there is no excuse for the way he behaved and that a suspension is totally justified, he requested the Appeal Board consider the length of suspension and whether a sanction, with part of it suspended, would be fairer and more proportionate.

THE RESPONDENT'S WRITTEN RESPONSE TO THE NOTICE OF APPEAL

13. On the 13th July 2023, Chair of the Disciplinary Commission stated that he was content to rely on the written reasons produced by the Disciplinary Commission (23rd June 2023), and had no further submission for consideration by the Appeal Board.

APPLICATION TO SUBMIT NEW EVIDENCE - BASKETBALL ENGLAND DISCIPLINARY CODE - PARAGRAPH 13.6

14. The Appeal Board considered KT's application to present new evidence. After hearing his reasons why such evidence was not made available to the Disciplinary Commission which met on 19th June 2023, particularly the lack of understanding at all levels in regard to the disciplinary rules and regulations, the Appeal Board allowed the application. The new evidence consisted of two character references/statements for KT, submitted by the WEBBA League Secretary (Brendan Redko) and the WEBBA Chairman (Steve Brocklehurst).

THE APPELLANT'S ORAL SUBMISSION (INCLUDING HIS RESPONSE TO APPEAL BOARD QUESTIONS)

15. KT argued, based on previous cases, that the 2-year suspension from all basketball was excessive. Similar cases over the past 12 months had attracted a 6-month suspension and it was unfair that he had received the maximum suspension of 2 years. The process was not clear to him and even the local leagues/WEBBA Officials did not understand the current disciplinary regulations and how they are applied. The local leagues also did not know what was happening with the charges against him and so were unable to give him any help or advice. KT said that he didn't know what to do and struggled to understand the process.

16. In his view the Disciplinary Commission came to a decision that was unreasonable because they had not analysed the evidence properly. The Referee was shouting at him, was in a heated state and had lost control. In his statement the Referee even apologised for losing control. In KT's opinion, both he and the Referee were at fault, and it was not right that he was the only one singled out as the 'bad guy'.
17. KT said he missed the BE e-mail telling him that he had to pay £100 to present a plea in mitigation. The e-mail had gone to his generic business mail box, and during a very busy time he had simply missed it. He had never denied the charge and the fact that he missed the deadline and failed to pay the £100 should not be held against him. He shouldn't be judged by his failure to respond to the e-mail. KT said that he wasn't opposing the £150 fine, but a ban of 2 years was like a life sentence. He had put a lot of work into developing basketball at all levels within the area. He was happy to pay a higher fine but the 2 year ban was too high.

CLOSING SUBMISSION

18. KT said he was always thinking about the incident and had already learnt his lesson. He apologised for wasting everyone's time and was sure that such a thing would never happen again. He urged the Appeal Board to consider what was a reasonable sanction. He wanted to carry on with his involvement in basketball. Such involvement included finding sponsors and developing the game within Bristol. BE did not need to make an example of him.

ROLE/FINDINGS OF THE APPEAL BOARD

19. The role of the Appeal Board is to exercise a supervisory jurisdiction. Therefore, the Board must apply the following principles to the grounds of appeal:
- a. An appeal such as this proceeds by way of review of the decision of the Disciplinary Commission, it is not a re-hearing.
 - b. It is not open to the Board to substitute their decision for that of the Disciplinary Commission simply because the Board might themselves have reached a different decision. If the Disciplinary Commission has reached a decision which it was open to them to reach, the fact that the Appeal Board might have reached a different decision is irrelevant.
 - c. The Appeal Board should be slow to intervene with evidential assessments and factual findings made by the Disciplinary Commission. It should only be interfered with if they were clearly wrong or if wrong principles were applied. This is likely to be where there is no evidential basis whatsoever for a finding of fact that had been made, and/or where the evidence was overwhelmingly contrary to the finding of fact that had been made.

20. In their determination, the Appeal Board unanimously concluded that the Disciplinary Commission, based on the evidence that was available to them at the time, came to a decision that, on the balance of probability, was fair and one that they were entitled to make. The Appeal Board also concluded that the Disciplinary Commission afforded KT a fair hearing, and based on the serious nature of the offence imposed a sanction that was fair and in line with the BE Sanction Guidelines. So, in totality, the Disciplinary Commission made fair and reasonable decisions.
21. The Appeal Board then considered the character references/statements submitted by KT as new evidence. The references, whilst agreeing that his actions were unacceptable, recognised KT's work and support to basketball within the Bristol community. The WEBBA Officials were keen to ensure that he was not totally lost to the game. After much consideration the Appeal Board determined that the sanction imposed by the Disciplinary Commission should be adjusted.
- a. KT is to serve a 2-year suspension from playing, coaching and officiating. Start date of the suspension is to be backdated to 4th May 2023, the date of his Interim Suspension Order (ISO). The sanction will end on 3rd May 2025. For clarity, KT is able to spectate at games from 3rd November 2023 (the end of his administrative ban - see para 21b below), but must not act in any playing, coaching or officiating capacity until 3rd May 2025.
 - b. He is to serve a 2-year suspension from any administrative involvement in the game. Six (6) months of that administrative suspension is to be served, with the remaining 18-months being suspended. Again, the suspension is to be backdated to 4th May 2023, the date of his ISO, and will end on 3rd November 2023. The suspended 18-months will be invoked if he is found guilty of a similar proven charge before 3rd May 2025.
 - c. He is to be fined £150.
22. Having agreed that the sanction imposed should be adjusted, the Appeal Board determined that 50% of the appeal fee, £125, should be returned to the Appellant.
23. Any aspect of the sanction/fine not yet served/paid becomes immediately enforceable from notification of the Appeal Board's decision. There is no order as to costs.
24. The Appeal Board's decision is final and binding on all parties.

OBSERVATION/RECOMMENDATION OF THE APPEAL BOARD

25. Whilst it is procedurally unusual for an Appeal Board to make specific observations or recommendations, in this case the Appeal Board thought it appropriate to observe that there is still a lack of knowledge at all levels, but particularly within the local leagues, in regard to the current BE

disciplinary regulations. BE may wish to consider increasing their level of engagement to address this problem.

Anthony Rock (Chair)

Alex Francis

Martin Shaw

Tuesday 8th August 2023