

EUROPEAN RUGBY CUP
DECISION OF DISCIPLINE COMMITTEE
HELD AT THE LEINSTER SUITE, BUSWELLS HOTEL,
MOLESWORTH STREET, DUBLIN 2
8th day of November 2005

IN RESPECT OF:-

DAVID BARRIER (“the player”)

AND

The citing complaint that the player’s actions had breached law 10.4(b) of the laws of the game.

MEMBERS OF THE DISCIPLINE COMMITTEE:- (“the Committee”)

Brian McLoughlin IRFU – Chairman

George Spotswood – IRFU

Iain Goodall – SRU

DECISION OF THE COMMITTEE:

- (i) The Committee found that the player had committed an act of illegal and foul play which merited a red card.
 - (ii) The player is suspended from taking part in the game of rugby up to and including the 17th January 2006. This represents a 10 week suspension commencing on the 8th November 2005.
 - (iii) The Committee declared that each party to the proceedings should bear their own costs.
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INTRODUCTION:

The Committee was convened by Professor Lorne D. Crerar, the Chairman of the ERC Discipline Panel pursuant to the discipline regulations of ERC in respect of a citing complaint dated the 1st November 2005 made by Derwyn Jones, Regional Rugby Manager, the Ospreys and reviewed by Steve Griffiths, Citing Officer who

confirmed that the player should appear before an ERC Discipline Committee on the grounds he had infringed law 10.4 (b) of the laws of the game. The citing complaint concerned the conduct of the player during a Heineken Cup Match played between ASM Clermont Auvergne (“Clermont”) and Neath/Swansea Ospreys (“the Ospreys”) on the 30th October 2005 at Stade Marcel Michelin, home ground of Clermont.

The citing complaint alleges that the player had stamped on the head of Andrew Newman (“Newman”) of the Ospreys with his right foot and this was a breach of law 10.4 (b) of the laws of the game.

Present at the hearing on the 8th November 2005, in addition to the members of the Committee were:-

Roger O’Connor – Disciplinary Officer for ERC

Max Duthie – Solicitor for ERC

James O’Callaghan B.L. – Legal Counsel for the player

The player

Neil McIlroy – Assistant Manager, Clermont

Sylvie Kleinman – Interpreter

HEARING:

At the commencement of the hearing the Chairman confirmed the identities of all present and established that the player was before the Committee to answer a citing complaint arising out of a match for which ERC does not appoint a Citing Commissioner, the procedures for which are set out in rule 6.2 of the Heineken Cup Disciplinary Rules (“the rules”) and the Chairman outlined the procedures to be adopted by the Committee for the hearing and specifically drew the attention of all parties to the provisions of rule 6.6. which set out the procedures to be followed in citing cases.

The player and all present agreed to proceeding on that basis.

The evidence presented to the Committee prior to the hearing was in the form of a Book of Evidence made up of the following documents;

1. Letter 2nd November 2005 ERC to Professor Lorne Crerar requesting him to nominate a disciplinary panel pursuant to rule 6.2.5 of the rules.

2. Citing Form.
3. Hearing Notice 2nd November 2005.
4. Citing Offence (Steve Griffiths) decision
5. Statement of Andrew Newman. (“Newman”)
6. Statement of Brent Cockbain – the Ospreys.
7. Statement of Alan Forrest – Touch Judge
8. Statement of Rob Dickson – Referee.
9. Statement of Iain Heard – Touch Judge
10. Fax 4th November 2005 from Clermont re; representation at the hearing.

All parties agreed that they had received the documentation in good time.

The Chairman then confirmed that the only additional evidence would be the t.v. broadcast video of the incident.

Prior to the commencement of the formal hearing the Chairman invited the player’s representative to confirm whether or not he had any preliminary issues that he wished to raise and he confirmed that there were no preliminary issues.

The Chairman then narrated the terms of the citing complaint and asked the player how he wished to plead in relation to the citing complaint and through his legal representative he denied that he had committed an act of illegal or foul play as alleged.

Mr. Duthie on behalf of ERC opened to the Committee the Statements contained in the Book of Evidence and then presented the video clip of the incident, the subject matter of the complaint.

In summary the evidence presented and as seen on the video was to the effect that during the second quarter of the game in or around the Ospreys 10metre line Newman tackled Clermont No. 12 and a ruck formed with the ball wedged between Newman and the tackled player with Newman being on the wrong side. The player approached the ruck and leaning forward with both arms outstretched proceeded to come off both

his feet with his right foot making contact with Newman's head and his left foot subsequently making contact with his back.

The player in his evidence stated that he had come back to play for Clermont that year having previously played for them for 7 years. He is 30 years of age and has played in 18/19 European Cup Matches. The match was a very clean match with no incidents. He saw the ruck moving but could not see what was happening. An Ospreys player fell to the ground and had his back to him. The player decided to try and free up the ball by moving the player aside and in doing so walked on the Ospreys player's head and as soon as he realised what happened he removed his foot. He did not intend to make contact with his head. He saw the player on the ground but did not see his head and once his foot came in contact with the Ospreys player's head he removed it and was aware of what he had done when other players joined in. The referee could not see what he had done and so he went to his captain, Rougerie, to tell the referee what he had done. He told his captain that he had unintentionally stood on the player. After the match he apologised in English for his rucking to the Ospreys player. At the reception later on the Ospreys player said in French to him "it is not serious". He believed the citing complaint is incorrect as his actions were not deliberate and he could not see what was happening as his view was masked. The video of the incident was replayed for the player's comment. As he arrived at the ruck he saw the Ospreys player but did not see his head. He could not see what was happening. The ball was between Clermont No. 12 and the Ospreys player and he wanted to remove the player to free up the ball. He had no intention of standing on his head. He stated that he liked combat but would not tolerate stamping.

Under cross examination from Mr. Duthie, through the Chair, the player said that on arrival at the ruck it was his intention to remove the player because the ball was stuck between 2 players. His intention was to make contact with the player but not with his head. His intention was to make contact with his upper back area as he could not see his head.

This concluded the evidence.

The Chairman then invited submissions on the evidence from each of the parties. Mr. Duthie relied upon:-

1. The Statements of Newman and Brent Cockbain
2. The video evidence;
3. The player's evidence to the effect that the player had stated that it was his intention to make contact with the player to free the ball and he submitted that this was contrary to the provisions of law 16.3(f) of the laws of the game, which state "a player rucking for the ball must not ruck players on the ground. A player rucking for the ball tries to step over players on the ground and must not intentionally step on them. A player rucking must do so near the ball".

Mr. Duthie also relied upon the definition of rucking in the following cases:

1. Decision of Judicial Committee convened under Sanzar Judicial Rules in the matter of a citing of Glen Taylor 23rd March 1999....."rucking which is directed at a player to remove him as an obstruction or impediment to securing possession of the football is illegal. Inadvertent or unintentional contact with players in a ruck as an incident of legitimate rucking for the football (reckless and patently dangerous rucking apart) on the other hand is not illegal"
2. Decision of Judicial Committee convened under Sanzar Judicial Rules in the matter of the ordering off of Ali Williams 22nd March 2005.
3. Decision of Sansar Appeal Committee in the matter of Ali Williams (Appellant) 30th April 2005.

Mr. O'Callaghan on behalf of the player submitted that the Committee should have regard to the fact that the citing complaint was only received one and half hours before the time for citing expired. He relied on the evidence of the player who stated that in his conversation with the Ospreys player after the game there was an acknowledgement by the Ospreys player that it was not a serious matter. The player had been very open in his evidence acknowledging that he stood on the head of the Ospreys player unintentionally and that his sole purpose on entering the ruck was to remove the player to free up the ball. He did not believe there was much dispute in the evidence but emphasised the evidence of the referee and touch judge as follows:-
Rob Dickson, Referee – "Ospreys 5 was the tackler who remained on the wrong side and in my view made no attempt to move. A Clermont Auvergne player arrived, sought to ruck the ball and made contact with the Ospreys player. I believed his

rucking would turn to stamping and I therefore blew and awarded a penalty against the tackler for not moving”.

Iain Heard, Touch Judge – “saw the Clermont Auvergne player use his boot in what I thought was an attempt to move the player and release the ball. At the time I felt, from the angle that I saw the incident from, that the boot had landed on the shoulder of the Ospreys player. I was aware of the comments from the Ospreys bench however I did not consider from the view I had that it was foul play.

The Committee retired to deliberate in private in respect of whether the player had committed an act of illegal and/or foul play. The Committee considered all the evidence submitted to it and as contained in the Book of Evidence. It also considered the evidence of the player and the video evidence which was most compelling in that it clearly shows that both of the player’s feet leave the ground as he enters the ruck with his right foot making contact with the Ospreys player’s head followed by his left foot making contact with the Ospreys player’s back. The Committee were of the view that this was a stamping incident and on the merits found the citing complaint proved in that the player committed an act of illegal or foul play contrary to law 10.4 (b) of the laws of the game which state that “a player must not stamp or trample on an opponent”.

The Committee were then required to consider what sanction should be imposed upon the player. In this regard the Committee reconvened and heard from the player’s representative as to sanction. Mr. O’Callaghan submitted that the entry point should be at the lower end by virtue of the fact that there was little or no dispute in the evidence and whilst it was acknowledged that the player had made contact with the Ospreys player’s head it was not deliberate and was unintentional and was as a result of efforts to try and free up the ball.

He tendered testimonials from Jean-Pierre Laparra, Assistant Coach, Clermont Auvergne Rugby, who stated that “he had known Mr. Barrier over several years now and would consider him to be a rugby player of impeccable character. He is a hard but fair player and certainly not dirty, or one to instigate acts of violence of a dangerous or underhand nature” and Jean-Marc Lhermet, Director of Rugby at Clermont Auvergne who regarded Mr. Barrier as “a fine individual and highly

respected in the club for his professionalism and attitude and that any dangerous gesture on his part would not have been deliberate”

The player’s disciplinary record in the previous 5 years was also presented and it was noted that whilst playing with Castres on the 5th October 2002 he was suspended for 10 days for aggressive behaviour and also whilst playing with Castres on the 13th November 2004 he was suspended for 20 days for punching.

The Committee then considered the terms of Appendix 3 of the Heineken Cup Disciplinary Rules 2005/2006 which sets out the IRB recommended sanctions for offences within the playing enclosures and were of the view that the offence before them was one of stamping on an opponent. The Committee assessed the seriousness of the player’s conduct and were of the view, particularly in light of the player’s own evidence, that the offence of stamping was intentional but that he did not intend to strike the Ospreys player on the head and so that particular aspect of the act was deemed to be reckless use of his boot. The actions of the player did not in any way affect the game as the Ospreys player received immediate attention by the application of an ice pack to the injury but continued on playing and did not require any further treatment. Consideration also has to be given to the vulnerability of the position of the Ospreys player at the time of the offence and the fact that contact was made with his head and his position in the ruck and his inability to protect himself. The Committee was satisfied that there was no premeditation but that the conduct of the player was completed and in all the circumstances were of the view that the entry point in respect of the offence of stamping on a player was in the mid range with an entry point of 3 months.

The Committee took account of the aggravating circumstances namely the player’s previous disciplinary record and the 2 suspensions referred to above and also considered all of the mitigating circumstances which in the opinion of the Committee were:-

- (a) his stated apology to the Ospreys player after the game;
- (b) the testimonials presented to the hearing on his behalf and referred to above;
- (c) his conduct prior to and at the hearing

- (d) his apology expressed at the hearing for making contact with the Ospreys player's head.

The Committee considered the evidence given on behalf of the player.

The Committee then decided that as this was a citing made by a Club in terms of rule 6.2. of the Heineken Cup Disciplinary Rules the player is not under provisional suspension. Having considered all the various factors that we are required to do under the rules including the seriousness of offending, aggravating and mitigating circumstances and having taken account of all the evidence presented to us as narrated above, we, the Committee, have concluded that the player should be suspended up to and including Tuesday 17th January 2006. This suspension is effective immediately as of the date of this decision. The suspension imposed upon the player equates to a suspension of 10 weeks from all rugby.

The Committee are further of the view that each party bear their own costs.

The parties are reminded that Regulation 7 of the Heineken Cup Disciplinary Rules provides for a right of Appeal against this decision.



BRIAN McLOUGHLIN
CHAIRMAN – DISCIPLINE COMMITTEE

DATED: 8th day of November 2005