

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:-

DIMITRI SZARZEWSKI (“the player”)

AND

The citing complaint that the player’s actions breached laws 10.4(a) and law 10.4(k) 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:

1. The Committee found that the player had committed an act of foul play which was not seen by the officials but the Committee were of the view that if it had been seen by the officials the foul play would not have merited a red card (ordering off) and thus the citing complaint is dismissed.
2. The Committee found that the citing complaint made by the Citing Commissioner was justified due to the acts of foul play on the part of the player.
3. The Committee declared that each party to the proceedings should bear their own costs.

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 made by Ray Wilton, the Citing Commissioner. The citing complaint concerned the conduct of the player during a Heineken Cup Match played between Stade Francais Paris and Leicester on the 29th October 2005 at Charlety Stadium, Paris, France. The citing complaint alleged that the player was on the ground grappling with the Leicester No. 6 and made several forward motions with his head which in the opinion of the Citing Officer were breaches of law 10.4(a) and 10.4(k) 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/Legal Counsel for ERC

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

The player

Patricia Moyersoan – Legal Advisor to the player

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 appointed a Citing Commissioner, the procedures for which are set out in rule 6.3 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. Charging letter and Citing Form;
2. Match Official's comments;
3. Hearing Notice and Adjournment Notice;
4. Louis Moody's Statement;
5. Newspaper articles.
6. Stade Francais correspondence

All parties confirmed 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 preliminary issues.

The player's representative raised such issues regarding the competency of the Citing Commissioner's Report which he submitted was inadequate for the following reasons.

1. The citing complaint was not in the form specified in Appendix 2, Form 4 of the Heineken Cup Disciplinary Rules and in this regard he submitted that it was a mandatory provision that it be in the particular form specified in the Rules by reason of the provision of Rule 6.3.6. of the Rules which specify that "where the Citing Commissioner decides that a player should be cited, he shall make a citing complaint in the form of Form 4 set out in Appendix 2 to these Disciplinary Rules;...."
2. The form submitted which was quite clearly incorrect did not specify the date of the match;
3. Full details of the acts of illegal or foul play were not specified.

Mr. Duthie on behalf of ERC responded that there was an acknowledgement by ERC that the citing complaint was on the incorrect form but referred the Committee to Rule 6.1.7. which he submitted gave a Disciplinary Committee power to depart from the guidelines and also referred the Committee to Rule 8.8., namely, "DEVIATIONS FROM THESE DISCIPLINARY RULES - Any deviation from any provision of these disciplinary rules and/or any irregularity, omission, technicality or other defect in the procedures followed shall not invalidate any finding, procedure or decision unless it is shown to render the proceedings unreliable or to have caused a miscarriage of justice".

In addition Mr. Duthie opened to the Committee a decision of the Appeal Committee of European Rugby Cup dated the 2nd February 2005 in the matter of Patrick Furet,

which, inter alia, required proceedings to continue, in the event of a defect in a citing complaint, unless and until a person and/or body having jurisdiction so to do, determines that the proceedings have been rendered unreliable and/or a miscarriage of justice has occurred”.

The player’s representative responded that the interpretation of Rule 6.3.6 should be interpreted as a mandatory provision that a citing complaint is in the appropriate form and submitted that there was prejudice to the player in that he had been charged with a serious act of wrongdoing which if found guilty could have an impact on his professional career and in all the circumstances the player should be given the benefit of the doubt.

The Committee then retired to consider the submissions and having considered each and every submission made by both parties held that the citing form was in the incorrect form and it was desirable that the match date would be inserted in the form but they were satisfied that there were details of the offence set out in the complaint and in all the circumstances did not believe that the acceptance of the form would render the proceedings unreliable or that a miscarriage of justice would occur and there was sufficient information before the Committee to deal with the case on its merits and no prejudice rendered to the player.

THE CONTINUED HEARING:

After making the Committee’s determination in relation to the preliminary matters raised by the player’s representative, the Chairman then referred to the Book of Evidence which had been presented to all parties in advance of the hearing and stated that the Committee, in advance of the hearing, had discussed the Book of Evidence and were not disposed to admitting any of the evidence contained therein relating to press reports by reason of the allegations contained therein of a very subjective nature made by Lewis Moody regarding eye gouging of which there was no complaint before the Committee.

The Chairman asked the player how he wished to plead in relation to the citing complaint and the allegation that he had committed an act of illegal and/or foul play. The player denied that he had committed an act of illegal and/or foul play.

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

Mr. Duthie also informed the Committee that Lewis Moody would be available between 1.00p.m. and 1.30p.m. on his phone to give evidence in the case. Attempts were made to contact Lewis Moody by phone between 1.00p.m. and 1.30p.m. all of which were unsuccessful and ERC were granted a short adjournment to endeavour to make contact with him and the Committee ruled that in the event that such contact was not made the hearing would continue on the basis of the Statement that had been furnished by him. No further communication was made with Mr. Moody.

In summary the evidence presented and as seen on the video was to the effect that during the second half of the match the player tackled Leicester No. 6 (Moody) early and without the ball resulting in the player ending up on top of Moody who was lying on his back on the ground. Both players were bound together “grappling” with both making movements of their hands and arms and the player making a number of forward movements with his head towards Moody. The incident lasted approximately 24 seconds and the match officials did not see the incident.

The player in his evidence stated that he had been with Stade Francais for 1 month and 2 weeks having previously been with Bezier for 11½ years. He had played 5 Heineken Cup games. The game against Leicester was a tough game and he had seen the video. His first contact with Moody was in the tackle and he anticipated Moody getting a pass from another player, tackled him early and ended up on top of Moody. On doing so he received a punch from Moody. At the point of impact both players fell to the ground the player got into a position to protect himself as there was an attempt by Moody to eye gouge him and the movement of his head was to protect himself and free himself to be out of reach of the punches from Moody. Moody was holding his head with his left hand. The player was not moving his head in a head butt movement and once Moody stopped punching him he stopped moving his head. He moved his head to protect himself and avoid a punch from Moody. He did not head butt Moody and the movement of his head was to avoid punches and to free

himself. The video was then replayed for the player and his explanation was as he had given in his direct evidence.

Under cross-examination through the Chair he agreed that he tackled Moody without the ball. The original ball carrier made a movement to pass and he anticipated that Moody would get the ball and went to tackle him. When tackled, Moody retaliated for being tackled without the ball, and was holding the player down with his left hand and the player was afraid that he would get another punch. He was unable to get up because Moody was holding him down. The movement of his head was because he was being held close to his head by Moody's left hand and he was moving his head to stop being eye gouged by Moody. He stated that Moody eye gouged him with his right hand and then towards the end of the incident with his left hand. He stated that Moody had grabbed him with his left arm and tried to gouge him with his right hand. He was asked had he spoken to anyone about the eye gouging and he stated that he had spoken to friends and members of the French team but that the first time he spoke about it was on the Tuesday after he heard of the citing. He was surprised at being cited and recalls the incident. He also spoke to the President of his club but he did not speak to the referee or his team mates after the incident or after the match. He stated that there were no previous incidents in the match, that he was punched and gouged and the only actions he took were to defend himself. He stated that he had already been selected for the French team and did not want to commit any act of foul play but as a result of the citing he had not been selected for the weekend game against Canada. One further look was taken at the video and the player said that he thought that Moody was going to receive the ball and anticipated it by tackling him early. This concluded the evidence.

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

1. The Statement of Lewis Moody
2. The video evidence

and also stated that the ERC were concerned solely with the striking with the head and that was the issue and not one of punching. He referred to the fact that the player had made no complaint during the game or after the game about being punched and eye gouged by Moody and submitted that this went to the player's credibility as a witness. He further stated that his explanation that he was trying to free himself from

Mr. Moody was not consistent with the movement of his head which was rapid. He further submitted that the evidence in Lewis Moody's Statement was quite significant and that ERC had done all that they could to make him available to give evidence and in his opinion the burden of proof had been discharged whilst acknowledging that the video evidence was not crystal clear as to what was precisely happening.

Mr. O'Callaghan on behalf of the player submitted that there were 4 pieces of evidence which the Committee should consider, namely,

1. The Statement of Lewis Moody and he submitted that limited weight should be given to this statement as he was not available for cross-examination when he had indicated prior to the hearing that he would make himself available and he referred the Committee specifically to the provisions of Rule 6.6.7.
2. He reiterated the player's evidence which was to the effect that he was being held down by Moody and being punched and eye gouged by him.
3. The video evidence and the player's explanation of the head movements.
4. The evidence of the match officials who did not see the incident.

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 and were in agreement with Mr. Duthie that "the video evidence was not crystal clear as to what was precisely happening".

The Committee is of the view that the player had committed an act of foul play, namely, an early tackle on a player without the ball following on which there was retaliation by the tackled player resulting in a grappling incident but was not satisfied on the balance of probabilities that the player head butted the tackled player and whilst the citing complaint was justified in all the circumstances the Committee is of the view that if the whole incident had been seen by match officials it would not have warranted a red card and thus the citing complaint is dismissed.

The Committee however would like to add that they disregarded that part of the evidence presented by the player as part of his defence to his actions that he was eye gouged by Moody by reason of the fact that no complaint was made by the player at

the time of the incident, no complaint was made by him after the match to either the match officials or his team mates, no complaint was made by anyone on his behalf to Leicester and the first mention of it on his own evidence was when he received the citing complaint on the Tuesday after the game.

The Committee has already made a decision on the citing complaint which is in favour of the player but feels it appropriate to say in all the circumstances that his evidence of eye gouging in the particular circumstances as a defence diminished the credibility of his evidence and was disingenuous in all the circumstances.

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 Mc Loughlin

BRIAN McLOUGHLIN
CHAIRMAN – DISCIPLINE COMMITTEE

DATED: 8th day of November 2005