

EUROPEAN RUGBY CUP

Decision of the Disciplinary Committee in the matter of

ERC

v

**Benjamin De Jager
Treviso RFC**

**HELD IN THE OFFICES OF THE JUDGE ADVOCATE
GENERAL, 81 CHANCERY LANE, LONDON WC2A 4BQ**

on

23rd October 2008

Disciplinary Committee:

His Honour Judge Jeff Blackett (Chairman)
Mr Robert Horner
Dr Barry O'Driscoll

Representing ERC:

Roger O'Connor (ERC Disciplinary Officer)
Max Duthie (Counsel)

Representing Benjamin De Jager (The Player):

Vittorio Munari (CEO Benetton Treviso Rugby)
The Player

Introduction and Preliminary Matters

This citing concerned an incident in the 72nd minute of the match between Treviso and Leicester Tigers played at Stade Mongio on 18 October 2008. It was brought under Disciplinary Rule 6.5 and the Disciplinary Committee appointed in accordance with Disciplinary Rule 6.1.3. The Player did not object the composition of the Committee.

Charge and Plea

The Player was cited for striking an opponent with his head contrary to Law 10(4)(a). He admitted the offence.

The Citing Complaint

The Citing complaint stated:

“Tackle on touch line by the Treviso No 13 (the Player) on Leicester No 8. He got on top of him and after a short altercation he proceeded to head-butt the No 8. After talking to the official after the match (sic), he felt that contact had not been made and so issued a yellow card. Sorry but I don't agree, it should have been a straight red.”

The Disciplinary Officer also presented two written statements from the touch judge and referee. The touch judge said that he saw nothing of the alleged incident. The referee said:

“The action unfolded with a tackle in touch involving Treviso No 13, Benjamin de Jager, and Leicester No 8. Once on the ground and after some words were exchanged, de Jager made a short head movement towards the head of Leicester no 8 without touching him. I therefore concluded that it was a gesture of intimidation and nervousness from de Jager after some words were exchanged.....I then.....gave a yellow card to de Jager for a gesture of nervousness, but not for a head butt, as this is how I perceived the action since I was located at about 5 metres from where it took place.”

The DVD showed that the Player received the ball when in the position of the left wing just outside the Treviso 22 metre line. He was tackled by the Leicester wing (No 11) and bundled towards the touch line. The Leicester No 4 arrived and joined the bundle and the three players (together with another Treviso player) fell into touch. The Leicester No 4 was lying on his back, the Player was lying on his back on top of the Leicester No 4 and the Leicester No 11 was lying face down half on the Leicester No 4 and in contact with the Player. The Leicester No 11 moved his head and body in such a way as to agitate the Player (there may have been some contact) and the Player tried to grab him as he moved away. The Player then turned over to face the Leicester No 4, pushed himself up and then from the position of being half upright, lunged head first towards the Leicester No 4, travelling about 3 or 4 feet. The video footage was not entirely clear, but it appears that the lunge was not forceful or particularly violent, but the top of the Player's head made fleeting and light contact with the side of the Leicester No 4's scrum cap. There was a very mild reaction from the Leicester No 4 who was not hurt at all and got up to continue. The referee consulted his touch judge, reversed a penalty he had awarded to Treviso and awarded the Player a yellow card. The sound track on the DVD confirmed that the referee told the Player that the yellow card was for “head butting”.

Mr Duthie said that both the referee and citing officer had erroneously reported that the Leicester No 8 had been involved when in fact it was the Leicester No 4. The Player took no point on these errors. Mr Duthie submitted that, notwithstanding the

referee's statement that there had been no contact, that was inconsistent with what he said at the time, the movement of the Leicester No 4's head backwards at the moment of contact and the DVD footage, which, he said, was conclusive.

The Player's Case and Mitigation

The Player apologised for what he described as a stupid and incorrect gesture. He said he meant no harm to the Leicester No 4 who is a fellow South African who used to play with him at Treviso. He said it was a gesture of frustration. The Leicester No 11 tackled him and then made a double movement and there was a slight bump between them. He then turned round and made a gesture which was effectively saying "give me space". He said he did not touch his opponent with his head and, even though he led with the top of his head he would have felt it if contact had been made.

The Player is 28 years old and has played professional rugby for 9 years. He has one international cap for Italy and has been the captain of the Italian 7s squad for three years. He has never been sent off or cited before and has, in that time, only received three other yellow cards. The most recent was during this season for a technical offence.

Mr Munari said that this was a very important match. At the time of the offence Treviso were only trailing by one point, but after the Player was sent to the sin bin Leicester scored 22 further points. He did not seek to excuse the Player's actions, but described them as "silly." He said that the referee's decision to award a yellow card should be given significant weight.

Decision

The Committee watched the DVD recording several times and frame by frame. Although not entirely clear there was sufficient evidence to enable the Committee to conclude that contact was made between the Player's head and the Leicester No 4. There was a lunge forward, as the head appeared to make contact the Leicester No 4's head moved backwards, the Leicester No 4 appeared to gesticulate that there had been contact and the referee said that he had awarded a yellow card for a head butt.

The Committee then undertook an assessment of the seriousness of the offending. It concluded that:

- a. The offending was deliberate in that the Player deliberately lunged forward head first so that the top of his head came into contact with an opponent's head;
- b. It was serious in so far as any strike using the head is likely to be more serious than a strike with the fist. However, it is wrong to classify this action as a "head butt". That colloquial term means that someone cocks his head backwards and then propels it forwards so that his forehead comes into contact with his intended victim (normally in the face). This incident is more properly described as striking with the head That is inherently less severe than a "head butt";

- c. There was some provocation in that the Leicester No 11 deliberately bumped the Player as he moved away after the tackle;
- d. There was absolutely no effect on the victim;
- e. The only effect on the Game was to weaken the Treviso side by reducing them to 14 players. There was no adverse reaction by the players.
- f. The victim player was not vulnerable; and
- g. The conduct was completed, although contact between the two heads was very slight, indicating that the Player's lunge forward lacked any real aggressive intent.

Taking all of these factors into consideration the Committee decided that this was the least serious offending of this type and concluded that it was at the Low End of the scale of seriousness.

There were no on-field aggravating features but significant mitigating factors.

- a. The Player acknowledged culpability in an e mail in advance of the hearing and, although he argued about whether contact was made or not he accepted that he had committed an act of foul play;
- b. He has an exceptional record. He has never been sent off or cited before and he presented as an open, honest and thoroughly decent person;
- c. He is aged 28, and has played professional rugby for nine years. Thus he cannot claim the impetuosity of youth but he can claim credit for maintaining his good character for so long in professional sport and that this conduct was entirely out of character;
- d. His conduct prior to and at the hearing was exceptional. He complied with the pre hearing directions, albeit slightly late, and he was charming and helpful at the hearing;
- e. He apologised for his unacceptable behaviour at the very outset of the hearing, even before preliminary matters had been dealt with. His remorse was entirely genuine.

In those circumstances the Committee decided that the Player merited the full credit of 50% from the entry point. He is, therefore, suspended for two weeks from 23 October – 5 November 2008. He may play again on 6 November.

As an aside the Committee undertook the same exercise on the theoretical basis that no contact had been made. We concluded that it would have made no difference to the eventual outcome of this case in that an attempted strike with the head which, fortuitously, does not make contact is no different in essence from one which makes very light and fleeting contact. Obviously, if contact was anything more than light and fleeting the sanction would be heavier.

Costs

Mr Duthie asked that the Committee make an order for costs against the Player/Treviso. He said that as a matter of policy ERC will always ask for the costs of a successful citing because it would be inequitable if all clubs were required to make an equal contribution to the disciplinary process irrespective of whether their players were cited or sent off. The policy is, therefore, that those who are called

before the disciplinary system must pay for it. The Player made no submissions as to costs apart from accepting that this would be an expensive month for him.

The Committee accepts the submission from ERC and orders that reasonable costs of the hearing be awarded against the Player/Treviso. ERC is to provide a statement of costs for approval by the Committee within 7 days.

Right of Appeal

Both parties are reminded of their right to appeal against the decision of this Committee as to sanction and/or costs.

Jeff Blackett
Chairman

Robert Horner
Member

Barry O'Driscoll
Member

Date: 24 October 2008