

**DECISION OF THE INDEPENDENT JUDICIAL OFFICER
ERC**

**Held at the offices of ERC, Huguenot House, St Stephens Green, Dublin
on 17 December 2009 at 12:00 midday**

In respect of

Arnaud Mela of Brive (“the Player”)

And

In respect of a citing complaint that he did punch an opponent in the Brive –v- London Irish match at Brive on 12 December 2009 which is contrary to Law 10.4(a) of the Laws of the Game (“the Laws”)

Judicial Officer appointed to hear the case

Robert H P Williams (Wales) (“the Judicial Officer”)

The Decision of the Judicial Officer

- i) The Judicial Officer found that the Player had committed an act of illegal and/or foul play as alleged in the citing complaint.
- ii) The Judicial Officer was satisfied that the act of illegal and/or foul play merited a “red card” and that the Player should have been ordered off for the offence.
- iii) The Player is suspended from taking part in the game of rugby up to and including 31 January 2010. This represents a seven week suspension commencing on 17 December 2009.
- iv) The Judicial Officer made an award for costs against the Player of ERC’s costs of convening the hearing, including the costs of providing a translator and their legal costs, together with one half of the Judicial Officers costs for attending the hearing.

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of ERC’s Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2009/2010.

The Citing Complaint

The Judicial Officer was appointed to consider the citing complaint, the complaint(s) against the Player in the match between Brive and London Irish on 12 December 2009 in the Heineken Cup 2009/2010.

Alberto Recaldini was appointed as Citing Commissioner to this match and had cited the Player for that he did:-

“After the whistle of the referee, according a free kick, number 5 of Brive (“Arnaud Mela”) punched the opponent number 16 (“Danie Coetzee”).”

The Parties at the Hearing

Present at the hearing in addition to the Judicial Officer were the following persons:-

- Mr Roger O’Connor, Disciplinary Officer, ERC.
- Max Duthie, solicitor with Messrs Bird & Bird of London, the legal representative of the Disciplinary Officer.
- The Player.
- Neil Robertson, the legal representative of the Player.

Preliminary Matters & Procedure

At the commencement of the hearing, the Judicial Officer noted the identities of all present and in particular that the Player acknowledged that he was the player referred to in the Citing Commissioners report.

The Judicial Officer narrated the complaints, reminding the Player that the complaint was in respect of an allegation that the Player had punched an opponent contrary to Law 10.3(a) of the Laws.

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2009/2010 (the “Disciplinary Rules” and “DR” in the singular) would apply. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceed on that basis.

The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was therefore as follows:-

- Clips of the incident taken from different angles.
- The charge letter and citing report.
- The hearing notice and standing directions.
- The brief note from Danie Coetzee, the London Irish hooker who is the playing opponent said to have been punched.
- The medical note from Dr Craig S White on the injury to the opponent.
- The note from Simon McDowell, the assistant referee.
- The e-mail from Kieran McCarthy of London Irish with further information on the effect of the punch on Danie Coetzee.

The Judicial Officer noted there had been no responses to the standing directions found at appendix 6 to the Disciplinary Rules. The Judicial Officer reminded the Player and his legal representatives of their duty to respond to the standing directions and that their failure would be an issue which the Judicial Officer would take into account during the proceedings.

The Judicial Officer invited the Player and the Disciplinary Officer to confirm whether or not they had any preliminary issues which they wished to raise. There were none.

The Judicial Officer reviewed the complaint in full and narrated the official reports from the Match Officials. The Judicial Officer asked the Player whether he accepted that:-

- The complaint was a true and accurate account of the incident and the facts surrounding the incident.
- That the complaint should be upheld (namely whether he had committed the alleged act or the illegal and/or foul play) and;
- The alleged act of illegal and/or foul play warranted a red card.

The Player responded that he accepted the citing complaint, but wanted to raise issues of he having been provoked by the London Irish team and Danie Coetzee, the opponent whom he punched in particular.

As the Player had accepted that the complaint should be upheld, the Judicial Officer advised the Disciplinary Officer that, despite the issue which the Player wished to raise (see above paragraph) he did not need to persuade him that the Player had committed the act of illegal and/or foul play that would have warranted a red card and ordering off. Nevertheless, in order to dispose of the matter, the Judicial Officer required the Disciplinary Officer to represent his evidence regarding the complaint.

Evidence Supporting the Complaint

The legal representative for the Disciplinary Officer informed the Judicial Officer that he would be producing:-

- The video footage of the incident from different angles.
- He would be referring to the documents which had been disclosed prior to the hearing.

There were several video footage clips of the incident and these were played several times in the presence of the parties.

In the first clip one can see the head of Mr Danie Coetzee (the opponent whom it is alleged was punched) ricocheting backwards and one can also conclude that the cause of this was a punch to the chin and mouth area.

A further clip taken from behind the incident shows the scrum where Danie Coetzee is the London Irish hooker and the Player is the second row number 5 for Brive. The Player detaches from the scrum and one has an unimpeded view of him punching Danie Coetzee. It can be seen as a fast swing of his fist.

The legal representative for the Disciplinary Officer referred to the statement of Danie Coetzee when he says that he came on as a substitute wearing the number 16 shirt for London Irish and about two minutes later in the course of the breaking up from the scrum he received a punch to his face.

The legal representative for the Disciplinary Officer pointed out that in the notes/statement from Danie Coetzee he refers to he having a broken nose and a cut lip. He does not have treatment immediately and played on until the next stoppage of play, when he was treated by the London Irish doctor and head physio. It was also noted that the Player did not leave the field of play because of the injury and further, that the medical note from Dr Craig S White and the note from Kieran McCarthy of London Irish states that Danie Coetzee had not broken his nose. The punch caused tenderness to the nostril and upper lip, which were bloodied.

The video clips were conclusive evidence of the punch to Danie Coetzee by the Player and it striking him so that his head ricocheted back and his nose and lip were bloodied.

The Player was then asked to explain his position in response to the allegations.

The Player's Position

The Player asked the Judicial Officer to put the incident in context and started by saying that the London Irish trainer had previously been the Brive trainer and knew that there were concerns about the Player's lack of self control. He openly admitted that he is someone who when he is provoked will hit out.

The Player said that during the game he had been the victim of being punched to his head. Insults were levelled at him.

The Player added that when Danie Coetzee joined the game he was "aggressive and nery". In the scrum the f-word was used at him and so were the words "f mother".

The Player accepted that his reaction was not professional and that he punched the London Irish hooker. He used the phrase "he was trying to get me to blow up and so I punched him – I immediately regretted it".

The Player also accepted that he had a poor record and had previously been before the disciplinary meeting for punching and the most recent was January 2009.

When he was questioned, the Player accepted that during the game he had had no previous incident with Danie Coetzee. He also accepted that he did not know whether the London Irish trainer had encouraged the London Irish players to provoke him and that this was therefore pure speculation.

When asked whether he had regretted his actions, he assured the Judicial Officer that he did and that he had wanted to speak to the London Irish trainer and also the player. The Player, however, concluded his evidence by stating that he felt that Danie Coetzee had exaggerated the action of his head moving backwards after the punch.

Further evidence was then led on behalf of the Player as follows:-

- He is 29 years old and is in his second season with Brive.
- He has been a professional player since 2004.
- His record showed that he was suspended for three weeks in the 2000-2008 season and four weeks at the beginning of 2009 and both suspensions were because of punching.

There was no further evidence from or on behalf of the Player.

The Judicial Officer invited the parties to address him on sanction.

Submission on Sanctions

As the evidence had been heard on what had happened, the Judicial Officer invited firstly the Disciplinary Officer to make submissions as to sanction.

The legal representative of the Disciplinary Officer referred to the on field factors and taking into account DR 6.7.32, submitted that:-

- Although the injury could be described as minor and;
- The injury had no effect on the result of their game, but it did lead to further confrontations.
- The opponent was in a vulnerable position when he was punched and could not defend himself.
- The video clip showing the opponent's head going backwards did not indicate that he would have been fabricating or play acting the effect of the punch.
- The provocation amounted to insults and name calling, which would be no justification for punching his opponent in the way that was seen on the video clip.
- The Player was just speculating as to what was being said by the London Irish trainer.
- Although the opponent did not leave the field because of the injury itself, he did not remain within the game for much longer than the incident.
- The Judicial Officer should take into account the previous cases in which the Player had been involved.

On behalf of the Player, it was submitted that:-

- He was full of remorse, particularly because he knew what impact any suspension would have on the Club.
- He had "betrayed" his colleagues by his actions.
- He had not fulfilled his promise which he had previously made about "holding back" from overacting if he is ever provoked.
- He had been subjected to punches and not just insults.
- It all happened on the spur of the moment.
- It was not pre-meditated nor gratuitous.
- It was more to stop the acts of provocation which he felt.

Decision as to Disposal

The Judicial Officer deliberated in private in respect of what, if any, sanction would be appropriate in the circumstances. The Judicial Officer was satisfied that the following had occurred in the incident:-

- That the Player had punched the opponent Danie Coetzee with his fist.

- That the punch was sharp and fast and the opponent would have been vulnerable.
- The punch caused the Player's nose and lip to be bloodied.
- The opponent was involved in a confrontational situation almost immediately afterwards and was irate and this was in the Judicial Officers view directly attributable to the punch.
- The opponent left the field of play, but not because of the injury sustained in the punch.
- The punch did not affect the result of the game.
- The Player had already been suspended on two previous occasions for punching.

In turning to the question of sanction, the Judicial Officer considered the terms of the Disciplinary Rules, including DR 6.7.29 through to DR 6.7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

The Judicial Officer noted that the offence of punching an opponent with a fist, in contravention of Law 10.4(a) was listed within the IRB recommended sanctions for offences within the playing enclosure (found at appendix 3 of the Disciplinary Rules) as follows:-

- Low end - 2 weeks.
- Mid range - 5 weeks.
- Top end - 8 + weeks.
- Maximum sanction - 52 weeks.

To decide upon the appropriate entry point, the Judicial Officer assessed the seriousness of the Player's conduct by reference to the following on field issues (following the criteria in DR 6.7.32):-

- a) It was intentional in that the Player intended to punch his opponent.
- b) As it was intentional, the issue of recklessness did not have to be considered.
- c) With regard to the gravity of the Player's actions, it was noted that:-
 - c.1) The Player used his fist.
 - c.2) The Player had alleged provocation, but even if it did exist, the Judicial Officer concluded that the provocation consisted of verbal provocation.
- d) As a result of the punch, the Player's nose and lip was bloodied but he was not removed from the game as a result of the punch.
- e) The Player's action did not affect the result of the game, but there were other confrontational issues arising from the incident.

- f) The opponent was vulnerable in that he was in a defenceless position in the scrum.
- g) The Player had fully participated in the incident.
- h) The Player's action was complete, in that the punch struck the opponent.

In so far as the punch was concerned, the Judicial Officer determined that the appropriate entry point for this punch was mid range – i.e five weeks.

The Judicial Officer then considered the off field aggravating factors (having regard to the 6.7.34 criteria) and whether there were any off field mitigating factors (following the 6.7.35 criteria).

With regard to the aggravating factors, the Judicial Officer noted:-

- a) Although the Player had expressed remorse, he had also submitted that the opponent had exaggerated the effects of the punch and to that extent, therefore, it was not accepted that he showed any remorse for the punch itself.
- b) In so far as the Player's disciplinary record is concerned, he already had two previous offences and in the last one he was banned for four weeks.
- c) There does need to be a deterrent to remind players that they are not allowed to punch players, even if they are being provoked.

Having taken the aggravating factors into account, the Judicial Officer concluded that it warranted an increase in the suspension by two weeks.

With regard to the off field mitigating factors, the Judicial Officer took into account:-

- a) That the Player had acknowledged his culpability, but he did not do so until the hearing.
- b) He did not have a good record.
- c) He is a player of experience and therefore should have known better.
- d) He had conducted himself well during the hearing and realised the consequences of his actions for himself and his club – but not for the opponent whom he had punched.

The Judicial Officer concluded, therefore, that there were insufficient mitigating factors to reduce the sentence below the seven weeks which is imposed as a result of the offending being mid range (five weeks) together with a further two weeks because of the aggravating factors.

In the circumstances, therefore, the Player would be suspended for seven weeks from the date of the hearing being 17 December 2009 until 31 January 2010.

The Judicial Officer also considered the failure by the Player to answer the standing directions, but decided the Player would not be further punished by this failure, but he and his representatives would be reminded of their obligations to comply with standard directions. Had the Player complied with the standard directions, the Disciplinary Officer might not have engaged the services of the legal advisor. The costs may therefore have been reduced. The Player is therefore facing a larger cost order than he would otherwise have done so.

Announce the Decision

The Judicial Officer announced that having reviewed the evidence and considered the submissions and reminding himself of the criteria under DR 6.7.32 and the Player having admitted the citing complaint in that he did punch his opponent with his fist which caused a bloodied lip and nose to his opponent, the entry point would be mid range and for this offence, a sanction would be a suspension of five weeks.

The Judicial Officer said he had looked at the aggravating factors as per 6.7.34 and concluded the sanction should be increased by a further two weeks and that this was partly because the Player had not shown any remorse for the opponent, in that he had said the opponent had exaggerated the effect of the punch and furthermore, the Player had already been suspended on two previous occasions. The Judicial Officer, therefore, announced that the suspension would be increased by a further two weeks to a total of seven weeks.

The Judicial Officer considered the 6.7.35 criteria, but concluded that there were insufficient mitigating factors to reduce the period of suspension.

The sanction would therefore be a suspension of seven weeks to take effect from 17 December 2009 and it would expire on 31 January 2010.

The Judicial Officer announced that a written judgment would follow by close of business Wednesday 23 December 2009.

There would be an order for costs, which would include the costs of convening the hearing, including the costs of the translators and ERC's legal representatives, but the costs would be apportioned to

reflect the fact that there were a number of other hearings being held on 17 December 2009. The Player would be given details of the costs and the apportionment.

The Player and his representative were reminded of their obligations to comply with standing directions, should they ever have to come before a disciplinary hearing in the future. The Judicial Officer reminded the Player and his legal representative that failure to comply with the standing directions could have resulted in sanctions under DR 6.7.10. Had there been a response to the standing directions with the Player admitting the offence and narrowing the issues, ERC might not have used the services of their legal representative and the costs would then have been reduced.

The Player and his representatives were reminded of their right to appeal under DR 7.

DATED this 22nd day of December 2009

Signed:
Robert H P Williams