

**DECISION OF THE INDEPENDENT JUDICIAL OFFICER
ERC**

**Held at the offices of ERC, Huguenot House, St Stephens Green, Dublin
on 17 December 2009 at 9:30am**

In respect of

Guillaume Ribes of Brive (“the Player”)

And

In respect of his dismissal from the field on 12 December 2009 in the match between Brive –v- London Irish when he was ordered off for he having kicked an opponent contrary to Law 10.4(c) 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) As the Player had accepted that the referee was correct to order him off, the Judicial Officer had to determine what suspension or other sanction should be imposed upon the Player, if any.
- ii) The Judicial Officer considered there was no reason not to impose a suspension on the Player and as such, the Player was suspended from taking part in the game of rugby up to and including 10 January 2010. This represents a four week suspension commencing on 12 December 2009.
- iii) The Judicial Officer made an award of 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 Ordering Off

The Judicial Officer was appointed to consider the ordering off of the Player in the match between Brive and London Irish on 12 December 2009 in the Heineken Cup 2009/2010. George Clancy was appointed as referee to this match and had ordered the Player off for:-

“The assistant referee, Simon McDowell, reported Brive number 16 for deliberately kicking an opponent after play had stopped”

contrary to Law 10.4.(c) of the Laws.

The Parties at the Hearing

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

- Mr Roger O'Connor, Disciplinary Officer, ERC.
- Max Duthie, solicitor with Messrs Bird & Bird of London, the legal representative for the Disciplinary Officer.
- The Player.
- Neil Robertson, solicitor from Brive Rugby Club and the legal representative for 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 dismissed from the field by George Clancy in the Brive –v- London Irish game on 12 December 2009 for having kicked an opponent contrary to Law 10.4.(c) 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. This evidence was as follows:-

- Video clips of the incidents immediately before and after the alleged kick had taken place.
- The notice of the hearing.

- The automatic directions order.
- The referee's report on Form 1.
- The assistant referee Simon McDowell's report on Form 2.
- The note from Kevin Biggs one of the assistant referees.
- The note from Danie Coetzee, the Player said to have been kicked.
- The note from Kieran McCarthy of London Irish RFC.
- A second note from Simon McDowell, the assistant referee.

The Judicial Officer noted that there had been no response to the standing directions found at appendix 6 of the Disciplinary Rules ("the Directions"). The Judicial Officer reminded the Player and his legal representative 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 Disciplinary Officer to confirm whether or not they had any preliminary issues which they wished to raise. They both confirmed there were none.

In accordance with DR 6.2.2, the Judicial Officer reviewed the ordering off, including the referees reasons for the ordering off. In accordance with DR 6.2.8, the Judicial Officer referred to the official reports of the Match Officials and asked the Player whether he accepted that:-

- The official reports were a true and accurate account of the incident and the facts surrounding the incident.
- Whether the Player accepted that he should have been ordered off.

The Player accepted that he ought to have been ordered off, but added that there had been a clash of heads between he and Danie Coetzee (the opponent) and that he (the Player) was spat at and blood had been splattered over him by the opponent and that the incident should be considered in the context of a confused situation immediately prior to the incident when he was then provoked into the act of kicking his opponent.

The Judicial Officer therefore pointed out to the Player that, despite the provocative act which he was alleging (in the above paragraph), as he had accepted that the complaint should be upheld, the Disciplinary Officer did not need to persuade him that the Player 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 would be requiring the Disciplinary Officer to present his evidence regarding the complaint and the Disciplinary Officer was asked to highlight parts of the reports which had been produced and to explain any video footage.

Arrangements had been made for Simon McDowell, the assistant referee who had reported the incident to the referee to be available by way of a telephone link and he would be asked to address the issues which had been raised by the Player.

Evidence Supporting the Complaint

The legal representative for the Disciplinary Officer referred the Judicial Officer to:-

- The referees report on Form 1, whereby he states that it was the assistant referee, Simon McDowell who reported the Brive number 16 i.e the Player for deliberately kicking an opponent after play had stopped.
- The assistant referees report (Simon McDowell) on Form 2 referring to Brive number 16 deliberately kicking the opponent after play had stopped.
- The assistant referee, Kevin Biggs, says in his note to the hearing that he clearly saw the Brive number 16 who was standing, kick out towards a London Irish player. The note states that the Player had raised his leg and kicked out above knee level. Kevin Biggs' note states he was not aware of any incident prior to this that would have caused him to kick out. He also states that he could hear Simon McDowell, the assistant referee, on his other side reporting the same event to the referee.
- There was a further note from Simon McDowell referring to the London Irish hooker in his opinion having "probably been hit in the face" and a few seconds later there was a separate incident and Simon McDowell's note states that the London Irish hooker confronted the Brive hooker (i.e the Player) in close proximity – less than 1 metre – they were face to face. The note states that the London Irish hooker was irate, having previously been hit to the face a few seconds earlier and while they were face to face the Player kicked out with his foot striking the London Irish player around his leg. The note concludes by stating that he had a clear view of the action and reported the incident to the referee and recommended a red card sanction.
- There was the note from Danie Coetzee who was the opponent (the London Irish substitute hooker) in which he states that the Brive number 16 asked him to stop "the aggression" and that he was then kicked by him.
- The Disciplinary Officer explained that there was no video footage of the incident itself, but there was video footage of the incidents leading up to the kick and immediately afterwards. The Judicial Officer viewed the video footage in the presence of the parties and Danie

Coetzee is seen being punched, the play is stopped and Danie Coetzee is seen standing in front of the Player and the Player is seen wiping his mouth with his shirt.

- Simon McDowell gave his evidence by the telephone link and it could be summarised in the following manner

The London Irish substitute hooker was irate, he having been hit to the face in a scrum. He walked to the Player and they were standing less than 1 metre apart. The Player kicked him. With regard to the ferociousness of the kick, it was as if one was kicking a ball standing still.

When asked about clash of heads and spitting, Simon McDowell said that he saw no clash of heads between the Player and the London Irish hooker. He saw no sign of spitting. After the kick, the London Irish hooker backed away and then looked across to him as if to enquire if he had seen the kick.

Although it was not clear whether the London Irish hooker was struck, the toe of the Player landed around the middle of the leg. He did not see the London Irish hooker flinch, nor hold his leg, nor limp away nor fall.

Danie Coetzee (the London Irish substitute hooker) had provided a brief statement referring to having been punched and kicked. Prior to the hearing, neither the Judicial Officer nor ERC were made aware that the Player was raising any issue of provocation and an allegation that he had been spat at by the London Irish hooker. There was a brief adjournment to ascertain if Danie Coetzee could be contacted, but he could not and the Judicial Officer directed that the proceedings should continue.

ERC called no further evidence.

The Judicial Officer then asked the Player and his representative to explain the position in relation to the offending.

The Player's Position

The Player narrated his position in relation to the offending and this could be summarised as follows:-

“.....he (Danie Coetzee) had come on as a substitute hooker I came on shortly afterwards as substitute hooker. There was a scrum. The referee ordered us to take up our positions. Before crouching, he (Danie Coetzee) was insulting the Brive players. The scrum broke up. Play carried on, but the referee stopped play. He (Danie Coetzee) arrived where I was standing and he was using insulting words and spitting directly at me. As a reflex action I gave him a light kick to

the shin. We were separated and the referee consulted the Touch Judge and I was ordered from the field.”

The Player then asked for the video footage to be shown again and pointed to him wiping his face on his jersey and his explanation was that he was wiping away the residue of spit which had come from Danie Coetzee.

The Player had stated that the insults were in English. They were general insults. He said that Danie Coetzee was using the f-word and also referring to “mother”. He was bleeding from his nose when he was within 50cm and the Player said “he breathed in and spat at me”.

When questioned about the matter the Player said he did not complain to the referee about Danie Coetzee despite stating that he felt aggrieved at being sent off.

The Judicial Officer noted that the Player did not look particularly aggrieved when he was leaving the field after being ordered off.

Further evidence was led on behalf of the Player explaining that the Player was 28 years old, in his first season with Brive, had been a professional player for several years with a clean record, except for one yellow card for a technical offence. The Judicial Officer was also informed that the Player had already been reprimanded by the Club.

It was submitted on behalf of the legal representative the Club were having a difficult season and could ill afford to lose players through disciplinary matters.

It was said that the Player had wanted to apologise to Danie Coetzee but had no opportunity to do so after the end of the game.

Submission on Sanctions

Once all the evidence had been heard on what had happened, the Judicial Officer invited the legal representative of the Disciplinary Officer and the Player to make submissions as to sanction.

The legal representative of the Disciplinary Officer referred to the criteria in 6.7.32 and referred to the “on field issues” to establish the entry point and highlighted the following:-

- It was intentional in that the Player intended to kick his opponent.
- The Player had used his boot to kick his opponent on or near his knee.
- There appears to have been no injury to the opponent.

- The incident did not affect the outcome of the game i.e the result, but there were a series of incidents during the game which flowed from Coetzee having been punched and later kicked.
- The act itself was completed.

The legal representative of the Disciplinary Officer reminded the Judicial Officer of the criteria in 6.7.36 and that if the Judicial Officer came to the conclusion that the entry point was low end, then one can only reduce the suspension below the low end entry point where there are:-

- a) No aggravating features.
- b) Compelling mitigating factors.

The Player's representative submitted that the Player had been provoked by insults levelled at him and by he being spat at. The Player's representative referred to the lack of injury and that the Player felt aggrieved at being dismissed from the field. The Player had wanted to apologise to Danie Coetzee, but had not had an opportunity to do so. The Judicial Officer was asked to take into account that the Player had admitted the complaint when immediately it was put to him at the hearing.

With regard to the failure to comply with the standing directions, the Player's representative asked that the Player should not be punished for this failure and the Player's representative accepted responsibility for that matter.

Decision as to Disposal

The Judicial Officer deliberated upon the matter in private. The Judicial Officer was satisfied that the offence had been committed and that the referee was right to dismiss him from the field of play.

The Judicial Officer concluded that:-

- The Player had kicked his opponent with the toe of his boot and the kick had landed near his knee.
- That the opponent had been struck in the face a few moments before the kick.
- That the opponent may well have been irate when standing immediately in front of the Player, but the Player had not given ERC and the Judicial Officer an opportunity of dealing with this allegation that he had been provoked, because no prior notice had been given i.e had not responded to the standing directions.
- At its highest it comprised of allegations of insulting words.
- The assistant referee who witnessed the kicking saw none of the other acts described by the Player.

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 kicking in contravention to 10(4)(c) 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 - 4 weeks.
- Mid range - 8 weeks.
- Top end - 12 + weeks.
- Maximum Sanction - 52 weeks.

To decide upon the appropriate entry point, the Judicial Officer set the seriousness of the Player's conduct by reference to "the on field issues" and reminded himself of the criteria set out in 6.7.32:-

- a) The kick was intentional i.e he deliberately intended to kick the opponent.
- b) As it was intentional, one did not have to consider recklessness.
- c.1) With regard to the gravity of the Player's action in relation to the offence, it was noted that the Player had used the toe of his boot.
- c.2) The Player had put forward the issue of provocation, but the Judicial Officer concluded that he had not put forward a convincing case and that in any event even if he had been provoked, it did not justify he kicking his opponent.
- d) The kick, however, did not seem to injure the Player and this was borne out by the statement of the assistant referee who witnessed it when he said that the London Irish substitute hooker did not flinch, fall, appear to be injured etc.
- e) The incident did not affect the result of the game, but this incident seemed to be one of several unpleasant incidents which were impacting on the game itself.
- f) The London Irish substitute hooker was standing directly in front of the Player when the kicking occurred. They were within 50cm of each other. They were squaring up to each other.
- g) The Player was the only one involved in that particular incident.
- h) The kick was completed in that it landed near the knee area.

In light of the above and as there was no injury and the kick itself did not seem to have any direct affect on the London Irish substitute hooker, the Judicial Officer determined that the appropriate entry point for this matter was low end.

The Judicial Officer the considered the “off field” issues and in doing so looked at whether there were any aggravating factors (he considered in particular 6.7.34) and also as to whether there were any mitigation (6.7.35) factors.

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

- a) Although the Player had said that he had wanted to apologise to Danie Coetzee, there was no sign of remorse or contrition as the Player was leaving the field. He had described himself as feeling aggrieved, but the video clippage did not bear this out.
- b) It was noted that the Player had a good disciplinary record.
- c) All players, however, should be reminded they cannot take the law into their own hands and the sentence therefore must send a message of a deterrent to players taking such actions, no matter how provoked or aggrieved they feel.

The Judicial Officer concluded that the aggravating factors in this case were such as they should increase the suspension beyond the low end entry point of four weeks by an additional week (one week).

The Judicial Officer considered the off field mitigating factors and noted (6.7.35):-

- a) The Player acknowledged his culpability at the outset of the hearing.
- b) Had a good record.
- c) He had conducted himself well during the hearing.
- d) He professed remorse for the victim, but he was not entirely convincing on this point.

The Judicial Officer considered that there were sufficient mitigating factors to reduce the suspension referred to above by one week so that the suspension would remain at the low end entry point of four weeks.

The Judicial Officer also reminded himself that under 6.7.36 one should not reduce a suspension for a low end without there being any aggravating factors and he had already concluded that there were some aggravating factors and in the circumstances, therefore, the correct suspension would remain at four weeks.

The Judicial Officer also considered the failure by the Player to answer the standing directions, but decided that the Player would not be further punished by this failure, but he and his representative would be reminded of their obligations to comply with standing directions. Had the Player complied with the standing directions, he might have been able to have presented his case in a better light.

Furthermore, because he had failed to comply with the standing directions, ERC had employed a legal representative. This might not have been the case had the standing directions been responded to. The Player would therefore have to bear the costs of the legal representative in attending the hearing.

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 kick but that it was not described as ferocious and that no injury seems to have occurred, the entry point would be low end and for this offence a sanction would be a suspension of four weeks.

The Judicial Officer said he had looked at aggravating factors as per 6.7.34 and concluded that the sanction should be increased by one week. The Judicial Officer said he was not convinced that the Player was genuinely contrite and there needs to be a deterrent for players taking the law into their own hands.

Under 6.7.35 the mitigating factors would decrease the sanction by one week, but the Judicial Officer pointed out that he was not impressed by the Player's submissions on the allegations that he was provoked.

The sanction is therefore a suspension of four weeks, taking effect from 12 December 2009 and it would expire on midnight 10 January 2010.

The Judicial Officer announced that a written Judgment would follow by close of business Tuesday 22 December 2009.

There would be an order for costs which would include the costs of convening the hearing, including the costs of 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 Judicial Officer also reminded the Player and his legal representative that failure to comply with the standing directions could have been dealt with under 6.7.10 and had there been a response to the standing directions with the Player admitting the citing complaint, the 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