

Decision of the Disciplinary Committee

ERC

Held at the ERC headquarters, St Stephens Green, Dublin

Thursday, 4th November 2010

In respect of

Mr Christian Gajan (Bayonne) (“The Club’s Director of Rugby”)

and

A Misconduct complaint with regard to events that took place after the 2010/11 Amlin Challenge Cup Round 2 match between Bayonne and Connacht on 15th October 2010 at the Sports Ground, Galway (“the match”)

Disciplinary Committee appointed to hear the case (“the Committee”):

Antony M Davies, Chairman (England)

H. Pat Barriscale (Ireland)

Jean-Noel Couraud (France)

Decision of the Committee:

- (i) The Club’s Director of Rugby was found guilty of the misconduct alleged and was fined the sum of € 12,500 of which € 5,000 has to be paid within 21 days. The balance of € 7,500 was ordered to be suspended until 30th June 2012 on condition there are no further acts of misconduct within this period.
- (ii) The Committee ordered that the ERC’s reasonable and proportionate costs be paid by the Club’s Director of Rugby, these costs to be assessed if not agreed.

Introduction

The Committee was convened by Professor Lorne D Crerar, The Chairman of the ERC Disciplinary Panel pursuant to the Discipline Regulations of the ERC Amlin Challenge Cup in respect of a misconduct complaint made by Mr Roger O'Connor, Disciplinary Officer of the ERC.

The misconduct complaint against The Club's Director of Rugby alleged that he made a number of comments to media representatives after the match in which he attacked disparaged, criticised, damaged and/or brought into disrepute, ERC, the tournament (i.e. the 2010/11 Amlin Challenge Cup), the match officials from the match and/or the sport of Rugby Union.

Present at the hearing on the 4th November 2010 in addition to the members of the committee were the following persons:

- Roger O'Connor, Disciplinary Officer, ERC
- Max Duthie, Solicitor representing the Disciplinary Officer
- Interpreters

And by way of telephone conference call to the hearing:

- Mr Christian Gajan
- Mr Paul Mauriac, legal representative for Mr. Christian Gajan

Preliminary matters & procedure

At the commencement of the hearing the chairman confirmed the identities of all present and established that the Club's Director of Rugby was before the Committee in relation to a misconduct complaint.

The Chairman reminded all parties that the ERC Disciplinary Rules found in the participation agreement for the Amlin Challenge Cup 2010/11 ("The Disciplinary Rules" and "DR" in the singular) would apply.

The Chairman outlined the procedure to be followed to determine the matter.

The Club's Director of Rugby and all present agreed to proceeding on that basis.

The Chairman established that there were no preliminary issues to be argued by any of the parties and narrated the terms of the misconduct complaint.

The Chairman 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. It was confirmed that they had.

Plea

The Club's Director of Rugby denied the misconduct alleged in the complaint.

Evidence in support of the complaint

Mr Duthie on behalf of the Disciplinary Officer commenced by referring the Committee to the written Misconduct Complaint form compiled by the Disciplinary Officer and dated 26th October 2010 which had been submitted to the Chairman of the ERC Disciplinary Panel.

The Disciplinary Officer considered that the Club's Director of Rugby had committed an act or acts of misconduct in comments made to media representatives following the match between Bayonne and Connacht on 15th October 2010.

Mr. Duthie drew the Committee's attention specifically to the following :

- (a) an article in Midi Olympique, dated 18th October 2010, in which Mr. Gajan was quoted as saying (this is an English translation of what was reported in French):

"In comparison to what we invested in that match, I think it is a shame that an organising body like ERC, who is always quick to lecture, does not use all the necessary means for the match to take place in good conditions. The organisation could not have been sloppier. The pitch did not conform to the regulations and there was no TMO. And the refereeing was completely inconsistent.

*...

In the first half, a perfectly valid try was denied to "Pepe" Lafond. The referee cannot say he did not see it as he was one metre away from the action. Also, the Connacht players were never penalised although they would systematically throw themselves in the legs of our ball carriers to make us collapse. I am also angered by the fact that Joe Pietersen, who was not in possession of the ball, was attacked five metres away from the referee who did not say or do anything. I am usually not the kind of person to criticise the referee, but this is a bit much. In order to beat Connacht and not be dependent on the refereeing, we needed to be stronger than them, yet we were not."*

- (b) An article in Sud-Ouest, dated 19th October 2010, in which Mr. Gajan was quoted as saying that the referee was "totally inadequate" and "out of his depth" and that a "perfectly valid" try was denied to Bayonne in the first half of the match (again, this is an English translation of what was reported in French)
- (c) A further article in Sud Ouest, undated, contained the following declarations :

"We are still in position to qualify in the Amlin Challenge Cup. We played two games against two good teams. We were competitive and some players had some rest. It is positive even if the defeat in Connacht disturbs me because the conditions were not there to get a fair and honest game. On a sportive approach we were inconsistent".

Mr. Duthie paraphrased the above media excerpts and submitted that they portrayed ERC as disorganised and dictatorial, that the tournament was devalued because it was not organised properly by ERC, that the Match Officials, and particularly the Match Referee, were either incompetent or biased, that the Match Referee was totally out of his depth and had disallowed a perfectly valid try. By denying that his Club had had a "fair and honest game" there was a criticism of the integrity of the Match Officials. It was an inevitable consequence of a Coach making such allegations that the game was brought into disrepute. A professional team Coach criticising Match Officials in this way was bound to result in Match Officials being seen in a less favourable light. The collective effect of the various comments amounted clearly in his submission to misconduct.

The regulatory regime

The regime is governed by the 2010/11 Amlin Challenge Cup Participation Agreement. It was not contended by the Club's Director of Rugby that he was not bound by the terms of the Participation Agreement. Insofar as it is relevant to this misconduct complaint, the Participation Agreement provides as follows :

Clause 2.1 of the Disciplinary Rules states :

"Each person is responsible and accountable for his own conduct ... in connection with the tournament. He must conduct himself ... at all times in accordance with the highest standards of disciplined and sporting behaviour. He must not commit ... any act(s) of misconduct"

Clauses 3.2 and 3.3 of the Disciplinary Rules set out a definition of "misconduct" which in particular is specified to include :

- *“Any conduct, behaviour, statements or practices on or off the playing enclosure during a match or otherwise that is unsporting and/or insulting and/or that brings or has the potential to bring the sport of Rugby Union, the tournament, other Clubs and persons, Match Officials, ERC and any sponsor or other commercial partner of the tournament or ERC into disrepute and/or that is not in accordance with the Participation Agreement;*
- *Breaching any ... provision of the Participation Agreement (clause 3.3.2);*
- *Making comments and/or conducting ... himself in connection with ... match officiating in such a way that ... is prejudicial to the interests of the sport of Rugby Union (clause 3.3.9); and*
- *Making comments, including to representatives of the media, that attack, disparage or criticise the sport of Rugby Union, the tournament or other Club or persons, Match Officials, ERC and/or any sponsor or commercial partner of ERC or the tournament (clause 3.3.15).”*

Mr. Duthie submitted that the Participation Agreement did not provide any defence of fair comment and it did not matter whether or not what the Club's Director of Rugby said was in his opinion true. It was misconduct for him to have said it in the way that he did and to the parties that he did. Even if the Match Officials were incompetent and biased, and the ERC was disorganised, it was still misconduct to use the channels he did as the ERC process and Participation Agreement provides an appropriate forum to give feedback on Match Officials. This had been highlighted to the Club's Director of Rugby during a meeting that had taken place in Toulouse (France) on 5th July 2010. The Participation Agreement was not there to stifle debate. If criticism was justified, there were proper official channels through which it could be pursued, and indeed ERC actively encouraged feedback on Match Official performance. He outlined the procedure for this. ERC expects criticism from outsiders, but not from those participating within and who have become a party to the Participation Agreement. ERC has wider duties, particularly to commercial broadcasters and sponsors.

As the Club's Director of Rugby had not complied with standing directions set out in the Appendices to the Participation Agreement prior to the hearing, Mr. Duthie wished to make the following further points:

- (i) ERC rejected the allegations that it was dictatorial and quick to lecture. It is democratic, run by a Board which encourages input from all stakeholders and participants. The Participation Agreement is ratified by the Board, which includes Club representatives.
- (ii) ERC rejected the allegation that it was disorganised. It has received no complaints from any other Clubs. The match did not have a television Match Official appointed to it because

it was not to be televised. Without a minimum number of outside broadcast cameras, the appointment of a TMO was not viable. Both Clubs in this case knew well in advance there was to be no TMO and in these circumstances the absence of appointment did not mean that ERC was "sloppy".

- (iii) The Match Referee is highly experienced, with five years' experience within ERC competitions and in the French T14. His performance had been reviewed. He was not in error in not awarding a try to Bayonne. Even if he had missed "a few tackles", that did not make him incompetent or biased.

Mr. Duthie concluded by stating that the criticisms of the Club's Director of Rugby were baseless and totally unjustified.

The Disciplinary Officer then submitted that there was an internal process within ERC to make remarks or comments. The remarks made were wholly inappropriate and unjustified. The tournament yields substantial profits to the Clubs and to see such criticism from within damaged the values of the tournament.

Finally, as to sanction, Mr. Duthie submitted that as the misconduct had not taken place on the pitch, but two days after the game, a financial penalty may be appropriate. He drew the Committee's attention to sanctions imposed on the Club's Director of Rugby in August 2010 and November 2004 for similar matters.

The Club's Director of Rugby's Case

Mr. Mauriac commenced by taking issue with the English translation of two of the words in the article in Midi Olympique of 18th October 2010. The first related to translation of the word "dommage". Its correct interpretation should have been "pity", but had been translated as "shame" in a rather more pejorative sense. The second issue related to the comments about the pitch not complying with Regulations, which was intended to be made in a humorous context, but in translation this had been missed. (The Committee is fortunate to contain a native French speaker and noted these observations on the translations.)

Mr. Mauriac confirmed that in the main the substance of what was reported by the journalist had been said in conversation, but it was the journalist who had chosen the rather more salacious headlines and given an interpretation and meaning to his client's words which had not been intended. In essence, words had been used out of context by the journalist.

Mr. Mauriac objected particularly to the submission made by Mr. Duthie that his client had

been accusing the ERC of being "dictatorial". That had never been his intention. (Mr. Duthie confirmed that this was a matter of paraphrase on his part rather than an allegation that the Club's Director of Rugby had used that word or made that specific accusation.)

The Club's Director of Rugby gave evidence. He explained that the two interviews were given by way of telephone call to him at home a couple of days after the game, and not by way of post match press conference. The article title of the Midi Olympique piece did not correspond with anything he had said to the journalist. His intention had been simply to express his regrets for the result of the match between Bayonne and Connacht. He had not wanted to criticise or attack the Match Officials, ERC or the tournament. He expressed regret that the words he had used had been taken out of context, as he believed they were measured and accurate. He appreciated ERC had invested a lot in its business partners. He has been a Coach with three Clubs over fifteen years and has achieved a significant level of success. He has clearly seen the benefits of the European competition for his sides and has been fully committed to it at all levels. He strives to put his best team on the pitch and will express regret when they do not perform to the best of their abilities.

When speaking about the incompetence of the Referee, he had sought to refer to inconsistencies. He sought to justify the criticism of the absence of the TMO through his own personally held view that the appointment of a TMO was obligatory and that his omission on this occasion meant that Bayonne had been "deprived". The try he felt was valid and had there been a TMO it would have been seen by him and the try awarded, which might have meant Bayonne winning the match.

As to the alleged attack on the Referee, he had sought simply to refer to a lack of consistency and an absence of measurable support from the Assistant Referees. He felt the below standard officiating of the three Match Officials as a team justified his use of the word "sloppy". He felt strongly that Referees could only operate effectively in teams of three which communicated effectively and it was the absence of that communication that he had wanted to highlight in his comments.

The Club's Director of Rugby went on to say that the context of his comments was related to his criticism of his own team's inability to dominate the game – a game that they had lost – and the responsibility fell with them, not the tournament or the Match Officials. He felt the translation of various terms and the way the journalist reported his comments had made them seem rather more severe and serious. He denied ever using the word "incompetent" and had sought simply to suggest the Match Officials were inconsistent. He felt overall that the terms used by him in his press interviews were constructive and was surprised and concerned by the interpretation of them.

Under questioning from Mr. Duthie, the Club's Director of Rugby confirmed that he had said the words reported. He maintained that his comments that ERC was "pourtant prompté à donner les

leçons" (always quick to lecture) came from an incident in a previous match against Harlequins when he felt he had been lectured by ERC representatives.

As to the words "difficile de faire plus artisanal" had been intended to convey the meaning of "not sophisticated". He objected to the translation which suggested he had meant "could not have been sloppier". He also suggested that the use of the words "totalement inadapté -dépassé" meant inconsistent as a team of three, rather than that the Referee was "totally inadequate" and "out of his depth".

He could not be sure if he had used the words "honest and objective" and felt fairly certain that he had not. He had given two interviews to two separate journalists, which had resulted in three articles. He felt he had been misquoted and his true meaning had not been properly conveyed, but he had not contacted either journalist to complain or to ask them to put the matter right.

Mr. Mauriac was asked for final submissions. He asked the Committee to bear in mind that with the benefit of hindsight the Club's Director of Rugby would have approached the matter differently and tried to ensure that words used by him could not be given meanings that he never meant. His client had always been militant in favour of the ERC competitions and did not wish to disparage them. He appreciated that damage could be caused by these type of articles to the competition if words were taken out of context and to that extent he put forward an apology. The comments did not intend to criticise or disparage, but were "linked to an ephemeral moment in a sporting context". Mr. Mauriac stressed that there had been no intention to deliberately attack or damage the ERC or any of its partners. He appreciated that ERC was worried about the tournament, but there needed to be a right to criticise, otherwise there was a danger that the competition would become "septicised rugby". He felt there must be a space for controlled constructive criticism. He believed that everybody wanted to see that as long as it was done with respect. His client would in future be very careful to ensure that the words he used could not be misconstrued or imply any fault or criticism of others.

Bearing in mind the submissions, Mr. Mauriac felt strongly that no misconduct had been made out and therefore that there was no need for any form of sanction.

Decision as to Finding and Sanction

The Committee found the case of misconduct proved on the basis that it was satisfied on the balance of probabilities that Mr. Gajan was inappropriately critical of ERC, the tournament and Match Officials, which taken together further undermined the sport of Rugby Union as a game, all contrary to the Participation Agreement by which Mr. Gajan conceded he was bound.

The Committee did not find Mr. Gajan set out deliberately intending to criticise, but given his experience of fifteen years of participation in European Rugby competitions and his dealings with

the press over that period, he should have displayed a better knowledge of the Rules that he had breached and the manner in which he had breached them.

As to sanction, there were few precedents, although the Committee had dealt earlier in the day with a similar incident with which the nature and seriousness of this could be compared. The Committee noted that the comments were made to a restricted audience and were not widely in the public domain.

In all of the circumstances, the Committee determined that the appropriate sanction was a fine of €12,500 of which € 5,000 was to be payable within 21 days and the balance of €7,500 suspended until 30th June 2012 on condition that there are no further acts of misconduct committed within this period.

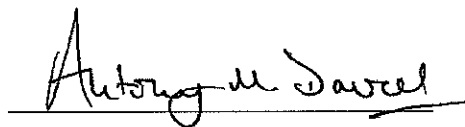
In coming to this sanction, the Committee considered that it should attempt to ensure that the appropriate channels are to be used for constructive criticism in the future.

Costs

The Committee ordered that the ERC's reasonable and proportionate costs be paid by the Club's Director of Rugby, such costs to be assessed if not agreed.

Appeal Process

The Club's Director of Rugby and the Disciplinary Officer are reminded that the Disciplinary Rules provide for a right of appeal against this decision.



Antony M Davies
Chairman of the Committee

11th November 2010

Date