

EUROPEAN RUGBY CUP
DECISION OF THE DISCIPLINE COMMITTEE
IN RESPECT OF A HEARING HELD AT THE
ERC HEADQUARTERS, ST. STEPHEN'S GREEN, DUBLIN
ON FRIDAY 29TH JANUARY 2010

IN RESPECT OF LEE BYRNE (THE PLAYER)
AND OSPREYS (THE CLUB)

And

Misconduct Complaints arising out of a match which took place at Liberty Stadium, Swansea on 23rd January 2010 between Ospreys and Leicester Tigers during Round 6 of The Heineken Cup 2009/2010

Members of the Discipline Committee (the Committee):

H Pat Barriscale, Chairman (Ireland)

Jean-Noel Couraud (France)

Mark McParland (Ireland)

Decision of the Committee

1. The Player was guilty of misconduct and is suspended from playing all rugby until 12 midnight on Friday 12th February 2010. This represents a two week suspension commencing on the 29th January 2010;
2. The Club is guilty of misconduct and is fined the sum of €25,000.00 which fine has to be paid on or before the 28th February 2010;
3. The Committee ordered that the ERC's reasonable costs to be paid by the Player and the Club.

Introduction

The Committee was convened by Professor Lorne D. Crerar, the Chairman of the ERC Discipline Panel pursuant to the Discipline Regulations of the ERC in respect of a misconduct complaint made by Mr Roger O'Connor of the ERC. The misconduct complaint against the Player alleged that he entered the playing area (after having received treatment for a blood

injury in the sixty seventh minute of the match) without replacing another player and/or without the referee signalling that he may do so and that that constitutes misconduct.

The misconduct complaint against the Club is that their player re-entered the playing area (after having received treatment for a blood injury in the sixty seventh minute of the match) without replacing another player and/or without the referee signalling that he may do so and that that constitutes misconduct by the Club.

Present at the hearing on the 29th January 2010 in addition to the Members of the Committee were:

Roger O'Connor, Disciplinary Officer, ERC

Max Duthie, Solicitor for ERC

Jamie Herbert, Assistant to Max Duthie

Roger Blyth, Director of Ospreys RFC

Andrew Hoare, Elite Performance Ospreys RFC

Owen Eastwood, Solicitor for the Player and the Club

Peter Tom, Chairman Leicester RFC (part hearing only)

Michael Blood, Solicitor, Leicester RFC (part hearing only)

Hearing

At the commencement of the hearing, the Chairman confirmed the identities of all present and established that the Player and the Club were represented before the Committee in relation to a misconduct complaint. The Chairman outlined the procedures to be adopted by the Committee for the hearing and that the provisions of the ERC Disciplinary Regulations would apply. All present agreed to proceeding on that basis.

The Chairman established that there was no preliminary issues to be argued by any of the parties and narrated the terms of the misconduct complaint. Mr Eastwood on behalf of the Player and the Club indicated that they would be pleading guilty to the charges that were before the Committee.

Thereafter, Mr Duthie on behalf of the ERC took the Committee through the very detailed and extensive investigation report compiled by the Disciplinary Officer in the limited time

available to him since the match had been played. In addition, there was detailed consideration of the video evidence and specifically the video footage which contained the referee's audio link. The Committee were taken through the detailed letter of complaint received from the Chairman of Leicester Mr Peter Tom together with the appended Statements thereto from Matt O'Connor, Paul Burke and Peter Wheeler. It was made clear that any of these witnesses were available to give evidence by way of telephone conference call and that Mr Tom, himself, would be attending for part of the hearing later on. The Committee did not require such evidence from the named witnesses. The Committee considered the remainder of the documentation available to them and at that stage Mr Duthie explained that he would be calling a number of witnesses to give evidence by way of telephone conference call to the hearing.

The first witness was the Player, Lee Byrne, who gave evidence that he was a professional rugby player for eight years and had played not only for his country, Wales, but also for the Lions. When asked if he was aware that he must be called on by the referee, his response that he was not quite sure really. He had come off for a blood injury in the sixty seventh minute, that this was treated and he was cleared by the doctor to go back on the pitch. His coach, Scott Johnson, had spoken to him and said he was to go back on at the next breakdown. He understood from this that he had permission to go back on. When asked by Mr Duthie what other player had come off to allow him back on he suggested that the other player could have gone off at the other side of the pitch but he did not know who it was. He explained that he had been out with injury for the previous ten weeks and that he was most anxious to get back on to the pitch. He stated that it was a pure accident that he went back on the pitch without the appropriate permission and/or protocols being complied with and that whilst he was on the pitch that he had no influence on the play. After he was on for less than one minute, Chris Tower, the Club's Head Physiotherapist was screaming at him to get off the pitch and he came off straightaway. He agreed with Mr Duthie that the integrity of the tournament was affected by his conduct and that he had previously been treated for blood injuries and come back on to the pitch after them. In response to a direct question from the Chairman he said that he did not know that only the referee could allow him back on to the pitch. The Committee were unimpressed with this answer having regard to his extensive rugby experience.

The next witness was Dani Delamere who was a Team Manager with the Club and she gave evidence that she knew that any player could only go on with the permission of the referee.

She stated that she had given the substitution card to reverse the blood injury substitution to Eric Griffiths who was either the fourth or fifth official just prior to the Player actually going back on the pitch. She did not see him go on to the pitch and believed that it happened when she was handing over the substitution card. She heard on her ear piece from Sean Holly, one of the coaches that the Player had gone onto the pitch and she immediately told the fourth and fifth officials and directed them to get him off. In answer to another question from the Chairman she said that she believed that the Player would have known that he could not go back on to the pitch without the permission of the referee.

The next witness by way of telephone conference call was Richard Hughes who was the fourth official on the day of the match. His recollection was that they did not receive the actual blood reversal card from Ms Delamere until it had actually taken place. This was after the Player had gone back onto the pitch and had subsequently come off approximately a minute later. He stated that they were not told by the Club Officials that there was 16 players on the pitch and he said that they were informed of this by the players who brought it to their attention. He said that as far as he was aware no substitution card had been provided to them prior to the Player going back on incorrectly but conceded that there was some possibility it could have been given to the fifth official Mr Griffiths but he didn't think so until the actual blood reversal took place.

The next witness was Mr Dave Pemberton who was the Club Doctor on the day in question who gave evidence that he knew the Player for in excess of 10 years and described him as like a racehorse; highly strung, anxious and on the day desperately keen to get back on to the pitch. He appeared to him to be particularly focused on the match and was irritable whilst off and having his blood injury attended to. He appeared stressed to the doctor but he stated that that was the type of individual that he was in all the period of time that he knew him. Whilst waiting to go back on the pitch, the doctor wasn't sure whether the Player was actually listening to what was being said to him.

The final witness was Mr Scott Johnson, the Club's Director of Coaching who gave evidence from Australia. It was put to him by Mr Duthie that he deliberately sent the Player back on to gain an advantage by having 16 players on the pitch. Mr Johnson took exception to this and said that he found the suggestion offensive. He agreed that he had spoken to the Player and that he told him he was to go back on to the pitch at the next break in play. He assumed that all of the appropriate protocols for getting him back on the pitch would be complied with by

other members of the team management and he moved on to the next coaching decision that he had to make. He said that he had an abhorrence of any type of cheating and that anybody who knew him during his career would never say that he would condone such behaviour in anyway. When they realised that the Player had gone back on without permission, he stated that it was all hands on deck to rectify the situation immediately. He stated that he never suggested to the Assistant Referee that there were 16 Leicester Players on the pitch and could only suggest that Mr David Wilkinson misconstrued what he was saying to him. He was telling Mr Wilkinson that there were 16 Osprey Players on the pitch not Leicester Players.

At this stage, Mr Duthie suggested that the Committee might consider making a number of findings of fact having regard to the evidence which they had before them. He felt that this was particularly important before the Representatives of Leicester made any submission to the Committee in relation to sanction. He urged the Committee to make specific findings of fact so that the Leicester Representatives could target their submissions on sanction having regard to the findings of fact. The Committee retired to consider these suggestions and reconvened approximately 15 minutes later.

At that stage, the Chairman stated that they had indeed made specific findings of fact which were as follows:-

1. That the Player had come on to the pitch without permission and that he knew or ought to have known that he had to have such permission before he re-entered the field of play;
2. That there was a clear breach of the substitution protocol clearly set out in the participation agreement;
3. The presence of the Player on the pitch for a period of less than one minute did not have a material effect on the game;
4. That the Player re-entering the field of play was not a deliberate and/or premeditated tactic on the part of the Club or any of their management personnel.

Mr Duthie requested that he would be allowed communicate these findings of fact to the Leicester Representatives and all agreed to this course of action. The hearing adjourned for a short period whilst this was communicated to them.

When the hearing reconvened, the Representatives from Leicester RFC were invited to attend and make submissions as to sanction having regard to the findings of fact. Mr Blood, Solicitor on behalf of the Club, stated that Leicester was a PLC but was 70% owned by the Members. He said that he was relying on the written submissions he had made in detailed letter to the Disciplinary Officer on the 28th January 2010 which had been available to all Members of the Committee. The essence of his submission was that the Player when he re-entered the pitch was ineligible and the only appropriate sanction was the forfeiture of the match or at the very least that it should be replayed. He accepted that such a sanction was very harsh indeed but that it was the only consistent and appropriate remedy in the circumstances. He gave examples of similar situations in rugby and other sports which had been quoted in his correspondence and suggested that the Committee had power to make such a sanction for good reason under the Disciplinary Rules in the Participation Agreement. He stated that it was appropriate to compensate Leicester for the breach which had been carried out by both the Player and the Club. When asked by the Chairman to differentiate this case from the decision in the Rugby World Cup 2003 made by Mr Brian McLoughlin he endeavoured to do so but not to the satisfaction of the Committee. The Leicester representatives then left the hearing.

The Committee were then addressed in relation to the sanctions initially by Mr Duthie on behalf of the ERC. He said that as far as the Player was concerned, it could be dealt with under either of two headings:-

- a) Foul play – where the normal practice of entry level, aggravating factors and mitigating factors were appropriate; and
- b) Misconduct under 6.7.29 of the Disciplinary Rules.

He stated that if it were to be dealt with under foul play it could be dealt with under a breach of Laws 3.11 (c) or 10.4 (m). If it was a breach of these Laws of The Game then consideration would have to be given to the appropriate criteria thereafter. If the Committee chose to deal with the matter under Misconduct then in the ERC's view, they believed that a fine was probably appropriate in the circumstances.

As far as the Club was concerned there were very wide powers indeed available to the Committee as far as dealing with the misconduct charge against them was concerned. When asked by the Chairman as to what view the ERC held in relation to either the forfeiture of the

match or a replay was concerned, Mr Duthie had a serious reluctance to answer on behalf of the ERC. He said that he would if pressed strongly to do so but would prefer not to. He opened the provisions of Clause 6.7.29 to the Committee as to the powers available to them in relation to sanction.

The Committee were then addressed by Mr Eastwood on behalf of the Club and the Player. He urged that the Player should be given a caution/warning in relation to his conduct. He emphasised that as far as the Player was concerned it was a genuine mistake, he apologised to the Officials after the match and that he offered a plea of guilty at a very early stage. He had co-operated, as had the Club, with the investigation carried out by the Disciplinary Officer in every respect. He said that neither the Player nor the Club had criticised any of the Match Officials at any time which was completely opposite to the position adopted by Leicester who had sought, in correspondence, to question not only the performance of all of the officials but also question the performance of the Disciplinary Officer and his representative as far as not only the investigation was concerned but also as to how the hearing before this Committee should be conducted. He went on to emphasise that the Club had made no statement whatsoever since the incident had occurred which was again completely different to Leicester who had engaged with the media extensively in seeking to put pressure on not only the ERC but the Committee as to how the hearing should be conducted. The matter had been dealt with by the referee on the pitch having been aware of the circumstances. The Player had come off immediately when called upon to do so and not waited for a break in play. He concluded on behalf of the Player by saying that he realised that he had made a mistake and that that was the reason he had pleaded guilty in the circumstances. On behalf of the Club he acknowledged that there was a significant breach of the substitution protocols which should not have happened and equally that was why they pleaded guilty. He asked for leniency on behalf of both of his clients in conclusion.

Mr Duthie concluded the proceedings by stating that as was standard in this type of situation that on behalf of the ERC they were looking for their costs of the hearing. He suggested in the circumstances that these costs would not be significant particularly as there was a guilty plea at directions stage.

The Committee retired to consider their position and returned sometime later with their decision which was as follows:-

1. They were satisfied that the Player was guilty of misconduct in that he entered the field of play without the permission of the referee and that he knew or ought to have known that he could not do so without the permission of the referee. They did not accept his explanation that he wasn't sure or didn't know that he needed the permission of the referee particularly having regard to the fact that he was eight years as a professional rugby player and involved in rugby all his life. He was suspended from all rugby for a period of two weeks from the date of the hearing to expire at 12 midnight on Friday 12th February 2010.
2. As far as the Club was concerned there was a serious breach of the substitution protocol attached to the participation agreement and that the Club were responsible for the same. They were aware that the Player was a highly strung/semi volatile individual and did not exercise the appropriate control, education and/or monitoring over him in the circumstances. The Club was fined €25,000.00 for this breach and the payment of the fine to be made before the 28th February 2010;
3. The reasonable costs of the ERC as far as the hearing was concerned were to be borne by both the Player and the Club equally.

Right of Appeal

Both the Player and the Club were reminded by the Chairman of the Committee of their right to appeal this decision pursuant to the Disciplinary Rules of the Participation Agreement.

Signed:

H. Pat Barriscale
Chairman

Dated:

1st February 2010