

DECISION OF THE INDEPENDENT JUDICIAL OFFICER

ERC

Held at Huguenot House, St. Stephen's Green, Dublin

Wednesday, 13th October 2010, 3.30 p.m.

In respect of

Jonny Fa'amatuainu of Llanelli Scarlets ("the Player")

And

A citing in respect of **an allegation of dangerous high and late tackling in contravention of Law 10(4)(e)**

The Judicial Officer appointed to hear the case :

Antony M. Davies (England) ("the Judicial Officer")

Decision of the Judicial Officer :

- (i) The Player did not contest the citing complaint brought against him. The Judicial Officer found that the Player had committed the act of illegal and/or Foul Play alleged in the citing complaint.
- (ii) The Player did not agree that the act of illegal and/or Foul Play merited a "red card". The Judicial Officer was however 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 3rd November 2010. This represents a three week suspension commencing on 13th October 2010.
- (iv) The Judicial Officer made an award of costs against the Player representing his proportionate share of the hearing costs.

Introduction

The Judicial Officer was appointed by Professor Lorne D. Crerar, Chairman of the ERC's independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2010/2011. The Judicial Officer was appointed to consider the citing complaint ("the Complaint") against the Player in the match played between Llanelli Scarlets and Perpignan on Saturday, 9th October 2010, in the Heineken Cup 2010/2011.

Maurizio Vancini was appointed Citing Commissioner to this match and had cited the Player for a dangerous tackle in contravention of Law 10(4)(e).

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

- Mr. Roger O'Connor, Disciplinary Officer, ERC
- Jonny Fa'amatuainu (the Player)
- Garan Evans (Team Manager, Llanelli Scarlets)

Preliminary matters and procedure

At the commencement of the hearing the Judicial Officer noted the identities of all present and narrated the Complaint reminding the Player that the Complaint was in respect of an allegation that the Player had committed an act of illegal and/or foul play by tackling an opponent dangerously in contravention of Law 10(4)(e).

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2010/2011 ("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 proceeding 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. There was no such evidence.

The Judicial Officer noted the terms of the parties' responses to the Standing Directions.

The Judicial Officer invited the Player and Disciplinary Officer to confirm whether or not they had any preliminary issues that they wished to raise. There were no such issues.

The Judicial Officer raised one preliminary matter with the Player and the Disciplinary Officer. Having read the Citing Commissioner's description and viewed DVD footage of the incident, the Judicial Officer considered whether or not a charge of dangerous charging contrary to Law 10(4)(g) would have been more appropriate. The Law reference specifies "A player must not charge or knock down an opponent carrying the ball without trying to grasp that player". The Player maintained that he had been attempting to make a tackle and that when the evidence was considered in detail there would be sufficient to conclude that this was an offence of tackling, not charging. The Judicial Officer proposed to hear the evidence and then make a determination on the matter. The Disciplinary Officer and the Player had no objection to this proposed course of action.

Plea

The Player confirmed that he accepted he had committed the act of illegal and/or Foul Play alleged in the Complaint but indicated that he intended to argue that there should be no sanction on the grounds that the act did not merit a "red card".

In the light of the Player's admission, the Judicial Officer confirmed that he intended to hear evidence from the Disciplinary Officer as to the nature and seriousness of the offending behaviour followed by the Player's evidence and submissions. The parties would have the opportunity of questioning the other and making final submissions at the conclusion of which the Judicial Officer would make his decision.

Evidence in support of the Complaint

The Disciplinary Officer referred the Judicial Officer to the written Citing Complaint form compiled by the Citing Commissioner, Maurizio Vancini. The incident occurred in the second half on 66 minutes on the match video. The Player was wearing 19, having come on shortly beforehand as a substitute. The Player had carried out a strong impact tackle, which was late and high, during a phase of open play. He had used part of the

shoulder and left arm to hit dangerously the neck and ear area of the other player, who then fell heavily to the ground. The Player was immediately sanctioned with a penalty kick and yellow card. Perpignan No. 14 was assisted and returned to play the last part of the game. After the match, the Citing Commissioner spoke with the Match Referee, Mr. Andrew Small, about the facts. Mr. Small had formed his opinion immediately that the tackle was dangerous and had proceeded to sanction it with a yellow card. The Citing Officer's report concluded with confirmation that the Player did not require medical attention on or off the field. The Judicial Officer considered the Referee's report, which was given separately. Mr. Small confirmed that he had reviewed the matter with his Assistant Referees, neither of whom had seen the incident clearly. He confirmed a clear view of the incident wherein he saw the Player "shoulder charge" into an opponent. He stated that he did not use his arms to grasp in the tackle and the shoulder charge was also high. He had no other information to add.

The Disciplinary Officer then referred the Judicial Officer to a DVD of the incident. A number of different angles were shown and the incident is depicted graphically and clearly in each. Perpignan are in possession of the ball in open play. The ball is passed to Perpignan No. 14. His outside channel is checked by a Scarlets defender. He looks to come back inside. As he does so, the Player is approaching him from behind and to his left. The Player does not lift his arms to make a tackle, but instead drives his right shoulder into the left side neck and ear area with considerable force. Perpignan 14 is knocked sideways with some force and to the ground, but fortunately does not suffer injury. The Disciplinary Officer was not alleging that the tackle was late, but it was high – to the neck and head – and there was a very limited effort to grasp the victim player in any way which might have resembled a proper tackle. The Referee blew up immediately and awarded a yellow card. Whilst awarding the card, he was heard to say "No arms".

The Disciplinary Officer referred to Regulation 6.4.3 whereby a citing can still be made out even where a yellow card is awarded and it is not necessary to prove that the Referee's reasons for awarding the yellow card were wrong. The Referee had to make an instantaneous decision, having seen the contact in real time from one angle only.

The Disciplinary Officer put forward his submissions as to entry point. He also referred to a perceived preponderance of tackles of this nature prevalent in the game worldwide. He reminded the Judicial Officer that a sanction below low entry point would need an absence of aggravating features and compelling mitigating features.

The Player's case

The Player had responded to Standing Directions, accepting the Citing Complaint, and confirming that the tackle did warrant the awarding of the yellow card. The Player accepted the tackle was high but could not be late as the tackled player was still in possession of the ball. The Player gave oral evidence. He confirmed that he had only been on the field a few minutes and was very keen to make an impact in the time remaining in the game. The opponents were a French team, who were perceived to have a significant advantage if they were able to off-load the ball in the tackle situation. His Club had called two training sessions during the previous week and had spent much time changing the height at which they would make contact with opponents to increase their chances of locking the ball in the tackle and preventing it being released. Consequently, the contact points were higher as the intent was to wrap up the ball on contact.

The Player drew the Judicial Officer's attention to the tackle he had made immediately prior to the one for which he received the yellow card. He had run quickly from his defensive line and had attempted to tackle the opponent ball carrier round the chest area. He made a perfectly legitimate contact but unfortunately was too late in that the ball had already been released to Perpignan 14. He was chasing back at speed to fill the hole he had left in the defensive line. He accepted he had misjudged his tackle and that it was a reckless contact. He conceded the Referee was right to have awarded a yellow card for it.

In response to the Judicial Officer's questions, he confirmed that the height at which contact would be made was changed specifically for this game. He was at full pace and was unable to pull out of the contact. He maintained that he was making a genuine attempt at a tackle and pointed to his right arm coming up at the time of the contact between his shoulder and the head/neck of Perpignan 14 and his left arm rising after that contact, albeit somewhat belatedly. He confirmed the contact was with considerable force and knocked the opponent sideways and onto the ground. Asked about the

position of his head, he confirmed that he had pulled this back and to the right so that he himself did not get injured in the contact and to ensure that his shoulder engaged first with the opponent. In his own words, the tackle “came out real bad”.

The Player plays in the back row. He has represented Samoa at both 7’s and 15 a side, with 14 Caps. He has had 5 years in the Premiership in England and is in his first year with Scarlets. He has been playing rugby 6 years in Europe and prior to that played basketball. He has one previous yellow card only for a technical offence. After the game, he spoke to a Samoan colleague who plays at Perpignan to enquire as to whether the opponent was injured, and had asked for his expressions of remorse to be passed on.

The Judicial Officer requested final submissions from both parties.

Decision as to disposal

The Judicial Officer upheld the Complaint on the basis of the evidence heard and the Player’s admission. The Judicial Officer considered that the citing was properly brought under Law 10(4)(e) as there had been some attempt to raise the player’s arms, albeit somewhat belatedly. The Judicial Officer went on to hear representations as to sanction.

The Judicial Officer retired to deliberate in private in respect of what, if any, sanction would be appropriate in the circumstances. In this regard, 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.

Match Officials do not have the luxury of time and opportunity to analyse closely and carefully each of the thousands of incidents during a game upon which they must make an immediate assessment and decision. Referees have a number of specific game management considerations when making split second decisions in relation to the appropriate on-field sanction. The Citing Commissioner applies an objective test addressing the incident in question, and the Judicial Officer does the same. The exacerbating features of this contact when seen from a number of different angles, and particularly from the ground level angle front on to the victim player, include the following ; the speed of closure, the intentional targeting of the chest/upper body, the

force of the contact and that it is first with shoulder into the head/neck area of the victim player, the force with which the victim player is knocked sideways to the ground and his being unable to do anything about the contact because he could not see it coming and to that extent was vulnerable. The attempt to make this a legitimate safe tackle was so woefully inadequate that had the Match Official the same luxury as the Citing Commissioner and Judicial Officer, he would have concluded that a red card was the appropriate sanction.

The Judicial Officer noted that the offence of dangerous tackling in contravention of Law 10(4)(e) was listed within the IRB Recommended Sanctions for Offences Within the Playing Enclosure (found at Appendix Three of the Disciplinary Rules) as follows:

- Lower End – 2 weeks
- Mid Range – 6 weeks
- Top End – 10 + weeks
- Maximum Sanction – 52

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 :-

- The offending was reckless and grossly so, to the extent that much of it was barely recognisable as a tackle
- Considerable speed and force was applied to the side of the head/neck area of the victim player
- The victim player was vulnerable in that he would not have seen the contact coming or been in a position to do anything about it or mitigate its effect.
- There was no provocation
- The victim player did not appear injured and was able to complete the game
- The act was completed
- The Judicial Officer is entitled to take into account any other feature of the Player's conduct that constitutes the offending in relation to on-field issues pursuant to DR 6.7.32(i). The Judicial Officer is concerned that the Player was coached specifically to carry out the targeting of the upper body as a game tactic

for this particular match. This type of tackle is inherently dangerous because it carries with it a real risk of serious injury. The higher up on the opponent's body the point of contact is made, the less margin there is for error. The risk of the tackle becoming dangerous rests firmly on the player carrying it out. It is not for the Judicial Officer to apportion blame between the Player and his Coach, but to deal with the incident as it appears to him.

In the light of these matters, the Judicial Officer determined that the appropriate entry point for this matter was **Mid Range**, giving an entry point of six weeks' suspension

The Judicial Officer then considered the "off-field" issues and in doing so looked at whether there were any "aggravating" or "mitigating" factors.

The Judicial Officer concluded there were no off-field aggravating factors but that the following off-field mitigating factors should be taken into account in determining the appropriate period of suspension:-

- The Player had acknowledged his culpability from the outset. His response to the directions and his conduct at the hearing had been good. The Player has an exemplary record
- The Player showed some remorse by making enquiries and apologising through a team mate

On account of the above off-field mitigating factors, a period of three weeks was to be deducted.

In all of the circumstances, the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of 3 weeks commencing on 13th October 2010 and ending on 3rd November 2010, inclusive.

The Player and the Disciplinary Officer are reminded that DR 7.1.1 provides for a right of appeal against this decision.

Costs

The Disciplinary Officer's request for costs was granted, these being the proportionate cost (apportioned with other cases) of the administration of the disciplinary process but do not include legal costs as there were none.

.....*Antony M. Davies*.....

Antony M. Davies

Judicial Officer

15th October 2010