

Decision of the Independent Judicial Officer

ERC

Held at Guildhall Chambers, 23 Broad Street, Bristol and by telephone conference call

On 22nd December 2010

In respect of

Xavier Rush, Cardiff Blues (“the Player”)

And

The award of a red card for a dangerous tackle in the match between Cardiff Blues – v- Northampton Saints at Cardiff on 19 December 2010

Judicial Officer appointed to hear the case:

Christopher Quinlan, England (“the Judicial Officer”)

Decision of the Judicial Officer:

- (i) The Player did not challenge the referee’s decision to order him off.
- (ii) The Player was suspended from taking part in the game of rugby up to and including 27 December 2010. This represents a one week suspension. The Player is free to play again on or after 28 December 2010;
- (iii) The Judicial Officer made no order for 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 Ordering Off of the Player in the match played between Cardiff Blues and Northampton Saints on 19 December 2010 in the Heineken Cup 2010/2011. Jérôme Garces was appointed as referee to this match and had ordered the Player off for a dangerous tackle above the line of the shoulders contrary to 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 (by telephone conference call)
- Mr Max Duthie, Counsel for ERC (by telephone conference call)
- The Player
- Mr Robert Norster, Chief Executive, Cardiff Blues

The Player complied with the standard pre-hearing directions. The available evidence was served timeously. The procedure to be followed at the hearing was explained to the Player and to Mr Norster; both understood. The Player did not raise any preliminary matters.

The Judicial Officer reviewed the Ordering Off, including the referee's reasons, in accordance with Disciplinary Rule 6.2.2. In advance of the hearing and by email sent at 15.57 on 21 December Mr Norster indicated on the Player's behalf that he accepted the tackle was dangerous and would not be contesting the Ordering Off. At the start of the hearing, the Player confirmed that he accepted the Referee's report as a true and accurate account of the incident and he further accepted that he should have been Ordered Off.

Evidence supporting Ordering Off

The agreed Ordering Off report stated:

"55 minutes of the game, the number 8 from CARDIFF tackled above the line of the shoulders the No 4 from NORTHAMPTON. It was a dangerous tackle and after the touch judge report, I decided to put [sic] a red card for this reason."

The agreed report from the touch judge with whom the referee consulted (Patrick Péchambert) read:

“53 minutes of the game, the number 8 CARDIFF (Rush Xavier) tackled high and dangerously the number 4 NORTHAMPTON, I was about twenty meters [sic]. When I saw the tackle, I use immediately my flag to report Jerome my view. He stopped the game and came to me. He told me ‘I saw a dangerous tackle’. I told him ‘yes it was a dangerous high tackle and violent’. After my report, Jerome decided to give a red card and I agree with his decision”.

Three DVD clips of the incident were available. They showed the incident at full speed, in slow motion and from a distance and in close-up. The various clips were from essentially two angles: one from an angle parallel to, elevated and slightly behind the attacking side (Northampton Saints) and the other from behind the defending team (Cardiff Blues). First, the DVD footage of the incident from the elevated position at an angle slightly behind the attacking side (Northampton Saints). Northampton recycled the ball in the Cardiff 22, and it was passed to the outside-half (Myler). Almost immediately he passed it to his left to the Northampton 4, Courtney Lawes, who was moving forwards. As Myler shaped to pass, the Player advanced at speed out of the Cardiff defensive line. Almost as soon as Lawes received the pass, he was hit high by the Player’s left arm and sent crashing backwards and down to the ground.

The view from behind the defensive team (the reverse angle) was closer to ground level. This angle was very informative. It showed the Player advancing quickly towards Lawes. As Lawes took the ball, the Player was but a stride or two away. Immediately he tackled him; his right arm out towards Lawes’s right hand side. His left arm swung across and towards Lawes; his left upper arm made contact with Lawes’s throat/lower face. Lawes crumpled to the ground. Of significance is that this angle showed that Lawes received the ball moving forward; ball in hand he took a large stride forward with his left leg. As he did so, and immediately before contact (but whilst Rush was in the act of tackling him), Lawes, either in anticipation of the tackle and/or because he slipped, dropped down such that his right leg was bent at the knee, and the said knee was a very short distance from the ground. This had the obvious effect of reducing his height and so lowering his head. Lawes continued downwards as contact was made by the Player’s upper right arm to the area of his throat/lower face and he crumpled down to the ground. At the moment of first contact, both of the Player’s feet were touching the ground; they go off as he goes through with the tackle.

The referee blew his whistle and play stopped. There was something of a reaction from a number of the Northampton players but calm was very soon restored. Lawes was attended by a member of the Northampton Saints' staff but very soon was sitting up. The referee consulted with the relevant touch judge and sent off the Player.

The material part of an email from Paul Shields, Northampton Saints Team Manager sent to Mr Roger O'Connor at 13.21 21 December read, "Courtney suffered no injuries as a result of the tackle from Rush".

The Player's Case

The Player accepted that the tackle was dangerous. Both in writing before and orally during the hearing he stated his conduct was reckless. Northampton Saints had a five-two overlap and for that reason the Player ran out of the defensive line, intent on making a "ball and all tackle"; the purpose was to envelop Lawes to prevent the ball being offloaded. His intention was to go high (to prevent the pass) but not above the line of the shoulders. Speed was of the essence otherwise the moment would have been lost. Both the Player and Mr Norster accepted the tackle looked "ugly" (something of an understatement) but urged careful analysis of the reverse angle. They agreed with my analysis of it, as set out above. The Player accepted the tackle was not "performed as intended" and that he was reckless in its execution and accordingly the tackle was (in that context) dangerous. He insisted that he did not intend to make contact where he did and did not intend to injure the opposing player.

Submissions on Sanction

On behalf of the ERC, Mr Duthie did not make any specific submissions on sanction. However, and with conspicuous fairness, he invited me to have regard to two specific features of the incident. First, the ERC submission was that this tackle was, as Mr Duthie put it, "very nearly the perfect legal tackle" by which he meant that had been a fraction earlier he would have tackled Lawes at the moment he received the ball. Second, he said that the ERC was "not advancing that Mr Rush was intending to make a high tackle". He observed that it was more likely that he was intending to make a lawful tackle.

Mr Duthie also reminded me of the observations of the Judicial Officer (Antony Davies) in *Jonny Fa'amatua'inu*, 13 October 2010 who when dealing with a citing for a dangerous tackle contrary to law 10(4)(e) said:

“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”.

With those observations I entirely agree.

Mr Norster said the Player did not intend to execute the tackle dangerously and was reckless. He prayed in aid the Player’s impressive playing career and disciplinary record: he has played in the back row at the highest level for many years is not a “dirty player”. The Player said he apologised to Lawes after the game and repeated those sentiments.

Decision as to Sanction

I first made an assessment of the seriousness of the offending by reference to Disciplinary Rule 6.7.32. I determined (on the balance of probabilities) that:

- a) The offending was not deliberate: upon my assessment of the evidence, the Player did not intend to tackle Lawes above the line of his shoulders. I was satisfied he was attempting to effect a “ball and all” tackle, namely to wrap up Lawes such that he was not able to offload the ball. I was satisfied that he was aiming for an area below the line of the shoulders. However executing a tackle in that way - at that height and at that speed – leaves very little margin for error. As he accepted (rightly, in my judgment) executing a tackle like that carries with it the risk of committing an act of foul play, namely an illegal and dangerous tackle. His conduct was reckless.
- b) As for the gravity of the Player’s action, contact was made in the way described hereinbefore; there was no provocation.
- c) The effect of the action was that Lawes appeared a touch discombobulated following and as a result of the tackle, but was very soon sitting and played on. He did not suffer any injury.
- d) The act of foul play had a modest and short lived effect on the game: there was an immediate reaction from a small number of players.

- e) Lawes was not vulnerable.
- f) There was no premeditation, but it was a completed act.

This case is factually different from *Jonny Fa'amatuinu*. Of note in that case was the Judicial Officer's categorisation of the offending act as "reckless and grossly so, to the extent that much of it was barely recognisable as a tackle". There is readily understandable when one looks at the Judicial Officer's description of the incident where that player did not lift his arms to tackle, but rather "drives his right shoulder into the left side neck and ear area with considerable force". The ERC relied on *Jonny Fa'amatuinu* for the principle set out above and not for any factual similarity between that and the instant case. I agreed with that approach.

Had I concluded this was an intentionally high tackle I would have little hesitation in concluding it merited at least a mid-range entry point. However, the reverse angle view led me to be satisfied this was (1) a reckless act and (2) contact was made in the place it was (Lawes's throat/lower face) not intentionally but because his height dropped at that crucial moment, as the Player was in the act of tackling, too late for him to alter his course and (3) the Player did not intend to and did not injure Lawes. In light of those features and all of the other factors set out above, **I categorised the offence as being at the lower end of the scale of seriousness**. Accordingly the entry point was a suspension of two weeks.

There are no aggravating features in this case *per* Regulation 6.7.34.

There was an abundance of mitigation *per* Regulation 6.7.35:

- a) The Player acknowledged his culpability in advance of the hearing
- b) He has played the Game at the highest level (including eight New Zealand caps) for fourteen years and only ever received a single yellow card. He is rightly entitled to categorise that as an exemplary disciplinary record.
- c) His conduct before and at the hearing could not be improved upon.
- d) His remorse was accepted as genuine.

His age and experience did not add to the sum of the other mitigation. I considered whether this was a case where I might properly exercise the power in Regulation 6.7.36. I resolved

that it was not. In those circumstances I reduced the sanction from the entry point by one week.

The result was a suspension for one week. He was sent off on 19 December and immediately ineligible to play. A period of seven days from that date would mean he would have completed his suspension before Cardiff Blues next game, scheduled for the 27 December. Accordingly and so the suspension has a meaningful playing consequence (*per* Regulation 6.7.44) I suspended the Player up to and including the 27 December 2010. **He may play again on or after 28 December 2010.**

Right of Appeal

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

Costs

The ERC did not apply for costs and accordingly no order was made.



Christopher Quinlan
Judicial Officer

24th December 2010