

EUROPEAN RUGBY CUP
DECISION OF JUDICIAL OFFICER
HELD AT
BUSWELLS HOTEL, MOLESWORTH STREET, DUBLIN 2, IRELAND
ON
TUESDAY THE 2ND FEBRUARY 2010

IN RESPECT OF:

JEROME THION ("the Player")

AND

A citing complaint that the Player's actions breached Law 10.4.(a) of the Laws of the Game.

JUDICIAL OFFICER:

Mark McParland (IRFU)

DECISION OF JUDICIAL OFFICER:-

- 1) The Judicial Officer was not satisfied that the Player committed the alleged act of foul play, namely striking contrary to Law 10.4(a)

- 2) The citing complaint was dismissed

INTRODUCTION

This disciplinary hearing was convened by Professor Lorne D. Crerar, the Chairman of the ERC Disciplinary Panel, pursuant to the Disciplinary Rules of the Heineken Cup 2009/2010 in respect of a citing complaint made by John Byett, the appointed Citing Commissioner for the match between Biarritz Olympique (Biarritz) and Glasgow Warriors (Glasgow) in the 2009/2010 Heineken Cup on Sunday the 24th January 2010 at Parc des Sport Aguilera (the "Match").

The citing complaint alleged that the Player punched the Glasgow No.4, Richie Gray (Mr Gray) in the face in the twelfth minute of the first half of the game contrary to Law 10.4(a).

Present at the hearing, in addition to the Judicial Officer, were:

Roger O'Connor (Disciplinary Officer, ERC)

Jerome Thion (the Player)

Serge Blanco (President of Biarritz)

John O'Donnell S.C. (Counsel for Biarritz)

HEARING

Introduction and Preliminaries

At the commencement of the hearing, the Judicial Officer confirmed the identities of all present and established that the Player was before the Committee to answer a complaint by the Disciplinary Officer pursuant to a citing arising out of the match.

The Judicial Officer confirmed that all present had in their possession all relevant written materials and video coverage of the incident which had been provided to the Judicial Officer in connection with the citing complaint. Mr O'Donnell stated that the Player had not received the Statements of Mr Gray or Dr Gerry Haggerty until the previous day but acknowledged that he had received same more than twenty-four hours prior to the commencement of the hearing and that the Player was not prejudiced.

CITING COMPLAINT

The Judicial Officer stated that it was unclear from the Player's response as to whether he was admitting the citing or contesting same. Mr O'Donnell stated that the Player was contesting the citing and denied committing an act of foul play.

THE EVIDENCE

1. The Citing Report
2. Match Officials Statement

3. Mr Gray's Statement

4. Dr Haggerty's Statement

5. DVD Clips (2)

The Judicial Officer considered the Citing Complaint Form of John Byett in which he cited the Player under Law 10.4(a) for striking another player with a hand, arm or fist. In Mr Byett's Report, he detailed an incident that occurred on the twelfth minute of the first half of the match where from a lineout on the Glasgow 22 metre line, the ball was thrown long by Biarritz. The ball was caught by a Glasgow forward at the back of the lineout. He was tackled by the Player. The Player got up from the tackle at which time he was on the Glasgow side. As he did so, Mr Gray came across and grabbed the Player by the shirt at the shoulders and pulled the Player out of the way. As the Player got up he punched Mr Gray in the face. Mr Byett stated that he was convinced the punch was intentional to the area of the face and as a result he decided to cite the Player.

None of the Match Officials, including the Match Commissioner, saw the incident.

Mr Gray, in his statement, said that whilst on route to a ruck, he pulled the Player who he believed to be in the way and lying in an offside position preventing a quick release of the ball – the Player was on the floor when Mr Gray pulled him. As he got to his feet "I received a punch to the face from him".

Dr Gerry Haggerty confirmed that he treated Mr Gray after approximately twelve minutes play, when Mr Gray indicated to him that he had been punched in the face by an opposing player. Dr Haggerty confirmed that Mr Gray had blood flowing from both his nostrils with tenderness over his basal bridge. Having treated him, it became apparent that he was showing some after effects of the injury and following an examination at half time, he formed the view that Mr Gray had signs and symptoms of a concussion whereupon he was substituted at half time. Dr Haggerty went on to state that Mr Gray became unwell on the flight home. He was treated with oxygen on the flight and admitted overnight to a local hospital in Glasgow following which a CT Scan was conducted and he was discharged the following day.

DVD Evidence

The Disciplinary Officer indicated that there were two clips of the incident.

In the first clip, which was taken from a camera which appeared to be located in the Grandstand some distance from the incident, it was noted that the Glasgow No.7 caught the ball at the back of a lineout following which he was tackled by the Player. The Player was noted to be on the Glasgow side of the tackle getting to his feet. Mr Gray attempted to join the ensuing ruck and being partially blocked by the Player, sought to pull him away. The Disciplinary Officer indicated the Player's right hand or arm making contact with Mr Gray following which Mr Gray fell to the ground. There was no other angle shown of the incident. The second clip showed Mr Gray receiving treatment from Dr Haggerty at the next stop in play.

The Player's Case

The Player gave evidence that he tackled the Glasgow No.7 at the back of the lineout. He sought to roll away from the tackle and get to his feet to join his defensive line as quickly as possible. As he was trying to get up, he was grasped by the back of his shirt and headgear with his face pointing to the ground. In attempting to free himself, he lifted his right hand and accepts that the back of his wrist made contact with Mr Gray's face. Throughout this action, his head was down facing the ground while he was attempting to get to his feet and he did not see Mr Gray's face nor could he identify the opponent who was holding him. He said it was a spontaneous response where he was being grasped, not just by the back of his shirt but also by his headgear and that he had no intention of striking Mr Gray or any opponent, his efforts being concentrated on getting to his feet and rejoining his defensive line.

The Player acknowledged that he had made contact with an opponent but was unaware until he reviewed the citing complaint and the DVD as to which opponent or what part of that opponent, he had made contact with.

The Player accepted that when one viewed the incident frame by frame, it looked bad. He pointed to the fact that from making the tackle to being released from Mr Gray's grip, occurred very quickly, in a period of slightly more than one second. He repeated that his actions were solely to release himself from the arms holding his jersey and headgear and that it was solely a spur of the moment reflex action.

The Player stated that there was no trouble, tension or friction in the game either before the incident or afterwards. Biarritz were already qualified for the knockout stages of the competition. No warnings were given to either team. None of the Officials saw the incident other than the Citing Commissioner and when the incident occurred there was

no expression of outrage either from the Glasgow Team or from the Scottish Supporters in the crowd. He stated that Mr Gray stayed on the pitch and did not go off for a blood substitution nor did Mr Gray complain to Match Officials. He said there was no complaint to the Match Officials from the Glasgow Captain and after the game all parties shook hands and both teams attended a post-match reception at which there was no bad feeling nor was any reference whatsoever made to the incident. His first knowledge of the citing was when he received the citing complaint on the Tuesday following the match.

He stated that he had been playing as a professional rugby player for a period of ten years in the French Top 14 and in ERC competitions. He was the Captain of Biarritz and he had 47 caps for France. In his rugby playing career he had never received either a red or yellow card nor had he ever been cited previously.

Mr Blanco referred to the fact that the Player was the tackler of the Glasgow backrow and that he was making an action to move away from the tackle when Mr Gray took a hold of him. He was clearly not offside. He also referred to the fact that there would be an automatic reaction from any player whose helmet or headgear was being interfered with.

SUBMISSIONS

Mr O'Connor referred to the citing and particularly to the fact that the Citing Commissioner carefully reviewed the footage before deciding that the Player's action constituted a deliberate punch to the face. He stated that it was not for him to prove intent and that it was sufficient to show the player's action could have been reckless. The Statements of Mr Gray and Dr Haggerty clearly showed that Mr Gray suffered injury as a result of the Player's action and the video evidence showed that Mr Gray went to the ground immediately after the punch. Mr O'Connor emphasised the independent function of the Citing Commissioner and stated that the Player's action was reckless, if not intentional.

Mr O'Donnell submitted that contact between the Player and Mr Gray was accidental in a situation where following a tackle the Player was trying to come to an upward position in a situation where he was not causing an obstruction but rather trying to move away from where the tackle was completed. He pointed to the fact that neither Mr Gray nor Dr Haggerty's Statements made any reference to intent and indeed there was no Glasgow Statement to such effect during the game, in the aftermath of the game, or

before the citing was made. He stated the Player's action was an involuntary reflex action which was totally unintentional and made without the requisite lack of care to establish recklessness. He suggested recklessness involved knowledge of the risk of injury and being indifferent to the outcome of the Player's action.

THE DECISION

Rule 6.7.11 of the ERC European Rugby Cup 2009/2010 states;

"In a citing case, the burden shall be on the Disciplinary Officer to prove, on the balance of probabilities, that the person cited committed the act(s) of foul play specified in the complaint....."

On an initial viewing of the DVD and indeed having reviewed same, it appears to me that it was appropriate and proper that the citing against the player be brought. The video footage clearly shows contact, albeit brief, between the Player's right hand, arm or fist with Mr Gray. In the absence of the Player's account, it is wholly appropriate that the citing complaint be made.

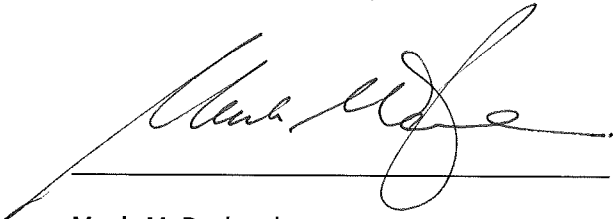
With the benefit of the Player's account given in a frank and forthright manner and tested in cross examination by Mr O'Connor and in direct questioning from me, I am of the view that the Player's evidence constituted a plausible explanation of the incident. In coming to this view, I am influenced by a number of factors. I accept that the Player was attempting to get to his feet having rolled away from the tackle which he made on the Glasgow back row player. I am of the view that at the time of the incident the Player was still raising himself to an upright position and that when contact was made with Mr Gray his eyes were facing downward towards the ground. While the DVD footage is not wholly conclusive, I accept the Player's evidence that he was being held, not just by the back of his jersey, but also by his headgear. The Player gave evidence that the contact with Mr Gray was with the back of his right wrist and not with his fist or in any form of punching motion. The DVD footage was not clear enough to disprove the Player's account. There was no tension or friction in the game either as a result of the incident, before same or for the rest of the game, or indeed afterwards at the post-match reception.

Having considered all the above facts and in particular the Player's explanation and playing record, I am not satisfied that, on the balance of probabilities, the Player committed an act of illegal or foul play and accordingly I dismiss the citing. In doing so,

I reiterate that it was wholly proper and appropriate that this citing was brought and I commend the Citing Commissioner for doing so

CONCLUSION

I am not satisfied on the balance of probability that the Player concerned committed the alleged act of foul play that was the subject of this citing complaint. Accordingly I dismiss the citing complaint.

A handwritten signature in black ink, appearing to read 'Mark McParland', is written over a solid horizontal line. The signature is fluid and cursive, with a large loop at the end.

Mark McParland

Judiciary Officer

Dated: 3rd February 2010