

# Decision of the Independent Judicial Officer

ERC

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

Wednesday 13<sup>th</sup> October 2010

In respect of

**Jamie Cudmore of Clermont Auvergne ("the Player")**

And

A citing in respect of an allegation that **the Player had been guilty of an offence contrary to Law 10.4 (b) of the Laws of Rugby Union (stamping or trampling on an opponent) and/or Law 10.4 (c) (kicking an opponent)**

Judicial Officer appointed to hear the case:

**Simon Thomas, Wales ("the Judicial Officer")**

## **Decision of the Judicial Officer:**

- (i) The Player contested in part the citing complaint brought against him. The Judicial Officer however found that the Player had committed an act of illegal and/or foul play as alleged in the citing complaint in that he had been guilty of an offence contrary to Law 10.4 (b) stamping on an opponent.
- (ii) The Player is suspended from taking part in the game of rugby union up to and including Sunday 19<sup>th</sup> December 2010. He is free to play on Monday 20<sup>th</sup> December 2010. This represents a 10 week suspension commencing on 13<sup>th</sup> October 2010.
- (iii) The Judicial Officer made an award of costs against the Player in the sum of €250 to be paid in 28 days.

## Introduction:

1. 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 Clermont Auvergne and Saracens on 9<sup>th</sup> October 2010 in the Heineken Cup 2010/2011.
2. Mr Murray Whyte (IRFU) was appointed as Citing Commissioner to this match and had cited the Player for offences contrary to Law 10.4 (b) - stamping or trampling on an opponent and/or 10.4 (c) - kicking an opponent.
3. Present at the hearing in addition to the Judicial Officer were the following persons:-
  - (a) Mr Roger O'Connor - Disciplinary Officer, ERC.
  - (b) Mr Jamie Cudmore ("the Player").

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## Preliminary Matters and Procedure:

4. 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 been guilty of an offence of either stamping or trampling on an opponent contrary to Law 10.4 (b) and/or kicking an opponent contrary to Law 10.4 (c).
5. 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 Mr O'Connor agreed to proceed on that basis.
6. 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. The evidence for consideration was as follows:-
  - (a) The citing report of Mr Murray Whyte.
  - (b) A signed statement from Mr Jacques Burger the player who sustained an injury due to the alleged offence.
  - (c) The statement of Dr Ademola Adejuwon, the Saracens doctor.
  - (d) The statement of Deon Carstens of Saracens RFC.
  - (e) The statement from the referee Peter Allan.

- (f) The statement from the assistant referee Jonathan Mason.
- (g) The statement of the assistant referee Hugh Watkins.
- (h) Six photographs of the injury to Mr Burger.

7. The Judicial Officer noted the terms of the parties' responses to the standing directions found at appendix 6 of the Disciplinary Rules ("the Directions") as follows:-

(a) The Player's response to the directions was:-

- a. That he confirmed he was the player named in the citing complaint.
- b. That he will not argue any preliminary matters.
- c. That the citing complaint was a true and accurate account of the incident that resulted in the citing.
- d. That he accepts that having viewed the video the incident could have been viewed as foul play.
- e. That on the basis that the incident was accidental, he did not feel that a red card would have been appropriate.
- f. It was only after having reviewed the video that the Player had a clearer picture of what happened. He stated as follows:-

*"Essentially my memory of the incident before reviewing the video clip this morning was that I rejoined a retreating maul in a defensive position where Saracens were advancing. In my efforts to halt this movement, I was trying to gain some kind of positive foothold to stop the momentum. The maul then broke up and I fell to the ground with one or two of the Saracens players. It was clear by their reaction that they felt that something had occurred, but also by my reaction that I was surprised by this. I do not contest that there was contact between my foot and the side of Mr Burger's face, but I do strongly contest any accusation that this was a deliberate stamp. I feel that this is borne out in the video clips that were forwarded to the club and I spoke to Mr Burger after the game to reiterate this and see if he was ok. (I additionally sent him a letter on Sunday, wishing him well)".*

- g. That he will attend the hearing on his own and would not have any representation.

8. The Judicial Officer's response to the Directions confirmed that the case that would be presented would be consistent with the evidence that had already been exchanged. The Judicial Officer invited the Player and the Disciplinary Officer to confirm whether or not they had any preliminary issues that they wished to raise. They said that there were none.

## Evidence Supporting the Complaint:

9. The Disciplinary Officer presented his evidence regarding the Complaint in the form of:

(a) The video footage of the incident.

a. The video footage shows a maul being driven up-field by the Saracens players who are in possession of the ball. The maul slows and Jacques Burger can be seen falling to the floor on his back, facing upwards. The Player is holding Burger's right shoulder as he falls and Burger is holding onto the Player's jersey near his chest as he crouches over him. The Player can then be seen standing over Burger. The Player raises his left foot and his left knee is raised in an exaggerated movement and it then stamps down towards Burger. Burger can then be seen immediately placing his left hand to his face.

(b) The witness statement of Jacques Burger stated as follows:-

*"I was stamped on by Clermont number 4 in the 19<sup>th</sup> minute of the first half".*

(c) The statement from the Saracens team doctor, Dr Ademola Adejuwon stated as follows:-

*"Jacques Burger was brought off for a blood injury to the face. He had a split injury to the left side of the bottom lip requiring 5 stitches and glue to close the wound. The incident occurred on 9<sup>th</sup> October in the 19<sup>th</sup> minute".*

(d) The witness statement of Deon Carstens, Burger's team mate was read as follows:-

*"I was holding onto Jacques Burger in a drive. Jacques fell to the floor. He was lying on his back. Clermont lock (number 4), Jamie Cudmore lifted his left leg and brought it down aggressively onto Jacques' face. I was positioned directly above Jacques and in my opinion Jamie Cudmore lifted his leg higher than is normal and brought his foot down directly and deliberately onto Jacques' face.*

*I then grabbed him as I thought this was dangerous and could have caused Jacques some serious harm".*

10. There were six photographs of the injury to the player which showed a cut to the left corner of Burger's mouth. The photographs also showed the stitches being inserted.

## The Player's Defence:

11. The Player was asked to give his evidence in conjunction with the video which was shown. He pointed out during the showing of the video that he had tried to stop the maul which was approaching him and progressing towards the Clermont goal line. In retreating, he described how Burger had fallen at his (the Player's) feet and that Burger was holding onto him. The main problem to him was that Burger had hold of him even though Burger was on the floor and the Player was standing up. The Player stated that he did step down aggressively and stated that he believed he stepped on Burger's chest. He said he did so because he was trying to get Burger to release his grip as quickly as he could. He described how he could also be seen pushing down on Burger with his hand. He said that at the critical time he was looking forward and not looking down to where Burger actually was. He said he didn't think he knew where Burger was. The Player then stated that he denied when he had stamped down on Burger he had made contact with Burger's face.
12. Under examination from the Judicial Officer the Player admitted that he had deliberately intended to stamp on Burger. He repeated that his reasons for so doing were to try and get Burger to release his grip on him. The video was shown to the Player again and at the start of the passage of play which leads to the stamp there was footage of Burger at the lineout which shows no injury to the left side of his face. The Player commented that the video evidence "did not look very good".
13. Under questioning by the Disciplinary Officer it was put to the Player that his evidence today had flatly contradicted what his case had been in his response to the standing directions. It was put to him that in the written response he had stated that the actions of his left leg had been in an attempt to obtain a foothold whereas today he had admitted that he had deliberately stamped on Burger. Also in the written response he had admitted that his boot had made contact with Burger's head whereas today he had denied that was the case. The Player's explanation was that the written response had been prepared before he had had the opportunity of watching the video evidence. The Disciplinary Officer pointed out that the written response had confirmed that he had seen the video evidence and that is what had enabled him to prepare his response. The Player did not answer. He maintained, however, that after the match he had spoken to Burger and that Burger had accepted his apology. They had had "some beers together" and the following day he had written a letter of apology which he presented to the Judicial Officer. The Player was asked whether there was anything else that he wanted to say in his defence but he confirmed that there was nothing.
14. On the basis of the Player now having admitted a deliberate stamp on Mr Burger, it was agreed by the Disciplinary Officer and the Player that the case would proceed pursuant to Law 10.4 (b) rather than Law 10.4 (c) i.e. a kick.

### **Submissions on Whether to Uphold the Complaint:**

15. Once all of the evidence had been heard on the question of whether the complaint should be upheld or not, the Judicial Officer invited both the Disciplinary Officer and the Player to make submissions on whether or not the Complaint should be upheld.
16. The Disciplinary Officer's submissions were that the Player had admitted a deliberate stamp today and even though he had not accepted that he had made contact with Burger's head the evidence was clear and compelling.
17. The Player did not make any further submissions.
18. The Judicial Officer retired to deliberate in private in respect of whether the complaint should be upheld.

### **Decision as to Whether or Not The Complaint Should be Upheld:**

19. The Judicial Officer's decision was that the complaint that the Player had been guilty of stamping on an opponent contrary to Law 10.4 (b) was proven on the balance of probabilities and that this had caused the injury to Burger's face. The evidence presented by the Disciplinary Officer was cogent and consistent. The video evidence clearly showed that the Player had raised his left leg high into the air so that his left foot was at the same level as his right knee. The stamp had clearly made contact with Burger's face as one can see Burger's head being jarred as the boot follows through with the stamp and immediately, Burger reaches with his left hand to the left side of his face where the injury occurs. There was also the statement of Deon Carstens who indicated that he clearly saw what had occurred. From the video evidence he was obviously in a very good position to do so. The Player did not make a good impression in giving evidence. He had contradicted himself as to what he had previously said in his response to standing directions in a number of ways. Firstly he had previously denied there had been any deliberate stamp but he had admitted contact with Burger's face. At the hearing he had admitted a deliberate stamp on Burger but to the chest and had denied any contact with the face. When asked why he had changed his version of events from that contained within the response to standing directions his only explanation was that he had not at that time had sight of all of the video evidence. However his response to standard directions stated that he had seen the video and had obviously seen several clips. The Judicial Officer found that the Player's evidence was unreliable and that he had not been truthful. On that basis the Judicial Officer found that the complaint should be upheld.

## Decision as to Disposal:

20. As the complaint was upheld, the Judicial Officer reconvened, intimated that the complaint had been upheld and thereafter heard representations from the Disciplinary Officer and Player as to sanction.

21. The Disciplinary Officer's submissions were as follows:-

As to entry point regard should be had to the fact that the Player's actions were intentional. His boot had been used although this is implicit when it comes to a stamp. There may have been some element of provocation on the part of the victim player by holding on but that was minimal. An injury was caused to Burger. He had had to have stitches and was blood binned. The additional "on field" factor was that the Player himself had been yellow carded. The victim was in a vulnerable position and the conduct was completed.

22. Turning to aggravating factors, the Disciplinary Officer questioned whether there was any legitimate remorse in this case in light of the way in which the Player had conducted himself. The Player also had a recent disciplinary record and had appeared before Disciplinary Committees on three occasions within the last 2 ½ years. These had been offences of striking with the fist and had occurred in ERC tournaments in January 2008 and December 2008 in respect of which there had been four week and five week suspensions respectively. In September 2009 he had been suspended in the French National League for 20 days for striking another player with his fist.

23. The Player's submissions were as follows:

24. He was 32 years of age and had played professional rugby since 2002. He had played one year in Wales and the remainder of his time in France. He was not proud of his record. He said he was remorseful for what had occurred. He said that he had done his best to talk to Jaques Burger afterwards. He invited the Disciplinary Officer to allow him to be available for selection for his Canadian national team in November as if he was not available then he would be unlikely to be selected for the Rugby World Cup 2011. He said that he had won 20 caps for Canada. Again he repeated his apology.

25. 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.

26. The Judicial Officer noted that the offence of stamping in contravention of Law 10.4 (b) was listed within the IRB Recommended Sanctions for offences within the playing enclosure (found at appendix 3 of the Disciplinary Rules) as follows:-
- (a) Lower end – 2 weeks.
  - (b) Mid range – 5 weeks.
  - (c) Top end – 9 + weeks.
  - (d) Maximum sanction – 52 weeks.
27. 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:-
- (a) The offending was intentional. The Judicial Officer found that the Player had deliberately stamped on the victim player however he was not satisfied that it had been a deliberate stamp to the victim player's face.
  - (b) The part of the body which was used to commit the offence was the boot but this, of course, is inherent in a stamping offence.
  - (c) There was a very minor element of provocation by Burger holding onto the Player when Burger was lying on the floor which prevented the Player from defending the oncoming maul.
  - (d) There was a significant effect on the victim player in that he suffered a cut to the mouth requiring five stitches and glue. It was fortunate that the injury was not more severe. The victim was removed from the match for a short period of time.
  - (e) The victim was particularly vulnerable and unable to defend himself from the Player's boot.
  - (f) The conduct was completed.
28. In light of the above the Judicial Officer determined that the appropriate entry point for this matter was top end and started at a suspension of nine weeks. Had the Judicial Officer found that this had been a deliberate stamp to the face or head it would have been significantly higher.
29. The Judicial Officer then considered the "off field" issues and in doing so looked at whether there were any "aggravating" or "mitigating" factors.

30. The Judicial Officer considered that the following were off field aggravating factors to take into account in determining the appropriate period of sanction:-
- (a) The Player's lack of remorse. Whilst the Player had suggested he was remorseful for what had occurred his conduct in these proceedings demonstrated he had not accepted the gravity of his actions. However, he had both spoken to the victim after the match and had written a letter of apology and on balance the Judicial Officer did not add any further period of suspension for this.
  - (b) The Player's status as an offender against the laws of the game. The Player had three previous suspensions albeit they were for punching. However they were recent and two of them had occurred in the ERC competitions. The Judicial Officer decided that this would incur an additional one week.
31. The Judicial Officer also considered whether there were any off field mitigating factors to take into account in determining the appropriate period of suspension but found that there were none.
32. In all of the circumstances the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of ten weeks commencing 13<sup>th</sup> October 2010 and ending on Sunday 19<sup>th</sup> December 2010 (inclusive). He is free to play on Monday 20<sup>th</sup> December 2010.
33. The Player and the Disciplinary Officer are reminded that DR 7.1.1 provides for a right of appeal against this decision.

**Costs:-**

34. The Judicial Officer ordered that the Player should pay €250 to ERC within 28 days.

Dated 18 October 2010.



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Simon Thomas

Judicial Officer