

Decision of Appeal Committee

ERC

Held at the Glasgow office of Harper Macleod LLP
2nd February 2010

In respect of an appeal by

Lee Byrne of the Ospreys ("the Player")

And

The decision of a Disciplinary Committee ("the Disciplinary Committee") dated 1st February 2010 ("the Decision")

Members of the Appeal Committee ("the Appeal Committee"):-

Rod McKenzie (Scotland) (Chairman)
Professor Lorne Crerar (Scotland)
Sheriff William Dunlop (Scotland)

Decision of the Appeal Committee:

- (i) That the Disciplinary Committee was in error by imposing a suspension from all rugby of two weeks on the Player and that its decision be varied;
- (ii) that the Player's sanction namely a period of suspension of two weeks be varied to the extent of substituting a fine of 5,000 Euros payable to the ERC by the Player within 28 days of 2nd February 2010; and
- (iii) that no order be made as to recovery the costs of the appeal..

Introduction

The Appeal Committee was convened by Professor Lorne D. Crerar, Chairman of the European Rugby Cup ("ERC") Disciplinary Panel, pursuant to the Disciplinary Rules in the Participation Agreement of the Heineken Cup 2009/2010 in respect of a Misconduct complaint made by Mr Roger O'Connor, Disciplinary Officer 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 67th minute of the match without replacing another player and/or without the referee signalling that he may do so and that that constituted Misconduct.

The Misconduct Complaint was considered by the Disciplinary Committee at a Hearing on 29th of January 2010. The Decision was issued on 1st February 2010. The Disciplinary Committee was 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 contrary to Law 3.11(c). The Committee did not accept the Player's explanation that he was not sure or did not know that he so needed the permission of the referee. The Player was suspended from all rugby for a period of two weeks from the date of the hearing to expire

at midnight on 12th February 2010.

The Player appealed by Notice of Appeal dated 1st February 2010. This Notice of Appeal did not comply with Disciplinary Rule ("DR") 7.2.1(b) insofar as it was entered prior to the Decision being issued. However, the Chairman of the Appeal Committee exercised his discretion under DR 7.2.2 and allowed the appeal to proceed.

The Player had pled guilty to the Misconduct complaint and was appealing against the level of sanction only. The Player did not seek to withdraw or modify his plea.

The Appeal Committee met in Glasgow on 2nd February to consider the appeal.

In addition to the members of the Appeal Committee, there was present during the appeal hearing:-

The Player

Mr Adam Lewis QC, representing the Player ("Mr Lewis")

Mr Gareth Williams, (solicitor of Hugh James) representing the Player

Mr Alan Phillips, Wales team manager

Mr Roger O'Connor (ERC, Disciplinary Officer) attended the Appeal Hearing by conference call

Mr Max Duthie (solicitor of Bird & Bird LLP) representing the ERC Disciplinary Officer) ("Mr Duthie")

Ms Jennifer Nicol (trainee solicitor of Harper Macleod LLP) (Clerk to Appeal Committee)

The following documentation and other materials were considered by the Appeal Committee:-

1. Misconduct complaint from the ERC Disciplinary Officer
2. Hearing notices and directions, both in respect of the hearing before the Judicial Officer and the hearing before the Appeal Committee
3. All papers available to the Disciplinary Committee
4. The Decision dated 1st February 2010
5. The Player's Notice of Appeal
6. Preliminary response to the grounds of appeal from Mr Duthie on behalf of the Disciplinary Officer and various attachments including previous ERC decisions and the Player's acknowledgement and Agreement form

Preliminary matters

Mr Lewis advised that the Player was no longer pursuing a *de novo* hearing on the basis that the Player would be given an opportunity to speak during the appeal hearing.

Following submissions from Mr Lewis on why new evidence in the form of statements from the Player, Mr Warren Gatland and Mr Roger Lewis should be admitted, the Appeal Committee determined not to admit this evidence. The Appeal Committee considered that this evidence was available on reasonable enquiry at first instance and that the test for admission of new evidence on appeal in DR 7.4.11 had not been made out.

The Chairman confirmed with both parties that the terms of the charge of Misconduct against the Player was at the bottom of page 4 and at the top of page 5 of the charge letter from the ERC Disciplinary Officer together with a modification made by email of 28th January 2010. The charge to which the Player pled guilty was as follows:-

"The Misconduct complained of against the Player is that he entered the playing area (after having received treatment for a blood injury in the 67th minute of the Match) without replacing another player and without the referee signalling that he may do so, and that that constitutes Misconduct because:-

- (a) It was an infringement of Law 3.1 of the Laws of the Game, which represents a breach of clause 4.1 of the Tournament Rules (which constitutes Misconduct under clauses 3.2 and 3.3.2 of the Disciplinary Rules);
- (b) It was breach of the Protocol and under clause 4.4 of the Tournament Rules (which constitutes Misconduct under clauses 3.2 and 3.3.2 of the Disciplinary Rules);
- (c) It was Misconduct in connection with match officiating that was or may have been prejudicial to the interests of the sport of Rugby Union and/or ERC (which constitutes Misconduct under clause 3.3.9 of the Disciplinary Rules); and
- (d) It was misconduct and/or behaviour that was unsporting and/or insulting and/or that brought or had the potential to bring into the sport of Rugby Union, the Tournament and/or ERC into disrepute (which constitutes Misconduct under clause 3.2 of the Disciplinary Rules)."

By e-mail dated 28th January 2010 the Disciplinary Officer applied to the Chairman of the Disciplinary Committee to be allowed to amend the terms of the Misconduct complaint against the Player. The e-mail describes the application as only "very slightly" amending the terms of the Misconduct complaint. In fact, the amendment had, for the reasons set out below, a very significant effect on the nature of

the Misconduct complaint made against the Player.

The proposed amendment sought to make an addition to the complaint in the following terms:-

"By re-entering the playing area without the Referee's permission, [the Player] infringed (or may have infringed) Laws 3.11(b) and (c), which would constitute an act of Foul Play and therefore Misconduct under clause 3.2 of the Disciplinary Rules."

By e-mail of the same date the Player's then solicitor advised that he did not object to the request to amend the Misconduct complaint but observed that the amendment was "substantive given it creates jurisdiction under Law 10 of the Laws of the Game". We agree that the amendment was substantive although not for the reason given by the Player's then solicitor.

By e-mail, again of 28th January 2010, the Chairman of the Disciplinary Committee agreed to the amendment.

DR 3.2 defines "Misconduct" for the purposes of the Disciplinary Rules. So far as relevant it provides as follows:-

"For the purposes of the Disciplinary Rules, "Misconduct" shall mean any act of Foul Play by a Player and/or any conduct, behaviour, statements or practices by a Club and/or any of its players... on or off the playing enclosure, during a match or otherwise, that is unsporting and/or insulting and/or brings the sport of the Rugby Union, the Tournament, other Clubs or Persons, match officials, ERC... into disrepute and/or that is not in accordance with the Participation Agreement."

Foul Play is defined in Appendix 1 to the Disciplinary Rules as:-

"Foul Play" means a breach or breaches of Law 10 of the Laws of the Game, or of Law 3-11(c), Law 4.5(b) or Law 6.A.5"

It should be noted that since the Disciplinary Rules were promulgated what was Law 6.A.5 has been renumbered 10.4(s) in the 2010 edition of the Laws of the Game published by the IRB.

The inclusion of Foul Play in the definition of Misconduct in DR 3.2 means that the Disciplinary Officer can bring as a Misconduct complaint a charge of Foul Play on the playing enclosure which might otherwise have been dealt with by way of a reprimand, caution or sending off by the referee or the bringing of a citing complaint.

The inclusion in the amendment to the charge of reference to Law 3.11(c) meant that the Disciplinary

Officer was now bringing a Misconduct complaint which included a charge of Foul Play by the Player on the playing enclosure as well as the other elements of the complaint which fell within the second part of the definition of Misconduct in DR 3.2.

The ERC definition of Foul Play is consistent with the IRB definition of Illegal and/or Foul Play in IRB Regulation 17.4.1. The distinction between the ERC Disciplinary Rules and IRB Regulation 17 in relation to Foul Play and Misconduct is that IRB Regulation 17.21.1 explicitly excludes Foul Play during a Match from the definition of Misconduct for the purposes of IRB Regulation 17, whereas DR 3.2 includes in the definition of Misconduct, Foul Play during a Match.

Whilst sub paragraph (a) of the original Misconduct charge brought against the Player by the Disciplinary Officer contains reference to an infringement of Law 3.1 of the Laws of the Game there was no reference to Law 3.11(c) and the Player could legitimately have argued that the absence of an explicit reference to Law 3.11(c) meant that the original Misconduct complaint did not include commission of an act of Foul Play on the playing enclosure but rather was concerned only with acts relating to the second part of the definition of Misconduct in DR 3.2.

In any event, consideration of what might have been the position had the Misconduct complaint not been amended is moot since the Player entered a plea of guilty to a complaint of Misconduct including all elements of the Misconduct complaint, i.e. including the express reference to contravention of Law 3.11(c).

In the section of the Decision which refers to the submissions made on behalf of the Disciplinary Officer by Mr Duthie in relation to sanction, there is reference to Mr Duthie having suggested that if the complaint against the player "were to be dealt with under foul play it could be dealt with under breach of Laws 3.11(c) or 10.4(m)". Mr Duthie told us that this does not represent an accurate summary of the submission that he made to the Disciplinary Committee. Mr Duthie acknowledged to us that it was not open to the Disciplinary Committee to deal with the Misconduct complaint against the Player as including a charge of breach of Law 10.4(m) since that had not been part of the charge to which the Player had pled guilty. Mr Duthie told us that what he submitted to the Disciplinary Committee was that the facts underlying the charge against the Player could constitute a breach of Law 10.4(m) but that the Committee could deal with the charge against the Player as including only a breach of Law 3.11(c) since that was the only act of Foul Play included in the Misconduct complaint.

Law 10.4(m) provides that acts contrary to good sportsmanship are Foul Play but as Mr Duthie very properly conceded, it was not open to the Disciplinary Committee or the Appeal Committee to deal with the complaint against the Player as including contravention of Law 10.4(m).

The consequence of including within the Misconduct complaint an express reference to the commission of an act of Foul Play, contravention of Law 3.11(c), is that this became a case of Foul

Play once the Player pled guilty to the charge. As such, the Disciplinary Committee were bound to apply DR 6.7.31 which incorporates reference to the IRB's "recommended sanctions for offences within the playing enclosure" which are reprinted at Appendix Three to the Disciplinary Rules. Further, it required the Disciplinary Committee to deal with the sanctioning of a Player in accordance with Disciplinary Rules 6.7.32 to 6.7.44 (inclusive) i.e. the standard sanctioning regime applicable to all cases of Foul Play and which is applied in cases of sending off and citing. The Decision makes no reference to the Disciplinary Committee applying and/or considering DR 6.7.31 to DR 6.7.44 (inclusive) and Mr Duthie confirmed that there had been no discussion before the Disciplinary Committee concerning the application of the standard sanctioning regime.

The Appeal Committee noted, and it was accepted by both Mr Lewis and Mr Duthie, that the Disciplinary Committee retained a general power to impose a sanction other than or in addition to suspension in the context of a Misconduct complaint as set out in DR 6.7.29.

Submissions on behalf of the Player

The Chairman referred to the two part test contained in DR 7.4.8 whereby the appellant has the burden of proving that the decision being challenged (a) was in error and (b) should be overturned or varied. The Appeal Committee invited Mr Lewis to make oral submissions as to why it was considered the Disciplinary Committee's decision had been in error and whether it should be overturned or varied.

Mr Lewis explained on behalf of the Player that the starting point should be the very nature of the charges. It was not submitted that the Player had no liability or that his behaviour did not constitute misconduct. He invited the Appeal Committee to consider the word "Misconduct" and suggested that one would generally not think an innocent mistake would constitute Misconduct. Instead one would tend to think of "recklessness" or "deliberateness". It was argued that an honest mistake does not obviously amount to insulting conduct, unsporting behaviour or bringing the sport into disrepute.

Mr Lewis suggested that the Appeal Committee should start with the proposition that some instances of Misconduct will be dealt with adequately on the pitch and that an off pitch sanction would not be appropriate in such circumstances. He argued that the appropriate sanction for this "honest mistake" would have been a penalty during the game and that this could not be replaced with a sanction off the pitch. The Chairman of the Appeal Committee observed the referee did not award a penalty at the time as he had been advised that both teams had 16 players on the pitch. This advice has been wrong and, in fact, only Ospreys had at any time had 16 Players on the pitch.

Mr Lewis submitted that the Misconduct would not have warranted a red card and therefore the Disciplinary Committee were entitled to impose no suspension on the Player under DR 6.7.41.

Mr Lewis accepted on behalf of the Player that under Law 3.11(c) a player could be penalised for

misconduct where he rejoins the field of play and the referee believes the player did so to help that player's team or obstruct the opposing team. It was argued that the Player did not deliberately rejoin the game to assist his team and it was simply an honest mistake.

Mr Lewis submitted that the only aspect of "deliberateness" was rejoining the field of play. On this basis the Player's representative submitted that this honest mistake did not merit an onerous off-pitch sanction such as suspension.

It was contended by Mr Lewis that the Player is ultimately bound by the substitution protocol but that this mainly contains expectations of the club.

Mr Lewis emphasised that nowhere in Law 3.11(c) does it say the Player requires express permission personally given to him by the referee. He submitted that there was nothing in the law which required that a Player must personally receive permission from the referee in order to let him rejoin the game. The Player was not obliged to get permission personally nor was he under an obligation to ensure there were only 14 other players on the pitch. The Player understood that certain formalities were required to be carried out but was firmly of the belief that these had been complied with by the club. Law 3.11(c) required that a referee gives permission for a player to return not that such permission must be communicated direct from the referee to the player concerned.

Mr Lewis urged the Appeal Committee to consider the circumstances in which the Player returned to the pitch. It was a crucial match at a pivotal moment, the score was tight and this "star player" was keen to rejoin the game. The Player simply obeyed instructions from his team. The mistake was noticed 40 seconds later. The Player did not act deliberately to secure another man on the pitch. It was submitted that the Player was careless and only marginally so. The Player accepts he ought to have checked with his coach, Scott Johnson, whether the necessary formalities had been complied with. However, it was not reasonable for the Player to try and second guess his coach in these circumstances. There was no effect on the outcome of the match. Mr Lewis reminded the Appeal Committee that the incident did not involve breach of Law 10 .

Mr Lewis submitted that a 2 week suspension was out of proportion to the degree of fault in this case. The Player was relying on DR 6.7.41 whereby the Disciplinary Committee were entitled to impose no sanction. It was further submitted that the Disciplinary Committee had failed to consider DR 6.7.44 in terms of the playing consequences of a suspension on the Player.

Finally, the Appeal Committee were reminded by Mr Lewis that the Disciplinary Officer had never asked for a more severe sanction than a fine.

Submissions on behalf of the Disciplinary Officer

It was submitted by Mr Duthie, that an honest mistake can amount to Misconduct as it can give rise to

a prejudicial effect on the game. Mr Duthie contended that what the Player had done was not a reasonable mistake to make and that it was misleading to label this as an "honest mistake". He contended that Law 3.11(c) required a player who wished to enter the field of play as a substitute or replacement to first secure the permission of the referee personally communicated to the player concerned.

It remained the position of the ERC that a fine would have been an appropriate sanction as recommended to the Disciplinary Committee. Nevertheless Mr Duthie contended that the Disciplinary Committee were entitled to impose a suspension instead of a fine and that the ERC did not consider a suspension to be an inappropriate sanction having regard to DR 6.7.39.

Mr Duthie did not accept that this was clearly a case where a referee would not have sent a player off and in any event the Disciplinary Committee was not required to consider the "red card test" before determining to impose the sanction of a suspension.

Mr Duthie referred the Appeal Committee to previous cases involving England and David Reddin from RWC 2007 and the Plymouth Albion RFU case. Mr Duthie submitted that the Disciplinary Committee's decision in respect of the Player was not inconsistent with the disposals in these cases.

Mr Duthie submitted that although the Decision does not make reference to any consideration of mitigating factors the Appeal Committee did receive submissions on mitigation, recorded those submissions and it is reasonable to infer that the submissions were taken into consideration when determining sanction although he acknowledged that the Decision does not explain how such factors were taken into account in reaching the decision on sanction.

Mr Duthie's submission was that the Disciplinary Committee were entitled to a margin of appreciation in their decision on sanction and that whilst a fine had been the sanction favoured by the Disciplinary Officer a two week suspension was within the range of reasonable disposals open to the Disciplinary Committee in this case. He contended that the Appeal Committee should not interfere with what was essentially an exercise of discretionary judgement by the Disciplinary Committee.

Determination of Appeal Committee

Law 10.5(a) requires that any Player who infringes the Foul Play Law is required to be "admonished, or cautioned and temporarily suspended for a period of 10 minutes' playing time, or sent off. The referee knew that the Player had entered the field of play without receiving his permission because the referee had not given permission for the Player to join the match. The referee must therefore either have decided that there had not been an infringement of 3.11(c) or that the infringement was, in the circumstances, of such a minor nature that it did not require the referee to speak to the Player concerning the infringement. Whilst the referee had understood that both teams had had 16 players on the pitch at the same time and that accordingly no penalty had been imposed by him on Ospreys

for infringement of Law 3.2 the question of the Player entering the field of play without permission was a separate issue in terms of Law 3.11(c).

In terms of Law 6.A.4(a) the referee is the sole judge of fact and law during a match. In accordance with Law 6.A.4(e) it is for the referee to give permission for replacements or substitutes to enter the playing area.

During a match, the decision as to whether an act of Foul Play warrants a red card and the sending off of a player lies with the referee. Where a Citing Commissioner has been appointed to a Match he is entitled to cite a Player for an act or acts of Foul Play in terms of DR6.4.2 if he is of the opinion that the act or acts of Foul Play concerned warranted the Player being shown a red card.

In the ordinary course of events when considering incidents which have taken place during a match, the "red card" test is applied by a referee during play and by the Citing Commissioner after the match.

DR 6.7.41 provides:-

"In a citing case or a Misconduct case involving Foul Play, the Disciplinary Committee shall be entitled, where it believes that the act(s) of Foul Play committed by the Player would not have warranted a red card, to impose no suspension on the Player."

Appendix Three of the Disciplinary Rules, which is a reprint of Appendix 1 from IRB Regulation 17, does not contain a reference to Law 11.3(c). In these circumstances DR 6.7.39 applies which provides, so far as relevant:-

"In respect of offences not referred to in Appendix Three of the Disciplinary Rules,... appropriate sanctions may be imposed at the discretion of the Disciplinary Committee."

For the purposes of 6.7.31 to 6.7.44 (inclusive) the practical effect of the absence of a reference to Law 3.11(c) in Appendix Three is that a Disciplinary Committee cannot carry out the categorisation of an offence as being at the lower end, mid range or top end of the scale of seriousness for the purposes of DR 6.7.33.

However, that does not mean the Disciplinary Committee is not required to apply the other parts of the procedures in DR 6.7.31 to 6.7.44 (inclusive) in accordance with DR 6.7.31. It is a mandatory requirement of DR 6.7.31 that the Disciplinary Committees apply those parts of the procedures that are capable of being applied. What is appropriate for the purposes of DR 6.7.39 falls to be determined by reference to DR 6.7.31 to 6.7.44 (inclusive).

Since this was a Misconduct complaint involving an admitted act of Foul Play it was incumbent on the

Disciplinary Committee to make a judgement as to whether or not the act of foul play which had been admitted was such as to warrant a red card. The Decision does not indicate the Disciplinary Committee applied its mind to this question nor is there anything in the Decision which would imply that the Disciplinary Committee had considered whether the offending was such as to warrant a red card. In failing to apply itself explicitly to this issue the Disciplinary Committee was in error. Offending which would not warrant a red card in the context of a determination by a referee on the field of play or by a citing commissioner or officer during post match analysis cannot warrant a red card with a resultant sanction of suspension in the context of a Misconduct complaint.

Further, there is nothing in the decision which would indicate that the Disciplinary Committee applied itself to the relevant parts of DR 6.7.31 to 6.7.44 in determining what was the appropriate sanction for the purposes of DR 6.7.39. In particular, there is no consideration in the decision of the seriousness of the offending for the purposes of DR 6.7.32. There is no consideration as to what aggravating factors, if any, were present for the purposes of DR 6.7.34 and nor did the committee apply itself to the relevant mitigating factors for the purposes of DR 6.7.35.

DR 6.7.48 sets out certain mandatory requirements as regards the content of the written judgements of a Disciplinary Committees. Written judgements are required to set out the reasons for a Disciplinary Committees findings and the aggravating and mitigating factors it took into account in reaching its decision on sanction. The written judgement in this case does not adequately set out the reasoning of the Disciplinary Committee in determining to suspend the Player.

The only reasoning given for the decision of the Disciplinary Committee to impose a suspension of two weeks on the Player was as follows:-

"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 what he could not do without the permission of the referee. They did not accept his explanation that he was 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 the rugby for a period of two weeks from the date of the hearing to expire at 12 midnight on Friday 12th February 2010."

It appeared to the Appeal Committee that there was scope for misunderstanding between the Disciplinary Committee and the Player concerning the issue of the Player's understanding of what was required with respect to the matter of obtaining permission from the referee before the Player returned to the field of play.

The Disciplinary Committee records that the Player's evidence was that "He [the Player] understood from this [an instruction from his coach that he go back onto the pitch at the next breakdown] that he

had permission to go back on.

It was therefore apparent from the Player's evidence, which the Disciplinary Committee did not indicate that it rejected, that the Player understood that permission from the referee was required. The uncertainty was whether the Player required to obtain permission direct from the referee personally communicated to the Player or whether that permission, consistent with the Laws, could be communicated through a third party such as a fourth official and/or his coach.

There is nothing in the Laws which requires that permission to enter the field of play must be personally communicated direct from a referee to a player. It is no doubt wise for a player to seek to identify by some kind of direct communication from a referee, such as a wave or some other physical indication which would suggest that the player has the referee's permission to enter the field of play, otherwise a player is at risk of contravening Law 3.11(c). However, Law 3.11(c) does not state that a player commits an act for foul play in every circumstance in which he enters the field of play without the permission of the referee.

An infringement of Law 3.11(c) is only committed where a player joins the match without the referees permission "and the referee believes the player did so to help that player's team or obstruct the opposing team...". There may be some ambiguity in the precise meaning of these words but for present purposes what is clear is that it is only if the referee has the requisite belief the referee penalises the player for misconduct. This issue does not require to be resolved for the purposes of this case because the Player pled guilty to a charge of Misconduct which included a charge of contravening Law 3.11(c).

The only reason given for the sanction imposed on the Player was that the Disciplinary Committee did not accept the explanation given by the Player that the Player "wasn't sure or didn't know that he needed the permission of the referee" to enter the field of play.

This reason is inconsistent with the Player's evidence which was not rejected by the Committee that the Player had understood from what his coach had told him that he had permission to go back onto the field of play. In any event, the Disciplinary Committee's reasons for its decision does not include a finding that the Player knew, when he entered the field of play, that he did not have the referee's permission.

If the Disciplinary Committee had applied itself to the question as to whether or not the admitted act of Foul Play warranted a red card it would have been bound to find that it did not warrant a red card. Mr Duthie did not suggest to the Player at the Disciplinary Hearing that he had entered the field of play knowing that he did not have the permission of the referee and there was no evidence that the Player had done so in such circumstances. The referee did not even reprimand the Player, notwithstanding that the referee must, by definition, have known that the Player had not had permission from him to

enter the field of play. In short, the Player entered the field of play under the mistaken belief that the referee had given his permission for him so to do.

Further, and in any event, the Disciplinary Committee did not apply the sanctioning procedure set out in DR 6.7.31 to DR 6.7.44 (inclusive) and in particular did not assess the seriousness of the offending and, from the terms of the decision, did not apply the mitigating factors such as the Player's admission of guilt, his remorse for his actions and his exemplary disciplinary record in determining the appropriate sanction for the purposes of DR 6.7.39.

Further the Disciplinary Committee's judgement did not set out in sufficient detail the reasons for its findings as regards sanction and what aggravating and mitigating factors it took into account in reaching its decision on sanction.

For these reasons the Appeal Committee determined that, in terms of DR 7.4.8, the Disciplinary Committee had been in error in reaching the decision it had made in relation to sanction and that its decision should be varied.

The Appeal Committee took into account the full circumstances of the matter including the various mitigating factors that were present. The Player believed permission had been obtained from the referee for him to return to the field of play. He was responding to a direction from his coach to return to the field at the next breakdown. The Appeal Committee decided that the offending would not have warranted a red card and that the offending was at the lowest level of seriousness, that there were no aggravating factors, that there were substantial mitigating factors, principally the Player's early admission of guilt of Misconduct, the articulated remorse for his actions, the absence of any material effect on the match, as found by the Disciplinary Committee, and the Player's exemplary disciplinary record.

The Appeal Committee was satisfied that suspension was not, under reference to DR 6.7.39, an appropriate sanction in this case.

However, the Player pled guilty to other elements of the Misconduct complaint, including breach of the Tournament Rules, Participation Agreement and Substitution Protocol (all of which are inter related) and which, at least, had the potential to bring the sport and/or the Tournament into disrepute.

In the view of the Appeal Committee a significant sanction was therefore appropriate in this case, not least to signify the importance of the Law which requires a Player to obtain permission of the referee, however communicated, before entering the field of play and that in this case the failure to secure that permission resulted in Ospreys having sixteen players on the pitch for around 40 seconds. The Appeal Committee therefore imposed a fine on the Player of 5,000 Euros payable within 28 days of the date of the Appeal Committee meeting. The Appeal Committee took into account, in this context,

that the Disciplinary Officer had at all times advised that he considered that a fine was an appropriate sanction in the case of the offending to which this Player had pled guilty.

The decision of the Disciplinary Committee is therefore varied to the extent of substituting for the two weeks suspension a fine of 5,000 Euros payable by the Player to the ERC within 28 days of 2nd February 2010.

The Appeal Committee notes from the decision that representatives of Leicester RFC were invited to attend at the hearing before the Disciplinary Committee and were permitted to make oral submissions as to the appropriate sanctions to be imposed on the Player and his Club having regard to the findings of fact made by the Disciplinary Committee.

In the opinion of the Appeal Committee there was no warrant for the representatives of Leicester RFC being given this opportunity. Leicester RFC were not a party to the disciplinary proceedings which, in accordance with DR 6.7.6, are to be held in private. The Disciplinary Rules make no provision for representatives of third parties having an opportunity to be represented at hearing and making representations to Disciplinary Committees.

If Leicester RFC wanted to make representations in relation to sanction then the appropriate course of action was for them to make those representations in writing to the Disciplinary Officer. It is a matter for the Disciplinary Officer whether to bring those representations to the attention of the Disciplinary Committee when the Disciplinary Officer is making submissions on sanction in accordance with DR 6.7.28.

Costs

There were no applications for costs.


Rod McKenzie

Chairman

Appeal Committee

9 February 2010