

Decision of the Independent Judicial Officer

ERC

Held by way of a telephone conference hearing with the Judicial Officer, the Disciplinary Officer, the Player and his representatives being located in their respective offices at Neath, the ERC offices in Dublin and the London Irish Clubhouse in Sunbury.

On 27 January 2011

In respect of

Faan Rautenbach of London Irish ("the Player")

And

A citing in respect of a stamping contrary to law 10.4(b) of the Laws of Rugby Union (stamping or trampling on an opponent)

Judicial Officer appointed to hear the case:

Robert H P Williams, (Wales) ("the Judicial Officer")

Decision of the Judicial Officer:

- 1) The The Player accepted that the Citing Complaint against himself should be upheld. The Judicial Officer therefore found the Player had committed an act of illegal and/or Foul Play as alleged in the Citing Complaint
- 2) The Player accepted that the act of illegal and/or Foul Play merited a "red card". The Judicial Officer was therefore satisfied the act of illegal and/or Foul Play merited a "red card" and the Player should have been ordered off for the offence
- 3) The Player is suspended from taking part in a game of rugby up to 17 February 2011. This represents a 3 weeks suspension commencing at midnight on the morning of 27 January 2011
- 4) The Judicial Officer made no order as to costs against the Player

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of 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 between Munster and London Irish held at Thomond Park on 21 January 2011 in the Heineken Cup 2010/2011.

Francois Gwers ("Citing Commissioner") was appointed as Citing Commissioner to this match and had cited the Player for:-

"This player had made a stamping on the shoulder and head contrary to law 10.4.(b)"

Present at the hearing (in their respective offices), in addition to the Judicial Officer, were the following persons:-

- a) Mr Roger O'Connor – (Disciplinary Officer ERC)
- b) Kieran McCarthy – London Irish Senior Rugby Manager (London Irish representative)
- c) Neal Hatley - London Irish Forwards Coach
- d) Faan Rautenbach – the Player

Preliminary matters & procedure

At the commencement of the hearing, the Judicial Officer had noted the identities and roles of all those present and the Player had confirmed that he was the player referred to in the Citing Complaint. The Complaint having been narrated, the Player was reminded that the Complaint was in respect of an allegation that the Player had been guilty of an offence of stamping on an opponent contrary to law 10.4.(b).

The Judicial Officer reminded all parties that 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 and stated that as the Player had already indicated that he would be admitting that he had committed the act referred to in the Citing Complaint that the hearing could proceed to the sanction process immediately. The London Irish representative confirmed that this was the case.

The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired 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:

- Notice convening the hearing

- The standard directions which would have been part of the Notice convening the hearing
- The Citing Commissioner's report
- The letter from the referee namely Mr Peter Allan
- An e-mail confirming a conversation between the Disciplinary Officer and Garrett Fitzgerald of Munster dealing with the Victim Player's and the Munster doctor's response to the incident
- An e-mail from Jackie Roy on behalf of Kieran McCarthy enclosing a witness statement from the Player in compliance with the standing directions
- The statement of the Player dated 26 January 2011
- A further e-mail noting a conversation between the Disciplinary Officer and Clare Cooke on behalf of Munster Rugby on a further enquiry to the Munster Rugby's doctor on the injury
- The video evidence
- The London Irish representative stated that the Player would want to refer to a letter which had been received from the Victim Player.

The Judicial Officer noted the basis of the Player's response to the standing directions found at Appendix 6 of the Disciplinary Rules ("the Directions") in that the Player admitted the act of Foul Play meriting a "red card" but denied that it was intentional and stated that it was an instantaneous consequence of an attempt to ruck the Victim Player who was in an offside position and preventing quick ball emerging on the London Irish side.

The Judicial Officer invited the Player and the Disciplinary Officer to confirm whether or not they had any other preliminary issues which they wished to raise and they both confirmed that there were none.

The Judicial Officer narrated the Citing Complaint as follows:

"15,51 - yellow card for Munster – Rautenbach number 3. This player has made a stamping on the shoulder and the head. I cite this player contrary to 10.4 B Rule"

The Judicial Officer asked the Player whether:-

- He admitted the Citing Complaint

- That he had committed the alleged act of illegal and/or Foul Play of stamping on the Victim Player contrary to law 10.4.(b)
- The alleged act of illegal and/or Foul Play warranted a “red card”

The Player responded he had committed the act of Foul Play but that it was not intentional and was not to the head of the Victim Player.

Evidence supporting the Complaint

The Judicial Officer noted the response and as the Player had accepted the complaint that he had committed the act of Foul Play of stamping, the complaint itself would therefore be upheld. The Disciplinary Officer did not need to persuade the Judicial Officer that the Player committed the alleged act of illegal and/or Foul Play that would have warranted a “red card” and ordering off. Nevertheless, in order to dispose of the matter, the Judicial Officer required the Disciplinary Officer to present the evidence regarding the complaint.

The Disciplinary Officer’s Case

The Judicial Officer firstly referred to the Citing Report which stated that the Player had made a stamping on the shoulder and the head.

The Judicial Officer was referred to the response of the Victim Player and the doctor which had stated that in so far as the Victim Player was concerned, there had been no contact with the head area and minor contact with the neck and shoulder and that the doctor had said there was a minor abrasion, but no laceration.

The Disciplinary Officer also referred to a second e-mail of a conversation with a Claire Cook from Munster Rugby referring to a conversation with the Munster doctor who stated that the Victim Player was attended to for a presumed head injury and he was assessed for the same but it was not possible to confirm whether the abrasions were associated for that injury or not.

The Disciplinary Officer asked that the video evidence be played and after ensuring that all of the parties were looking at the same video shots at the same time, the following points were made by the Disciplinary Officer:-

The Video Evidence

The Disciplinary Officer’s evidence is summarised as follows:-

“The first clip has the camera at gantry level.....David Wallace (the Victim Player) is seen tackling a London Irish ball carrier who is not identified. David Wallace falls on the London Irish side of the ruck....A London Irish Second Row entersMr Rautenbach is the next to arrive”.

"The next camera shot shows a longer view with Mr Rautenbach joining the ruck and he enters into a pushing position raising his right leg and pushing down....."

"The ref is heard to say "Dancing on shoulders" as he is shown a yellow card"

"David Wallace is seen with his hands on his head and he does not get up when the others do so".

"The second clip – first angle – shows David Wallace tackling the London Irish ball carrier who goes to ground and his head is not close to the ball, Mr Rautenbach is seen entering from behind the London Irish Second Row; he is in control of his situation; he raises his leg high and brings it down on the head, shoulder of David Wallace, whose hands go to his head area as if in pain in that area"

"The second clip – second angle – shows David Wallace on the ground and Mr Rautenbach raises his leg thigh high and parallel to the ground and brings it down on the head, neck, and shoulder before the view of the incident is obscured but David Wallace's hands are on his head."

"The third clip shows David Wallace on the ground when Mr Rautenbach enters the ruck; he is seen looking down, he is on his toes of his left leg and his right leg goes up and down, making contact with David Wallace and the head moves downwards".

The Disciplinary Officer submitted the video evidence:-

- Confirmed the stamp was intentional and was to the head
- The Victim Player's statement was not consistent with the video evidence and
- The Munster doctor said that the Victim Player was assessed for a head injury

As the Disciplinary Officer had no further points to make at that juncture, the Judicial Officer called upon the Player and his representatives to present their case.

The Player's Case

The Judicial Officer had already received the Player's statement and paragraphs 5, 6 and 7 read as follows:-

"5 - I do not accept entirely that the Citing Complaint is a true and accurate account of the incident that resulted in the citing in so far as contact was made with the shoulder and lower neck, not the head, albeit an unintentional instantaneous consequence of my attempt to ruck

the Munster number 6, David Wallace, who was in an off side position and was preventing quick ball in merging on the London Irish side.

6 - I accept that I committed an act of foul play, as set out in the Citing Complaint, in so far as contact was made with the shoulder and lower neck, not the head, as attested by the match referee, Peter Allan and the Munster number 6, David Wallace, albeit that such foul inadvertently and immediate consequence of my attempt to ruck the off side player who was obstructing quick release of the ball.

7- Having viewed the video evidence, and giving comments in paragraphs 5 and 6 above, I accept that the act warranted a red card."

In addition, the Player made a statement to the Judicial Officer which is summarised as follows:-

"I joined the ruck after the number 4 London Irish player, David Wallace, was obstructing and slowing down quick ball. I was going to do a ruck, at which stage he moved his head. It appears that my intention is to ruck on the head, but there was no such intention. When the whistle went I thought David Wallace would get a yellow card for lying on the ball, but it was for me and I just jogged off.

The treatment to David Wallace was to his shoulders and not his head."

The Player went on to state:-

"When the whistle went I thought David Wallace was going to receive a yellow card for lying on the ballon the wrong side and I just jogged off."

The Player said that the treatment which the Victim Player received was to his shoulders and not to his head and he concluded by reiterating that he was trying to get the Victim Player out, as he wanted quick ball.

Neal Hatley

He introduced himself as the London Irish forwards coach and wanted to explain the dynamics of the situation which the Player had found himself and to point out to the Judicial Officer their view of the video evidence.

Neal Hatley's evidence is summarised as follows:-

"The referee has an unobstructive view of what occurred – he is just a few metres away looking directly at the head of (David Wallace).

The second view of the video angle shows Faan Rauntenbach with his back to us and the actual point of contact is on the shoulder and not the head.

Faan Rauntenbach is seen raising his leg to ruck David Wallace out.

As he is being rucked, his head moves, but the foot is not what causes the movement.

Faan Rauntenbach's foot slips off the shoulder to the back of the neck, briefly grazing it and goes into the collar.

The reason for David Wallace being seen grabbing his head is because it is a recoil, reflex action. It is a natural reaction is to go into the foetal position and put ones hand on ones head to protect oneself and is not an indication of an injury.

When the physio is assessing David Wallace, his hands are on his shoulders and not on his head.

One cannot ignore what the referee said "dancing on the shoulders" and one cannot ignore what David Wallace has said."

The Judicial Officer asked the Disciplinary Officer if he had any questions to put to the Player. The Disciplinary Officer asked the Player "what rucking meant" and the Player's response was:-

"Rucking means moving him backwards to get quick ball..... the contact was to the shoulder blade I didn't see David Wallace put his hands on his head."

Before closing submissions, the Judicial Officer asked for clarification and confirmation of the Player's record and as to the way in which London Irish had already disciplined the Player, because the Judicial Officer had noted in the Player's statement that he had referred to being disciplined by his club and had said that he was already suspended.

The Judicial Officer was advised (by reference to the Player's statement and from what he heard from the Player) that the Player was 34, had played at top level for 16 years, 104 appearances for London Irish, 5½ years in the Premiership, won 14 international caps for South Africa. He is married, deeply religious and involved in community and junior rugby and has a clean disciplinary record.

The Judicial Officer was also advised that the Player had apologised to the Victim Player for any of his actions and that the Victim Player had responded by saying:-

"I have told them (the Disciplinary Officer) you only made contact with the neck and shoulder and not the head – it wasn't done to cause injury."

Both parties confirmed there were no other points of evidence to be considered and the Judicial Officer therefore invited the parties to make their submissions and asked if they could do so by reference to the entry points in paragraph 6.7.32 and to deal with the aggravating factors as per 6.7.33 and mitigating factors as per 6.7.34 and that the Player would be entitled to make the closing submissions.

The Disciplinary Officer

The Disciplinary Officer made the following points:-

- Although the Player and the Victim Player say that contact was on the shoulder, the Player's reaction was as if it was on the head
- The Victim Player is seen on the ground when others are getting up and he is seen holding his head
- It was accepted that this was not a serious injury and it would not therefore be top end and the Judicial Officer was reminded that the entry points were low 2 weeks mid 5 weeks and high end started at 9 weeks
- Nonetheless, it was an intentional stamp and the Player was reckless as to the part of the body into which his boot came into contact
- The effect on the Victim Player was, however, slight
- It was accepted that the Player had a clean disciplinary record
- There were no aggravating factors
- It was for the Player to address the Judicial Officer on any mitigating factors
- There would be no application for costs because of the early admission of the Citing Complaint and the very constructive approach taken by the Player and the London Irish Club

The Judicial Officer invited the Player or the representative to make closing submissions and asked if they could, in particular, address paragraph 6.7.32.

The Player

On behalf of the Player, it was submitted:-

- This was a reckless and not an intentional act. It was a rucking movement to remove an offending player who was preventing London Irish from playing the game. The Victim Player is in an offside position and London Irish wanted quick release and the Victim Player was preventing this
- As to the gravity of the offence, it was more of a backward scraping act as opposed to a stamping

- the impact was on the shoulders and the boot glanced off the side of the neck which then struck in the Player's shirt collar
- The effect of the incident was minimal insofar as the Player was concerned
- The effect on the game was nil
- As to vulnerability of the Player - rugby is a dynamic physical game and the Victim Player was being contributorily negligent by being in the position which he was
- The Player was making an instructive reaction to a player being offside – such player preventing the release of quick ball
- A stamp means bringing one's foot down heavily and it was not the situation here. It was not a stamp on the head
- The entry point would be low to mid
- They reminded the Judicial Officer of the Player's background i.e. he was 36, playing professional rugby for 16 years, 5½ in the Premier Division. He had 14 international caps
- The Judicial Officer was reminded that the Player had been remorseful and had been in touch with the Victim Player and he regretted the incident

Both parties confirmed that there were no other points that they would want to draw to the Judicial Officer's attention.

It was agreed that as the hearing had been conducted by way of a telephone conference that the Judicial Officer would not reconvene the hearing but would announce his decision by way of an e-mail to be sent later that day.

Judicial Officer's Review of the Evidence

The Judicial Officer reviewed the evidence as follows:-

The Citing Commissioner's report

The Citing Commissioner's report dealt with the legal allegations and did not assist the Judicial Officer on the facts.

The Referee's Report

The referee's letter assisted the Judicial Officer in that it stated in paragraphs 3 and 4 that at the time when he was penalising the Player, he was aware that other players were making comments that there had been contact with the Victim Player's head. The referee had awarded the yellow card because he saw what he described as "dancing on shoulders".

Unlike the Judicial Officer, the referee did not have the advantage and luxury of being able to review the incident from different angles and at different speeds and the referee had to make his decision in a split second, whereas the Judicial Officer did not have to do so.

The Victim Player's Evidence

With regard to the notes of the conversation between the Disciplinary Officer and Gareth Fitzgerald of Munster relaying that the Victim Player had said there was no contact with the head area and minor contour of the neck and shoulders, the Judicial Officer concluded that this statement of the Victim Player was not consistent with his own observations of the video; nor with the Victim Player's immediate action to the incident; nor with the action of his fellow players.

The Medical Evidence

The Judicial Officer considered the evidence of the Munster doctor and although he had stated that the Victim Player was attended to for a presumed head injury and it was assessed as the same, his statement was not really conclusive for or against the Player.

The Video Evidence

The Judicial Officer's findings of the video evidence were that it showed:-

- A London Irish player with the ball in his arms being supported by a second London Irish player who was wrapped, partly, around him and the ball carrier is being tackled. The Victim Player is seen tackling the ball carrier and dragging the ball carrier down to the ground
- The ball carrier and the Victim Player go to ground and the ruck is formed
- The tackle has therefore been completed and the Victim Player is on the wrong side
- The Player is seen joining the ruck and he has good purchase and is pushing
- The Player raises his leg thigh high and parallel to the ground while he is standing on the toes of his left leg and he brings his right leg down against the Victim Player and the strike is on the head, neck and shoulder.
- The Player himself had accepted in his statement the allegation that he had stamped

The Player's Evidence

The Player's evidence can be summarised by reference to his written statement and to the verbal statements made by the Player and on his behalf by Neal Hatley. The Player's case is that his action was not intentional, was an instantaneous consequence of attempting to ruck the Victim Player who was in an offside position and preventing quick ball emerging. It was a reckless and not an intentional act. It was more of a backward scraping act as opposed to a stamp. The impact was to the shoulder and the boot glanced off the side of the neck which then struck in the Victim Player's shirt collar. The effect of the incident was minimal insofar as the Victim Player was concerned and it was nil on the game.

The Conclusions

The Judicial Officer's conclusions or findings were:-

The Player's description of the incident was not as was evidenced by the video

- The Player did not have to raise his leg and strike the Victim Player to be an effective member of the ruck
- The Victim Player was not preventing the Player from being an effective member of the ruck
- The Victim Player was not impeding or preventing a quick release of the ball
- The Player's body position, and particularly his head, were such that he could see or should have seen where his boots were likely to strike the Victim Player
- The Player was not performing the rucking movement, it was a stamp

The Legal Conclusions (DR 6.7.32)

By applying the criteria in DR 6.7.32, the Judicial Officer concluded:-

- It was an intentional stamp. The Judicial Officer was not considering at this stage of the process the consequences of the act i.e where the stamp struck the Victim Player. He did not have to make any finding or conclusion that it was an intentional stamp to the head, as that is dealt with at the different stage of the legal process
- As it was deemed to be intentional, the Judicial Officer did not consider recklessness
- As for gravity, a stamping inevitably means use of the boot and he did not accept that the Victim Player can be deemed by being in an off side position to be provoking the incident. The Judicial Officer had already found in his findings of fact that the Victim Player was not impeding the Player from being an effective member of the ruck and was not impeding the release of a quick ball
- The Victim Player's statement is such that it had no effect on him
- There was no effect on the game either as to the result or as to the way the game continued to be played
- The Player was in a vulnerable position, but this is inevitable when the Victim Player is on the ground in a prone position
- The Player was the only one who participated in the incident. He would or should have know his boot was likely to come into contact with the head. His body position was such that he knew there was a real risk his boot would have struck the Victim Player on or near the head
- The action was completed. The Player himself had admitted a stamp. The Judicial Officer had already concluded the boot had come into contact with the head
- There were no other features which were taken into account

The entry points for an offence of this nature are:-

Low – Two weeks.

Mid – Five weeks.

High – Nine weeks up to a maximum of 52 weeks

The Judicial Officer had already concluded that the Player either knew or should have known that the boot was likely to come into contact with the head or head area and this was therefore an intentional stamp where the entry point should be mid to high. The Judicial Officer, however, also concluded that having taken into account the circumstances and in particular that it had no effect on the Player nor on the game, that the correct entry point was mid.

The mid entry point is five weeks.

Aggravating Factors (DR 6.7.34)

There were no aggravating factors.

Mitigating Factors (DR 6.7.35)

Consideration of mitigating factors

- There was a very early acknowledgement of culpability confirmed in a witness statement
- The Player had a good playing record and was of good character
- The proceedings had been conducted by and on behalf of the Player in a very constructive manner
- There had been remorse for the action and the Victim Player with whom he had been in contact

He would be entitled to full mitigating factors.

Sanction Reduction (DR 6.7.37)

As this was a mid range entry point, with no aggravating factors, with full mitigating factors, the Player was entitled to a reduction in the sanction by 50%.

A 50% reduction is 2.5 weeks and the sanction is rounded up (DR 6.7.38). The sanction is therefore three weeks.

The Sanction

The sanction would commence midnight on the morning of 27 January 2011 and will end at midnight on the night of Thursday 17 February 2011.

The parties were advised that the Judicial Officer would produce a full written judgment.

Costs

The Disciplinary Officer had already stated that having regard to the early admission of the allegation in the Player's statement and the constructive way in which the London Irish team had

approached the matter, he would not be seeking an order for costs and, in this, the Judicial Officer concurred. There was therefore no order as to costs.

Appeal (DR 7)

The Player and the Disciplinary Officer was reminded of the right of appeal (DR 7.1).

1 February 2011

Robert H P Williams

Judicial Officer