

Decision of the Independent Judicial Officer

Heineken Cup 2010/2011

Held at the offices of the European Rugby Cup, Hugunot House, 35/38 St. Stephen's Green, Dublin 2
6th January 2011

In respect of

Richie Rees ("the Player") of Cardiff Blues

And

A citing in respect of the Player's actions breaching law Law10.4(m) of the laws of the game

Judicial Officer appointed to hear the case:

H. Pat Barriscale – IRFU

Decision of the Judicial Officer:

- (i) The Player contested 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;
- (ii) The Player did not agree that the act of illegal and/or foul play merited a red card. The Judicial Officer was however satisfied that the act of illegal and/or foul play merited a red card and that the Player should have been ordered off for the offence;
- (iii) The Player is suspended from taking part in the game of rugby up to and including midnight on Wednesday 30th March 2011;
- (iv) The Judicial Officer made an award of costs against the Player in respect of the costs of the hearing and of the Disciplinary Officer including legal costs of the Disciplinary Officer;

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the ERC's independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2010/2011. The Judicial Officer was appointed to consider the citing complaint ("the Complaint") against the Player in the match played between the Cardiff Blues and the Northampton Saints on the 19th December 2010 in the Heineken Cup 2010/2011.

Murray White, IRFU was appointed as Citing Commissioner to this match and had cited the Player for breaches of Law 10.4(m) foul play, contact with the eye or eye area and Law 10.4(m) Acts contrary to good sportsmanship.

Present at the hearing in addition to the Judicial Officer were the following persons:-

- Mr Roger O'Connor, Disciplinary Officer, ERC;
- Mr Max Duthie, Solicitor representing the Disciplinary Officer;
- Mr Richie Rees (the Player);
- Mr Robert Noster, Chief Executive, Cardiff Blues;
- Mr Dylan Hartley, Northampton Saints (by telephone).

Preliminary matters & procedure

At the commencement of the hearing the Judicial Officer noted the identities of all present and narrated the Complaint against the Player that the Complaint was in respect of an allegation that the Player had committed an offence in breach of Law 10.4(m) foul play in respect of contact with the eye or eye area and 10.4(m) Acts contrary to good sportsmanship.

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 all present agreed to proceeding on that basis.

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. All agreed that they had and there was no additional evidence. The Standing Directions had been appropriately complied with and there was no issues arising from the same. There were no preliminary issues arising from either side.

At this stage, Mr Duthie explained that whereas the citing report mentioned two separate breaches of 10.4(m) that they would only be adducing evidence in relation to one aspect of the same namely the Player was guilty of an offence contrary to 10.4(m) of foul play contact with the eye or eye area. This was accepted by the Player.

The Judicial Officer asked the Player whether he accepted that:

- He had committed the alleged act of foul play and that this alleged act of foul play warranted a red card.

The Player responded as follows that the incident which occurred was a complete accident and did not warrant a red card and stated that he wished to contest the Complaint in full.

The Judicial Officer explained in the circumstances that the onus was on the Disciplinary Officer to prove the case and the balance of probabilities to show that the Player committed the act of illegal and/or foul play.

Evidence supporting the Complaint

Mr Duthie commenced by reading through the Citing Complaint Form which was before the hearing as completed by Mr Murray White, Citing Commissioner and specifically referred to the detailed report on the second page thereof. He then went through in some detail the nine video clips which were available to all parties. There was one long clip showing before, during and after the incident together with a number of replays which had been shown on television at the time. There were eight individual clips which were shorter and Mr Duthie specifically emphasised clips 1, 4 and 3 as being helpful in the circumstances. He went through these in some detail and frame by frame at certain parts of these clips. He showed clips 2, 5, 6, 7 and 8 but accepted that they were either from a wider angle or at some distance from where the alleged incident of foul play took place.

The two medical reports from Mr David Cleal were read through and a query was raised by the Judicial Officer at this stage as to what conjunctival injection was as referred to in Dr. David Cleal's Report. Mr Duthie undertook to obtain the appropriate information in this regard. The Judicial Officer pointed out that it would only become relevant if the Citing Complaint was upheld and the hearing proceeded to sanction. Mr Duthie then read the email from the Referee which confirmed that neither he nor the Assistant Referees saw the incident during the game.

The next evidence was on the telephone from Mr Dylan Hartley, Hooker for the Northampton Saints who received the injuries in the incident. Mr Hartley confirmed that the Statement which was before the Hearing was his Statement despite the fact that it wasn't signed and all the detail contained therein was true and accurate. He was questioned by Mr Duthie in some detail and the incident started when he returned the ball a little forcefully to the Cardiff Blues second row. Thereafter he was grabbed by the throat and a melee ensued. At all times he kept his hands by his side despite the fact that people

were pulling and dragging him. The next he felt was a hand across his eyes and he pulled his head away. He said that he felt something go into one of his eyes and he moved his head away immediately. He felt a bit of a stinging sensation in his eye at the time and said that he was not sure

which eye it was because there was a lot going on around him. He did not put his hands up to his face at the time as he did not think there was any point in drawing attention to it. He went on to say that his contact lens came out of his eye and that he was satisfied that the contact with his eye caused the contact lens to come out. He became aware shortly after that that his contact lens was gone and he did not seek to put a new one in as he explained that he trains without contact lenses all the time. As far as the pain was concerned he stated that it was not excruciating but it was a stinging type pain in his right eye and it felt like a scratch. He said the stinging sensation lasted for a couple of days and there was some watering in his eye but that he had no problem whatsoever with his eye now. He was asked by Mr Duthie when the photograph which was before the hearing was taken. He explained that it was taken approximately an hour after the incident by the Manager of the Northampton Saints and was done at the request of the Citing Commissioner. As could be clearly seen from the photograph there were two red marks in the area of his eye.

By way of cross examination, Mr Noster on behalf of the Player suggested to Mr Hartley that he did not acknowledge any discomfort or pain at the time the incident occurred. He agreed with this. He went on to say that he had been targeted the previous week and expected the same in this match and that as far as he was concerned discipline was key. Mr Noster suggested that because there was no reaction from Mr Hartley that the incident didn't occur as he had suggested. He did not agree with this and stated that when the finger went into his right eye his reaction was to pull his head away immediately. He was then asked why he returned the ball to the Cardiff Blues second row in such a forceful manner and he stated that there was no reason for him to do so. By way of re-examination at this stage, Mr Duthie asked Mr Hartley whether the incident had occurred quickly and he agreed that it had.

Player's defence

Mr Noster opened the Player's defence by saying that this was not at all in this Player's character and he had an exemplary disciplinary record prior to this citing. He had references available if required vouching his credentials. He requested that the long video clip would be played again and explained from this that, just immediately prior to the incident, that the Player had been tripped cynically by one of the Northampton Players who received a yellow card as a result of the same. He said that following this the Player joined in the melee and that he now accepted that his actions were careless, ill-advised and indeed wrong. He said it could be clearly seen that there was no premeditation whatsoever to target Mr Hartley's eye area and that Mr Hartley's actions after the incident were entirely inconsistent with a finger being put in his eye. He expressed surprise that if he had lost the contact lens in this incident that it was not replaced. He accepted that there was a fleeting contact with Mr Hartley's face but that any contact was with a flat hand. He went on to say that it was not in the Player's character to behave as alleged and that indeed he was involved in a teaching course himself at the moment.

Mr Duthie requested that he be allowed ask the Player a number of questions and the Player agreed to this. The Player stated that it was intention to simply pull Mr Hartley away from the melee and to grab another part of his body. He did not agree that he targeted the head area and he accepts now in hindsight that he should not have raised his hands as he did. He accepted now that he did make contact with the Player's face/forehead/nose. He said that he had no specific recollection of the incident until it was brought to his attention after the match. When pressed by Mr Duthie he agreed that he did not know if he caused the injuries to Mr Hartley's eye. He accepted that he fully recognised that it was dangerous to put his hand in the eye or the eye area.

Submissions on whether to uphold the Complaint

Mr Duthie opened Paragraph 6.7.32 of the Disciplinary Rules and explained that the actions taken were either intentional, reckless or accidental. His submissions were that the Judicial Officer should be more than satisfied that from the evidence adduced before him that the incident complained of was either intentional or at the very least reckless. He did not accept that the actions outlined could be considered accidental under any circumstances.

Mr Noster submitted that the lack of reaction and the behaviour of Mr Hartley at the time of the alleged incident was entirely inconsistent with someone having had contact with his eye area and suggested that the Judicial Officer should consider that the entire incident was accidental in the circumstances.

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

The Judicial Officer's decision was that:-

1. The Player's actions were not intentional or deliberate;
2. The Player's actions were not accidental;
3. He was satisfied that the Player's actions were reckless in that he knew or should have known that there was a risk of committing an act of foul play by doing what he did at the time of the incident. He said that the Player should have known not to become involved in the incident at all and to allow it be dealt with appropriately by the Officials.

The Judicial Officer stated that Mr Hartley had given clear evidence of a hand across his face in the eye area and of one finger in one of his eyes and that these actions caused him to pull his head away. The Player on the other hand accepted that there had been some contact with the eye area and when questioned stated that he was unable to say whether he caused the injury or not. In those

circumstances the Citing Complaint was upheld. In the circumstances, the Judicial Officer stated that he proposed moving on in those circumstances to deal with sanction.

Sanction

Mr Duthie on behalf of the Disciplinary Officer referred to a number of cases which he had circulated the day prior to the hearing. He specifically referred to paragraph 20 of a Decision in 2007 involving Dylan Hartley. He said that this paragraph provided a guide in relation to the entry point level and that the essence of that paragraph had been adopted in a number of other similar cases. He also referred to a memorandum which had been sent on the 10th July 2009 to all IRB Judicial Personnel by Mr Tim Gression, the IRB Judicial Panel Chairman and copies of this were available to the hearing. This emphasised the need for a deterrent to this specific type of offence involving the eyes or the eye area. He stated in the circumstances of this case that he did not see it as a case necessarily involving high end entry point and indeed suggested from the decision in the Hartley case that it was possibly low end entry point. He specifically quoted from Paragraph 20 of that decision as follows "offences which would properly be classified as at the lower end of the scale of seriousness would include, but not be limited to, wiping with an open palm or fist without any real force or intent and causing no injury. In certain circumstances it might also include reckless contact with a finger into the eye area". He went on to point out the provisions of Clause 6.7.36 which set out that if a Judicial Officer is satisfied that the offences are categorised at the lower end of the scale of seriousness that he cannot apply any reduction from the entry point suspension unless he is satisfied that:-

- a. There are no aggravating factors; and
- b. There are compelling mitigating factors.

He concluded by saying that he was making a formal application for the costs of the hearing.

Mr Noster on behalf of the Player said he was not a dirty player and had an exemplary disciplinary record. He had three yellow cards in his career only and none for foul play. He was 27 years old and in his seventh year as a professional rugby player. He handed in the references to the Judicial Officer being one from Rob Howley and the other from Gareth Edwards which both spoke very well of the Player and asked the Judicial Officer to be reasonable and treat the Player fairly. He accepted that the Judicial Officer had a difficult decision to make.

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 noted that the offence of contact with the eye or the eye area in contravention of Law 10.4(m) was listed within the IRB Recommended Sanctions for Offences within the Playing Enclosure (found at appendix three of the Disciplinary Rules) as follows:

- Lower End – 12 weeks
- Mid Range – 18 weeks

- Top End – 24 weeks
- Maximum Sanction – 156 weeks

The Judicial Officer was satisfied having regard to all of the evidence which he had heard and the submissions made that the appropriate entry point was at the low end being 12 weeks particularly having regard to the previous decisions in similar matters.

The Judicial Officer considered however that there were a number of aggravating factors which had to be considered in the circumstances. These were the limited lack of remorse and/or contrition on the part of the Player in respect of the incident. There was a particular need for a deterrent in relation to this type of offence as set out in IRB Memo 10th July 2009. In the circumstances, he considered that the entry point level would be increased by three weeks to 15 weeks to take account of these factors.

The Judicial Officer went on to say that there were a number of mitigating factors which he had to consider also pursuant to 6.7.35 which include the previous good record of the Player together with his age and experience. In addition, the Judicial Officer was impressed with the Player's conduct at the hearing and the limited admissions which were made by him. In the circumstances, therefore, the Judicial Officer considered the appropriate reduction taking these factors into account to be three weeks bringing the sanction back down to 12 weeks.

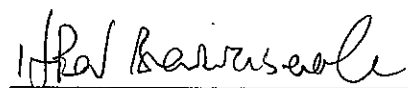
In all of the circumstances, therefore, the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of 12 weeks commencing on 6th January 2011 and ending on midnight on 30th March 2011 (inclusive).

Costs

The Judicial Officer decided that the Disciplinary Officer was entitled to his costs of the hearing to include any legal costs incurred by him.

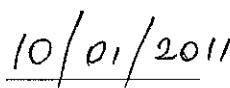
Right of Appeal

The Judicial Officer reminded both the Player and the Disciplinary Officer of the Right of Appeal against the Decision.



H. Pat Barriscale

Judicial Officer



Date: