

DECISION OF THE INDEPENDENT JUDICIAL OFFICER

ERC

Held at Huguenot House, St Stephens Green, Dublin 2
On Friday the 6th May 2011 at 2pm

In respect of

Rodrigo Roncero of Stade Francais Paris (The Player)

And

A citing in respect of Dangerous charging or obstructing of an opponent without the ball including shouldering, contrary to Law 10.4(f) of the Rules of Rugby Union.

Judicial Officer appointed to hear the case:

Mark McParland, Ireland ("The Judicial Officer")

Decision of the Judicial Officer:

- (i) The Player accepted that the citing complaint should be upheld. The Judicial Officer therefore found that the Player had committed an act of foul play as alleged in the citing complaint.
- (ii) The Player denied that the act of foul play merited a red card.
- (iii) The Judicial Officer was not satisfied that the act of foul play merited a "red card" and considered that no suspension should be imposed upon the Player.
- (iv) The Judicial Officer declared that each party to the proceedings should bear it's own costs.

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 Amlin Challenge Cup 2010/2011. The Judicial Officer was appointed to consider the citing complaint ("the Complaint") against the Player in the match played between Stade Francais Paris and Clermont Auvergne on Friday the 29th April 2011 in the Amlin Challenge Cup.

Alan Mansell was appointed as citing commissioner to this match and had cited the Player for dangerous charging or obstructing of an opponent without the ball including shouldering, contrary to Law 10.4.(f) of the Rules of Rugby Union.

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

- Mr Roger O'Connor, Disciplinary Officer, ERC
- Max Duthie of Bird and Bird Solicitors on behalf of the Disciplinary Officer
- Rodrigo Roncero, the Player

- John O'Donnell, Senior Counsel to the Player
- Michael Cheika, Head Coach to Stade Francais Paris
- Cedric Boudarel, General Secretary to Stade Francais Paris
- Alison Moore, Interpreter

Preliminary matters and procedure

At the commencement of the hearing the Judicial officer noted the identities of all present and narrated the Complaint as follows:

"Clermont Auvergne is in possession of the ball and attacking along the right wing. Morgan Parra receives the ball and runs an elusive line infield. He executes a kick ahead and is then confronted by Rodrigo Roncero who remains stationary and upright and makes no attempt to pull out of the situation, but shapes his body towards the left so as to drive his shoulder high into the upper body of Morgan Parra with his right arm by his side. His left arm is outstretched, but makes no contact with Morgan Parra until after the hit with his right shoulder. The force of the blow knocks Morgan Parra backwards and to the ground where he remained."

The Judicial Officer reminded the Player that the Complaint was in respect of an allegation that the Player had engaged in dangerous charging or obstructing of an opponent without the ball including shouldering, contrary to Law 10.4(f) of the Laws of Rugby Union.

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement of the Amlin Challenge Cup 2010/2011 (the Disciplinary Rules" and "DR" in the singular) would apply. The Judicial Officer outlined the procedure to be followed in determining the matter. The Player and all present agreed to proceed 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 same in good time. The Judicial Officer enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was as follows:-

- The citing complaint of Alan Mansell
- Statement of Morgan Parra
- Statement of Mark Pollock, Physiotherapist to Stade Francais Paris
- Statement of Nigel Owens, Match Referee
- Statement of Alan Lewis, Assistant Referee
- Statement of the Player
- Further statement of Morgan Parra
- Various video clips of the incident and of an earlier incident involving an injury to the Player.

The Judicial Officer noted the terms of the parties responses to Standing Directions found at Appendix 6 of the Disciplinary Rules (the "Directions") as follows:-

The Player confirmed:

- a) He was the Player named in the citing complaint.

- b) He would not be arguing any preliminary matters.
- c) The complaint is a true and accurate account of what occurred and that he accepted that he had committed an act of obstruction as referred to the complaint, but believed that the incident warranted a yellow card only and not a red card.

The Player referred to the decisions in the citing complaints against Martyn Williams dated the 13th October 2010 and Luca Redolfini of the 16th December 2010.

He also indicated that he would be accompanied by Michael Cheika, Head Coach of Stade Francais Paris and by John O'Donnell, Senior Counsel, and proceeded to give a full account of the incident in his written statement.

The Disciplinary Officer's response to Standing Directions was to note that the Player would not argue any preliminary matters and accepted that he had committed an act of foul play, albeit not one which warranted a red card. The Disciplinary Officer stated that he would present evidence in order to enable the Judicial Officer decide among other things, whether the act of foul play warranted a red card and, if so, what the sanction should be pursuant to Disciplinary Rules 6.7.23 and 6.7.41.

The Disciplinary Officer indicated that he would rely on the decisions in the Citing of (i) Ross Rennie (ii) Viliami Vaki (iii) Phil Vickery and (iv) Alan Quinlan

The Disciplinary Officer indicated that he had received a further letter from Morgan Parra as referred to above and that he would be attending at the hearing personally along with Max Duthie of Bird and Bird LLP, Lawyer to the Disciplinary Officer.

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

The Judicial Officer reviewed the complaint in full and narrated the official reports from the match officials. The Judicial Officer asked the Player whether he accepted that:-

1. The complaint was a true and accurate account of the incident and the facts surrounding the incident.
2. The complaint should be upheld (namely whether he had committed the alleged act of illegal and/ or foul play).
3. The alleged act of illegal and/ or foul play warranted a red card.

The Player responded by acknowledging that the complaint was a true and accurate account of the incident and the facts surrounding the incident and that the complaint should be upheld, but that the alleged act of illegal and/or foul play did not warrant a red card.

The Judicial Officer stated that he would adjudicate on the issue of whether or not the act of foul play warranted a red card in the first instance and deal with matters arising thereafter.

Evidence supporting the Complaint

The Player contesting whether the complaint warranted a red card, the Judicial Officer required the Disciplinary Officer to present the evidence available to enable him decide such issue.

Having opened the written evidence Mr Duthie, on behalf of the Disciplinary Officer presented the available video evidence.

From such evidence, it appeared that Clermont Auvergne were in possession of the ball in the thirty-eighth minute of the first half and attacking along the right wing. Morgan Parra received the ball and ran in field and, in open play, executed a cross field kick, following which he was tackled by the player at chest height, knocking him to the ground.

Player's defence

The Player stated that he was 34 years of age and a qualified medical doctor, who had been playing professional rugby for 10 years. He had been capped for Argentina on 43 occasions and had over three hundred games of professional rugby at international, Heineken and Amlin Challenge Cup, Premiership and Top 14 leagues behind him. He stated that he had never been cited or red carded other than in two incidents in 2008 in the Top 14 Championship, involving punching, for which he had received ten and thirty day suspensions.

He indicated that he was a good friend of Morgan Parra and that they knew each other well and socialised together. He said the game was very competitive, but free of unsavoury incidents both before and after the Players act of foul play.

He stated that four minutes prior to the incident (in the thirty-fourth minute of the first half), he himself had been injured. He stated that he had a longstanding herniated disc problem in his neck. If he received a blow in this area, he lost power in his arm and stated that this was the reason why his arm was not more evident in his tackle of Mr Parra. In the clip shown on the Player's behalf he is shown to sustain an injury and receiving treatment over a period in excess of one minute.

Immediately prior to the Player's tackle, one of his teammates was marking Mr Parra, but as the movement unfolded, Mr Parra ran into the Player's defensive space. Mr Parra was running with the ball in both hands, making it more difficult to know which way he intended to proceed. He crouched to tackle just as Mr Parra was in the act of kicking the ball crossfield and was fully committed to the tackle at the time he saw the ball pass by his head.

In response to questions from Mr Duthie, the Player indicated that he was committed to the tackle and that he had all his weight behind his movement and

as he saw the ball pass his head, he did not complete the tackle, also putting forward that the loss of power in his arm resulted in his tackle being more with his shoulder than it should have been. He stated he was insufficiently agile to react in time to avoid contact and accepted, without hesitation, that his actions were clumsy, misjudged and ill timed. He stated that he immediately apologised to Mr Parra (and two other Clermont Players) telling them that his action was accidental and that he no intention to injure Mr Parra.

On the Player's behalf Mr Cheika elaborated on Mr Roncero's longstanding injury and confirmed that when he suffered an impact to his neck, he would feel a burning sensation, a tingling in his fingers and loss of power in his arm.

He stated that he had been captain of the club and was part of his leadership team, who he trusted implicitly and was a player that he would always give extra responsibility to. His discipline was good both on and off the field. He stated that he coached his front five to always commit to tackles and not to hesitate, particularly when seeking to tackle quicker players, who might sidestep them. He submitted that it was clear the Player had not been quick enough to pull out of the tackle once he was committed to it.

He submitted a letter from Dr Felipe Contepomi , a fellow Argentine International, in which Dr Contepomi stated that the Player was a very responsible Player, who was not disposed to engage in acts of foul play.

Submissions on red card issue

Mr Duthie on behalf of Disciplinary Officer stated that it was matter for the Judicial Officer to decide as to whether the act of foul play merited a red card. He said that there was little guidance from the IRB on a red card test. He referred to the Six Nations case of Jerry Flannery on the question of recklessness. He distinguished intentional acts from those which were reckless, those that were careless and those that were simply accidental. It was submitted that suspension would be the only appropriate sanction if it was decided that the act of foul play warranted a red card. It was also submitted that, as the Player accepted the citing complaint, the Disciplinary Officer had no burden to meet under DR 6.7.11.

Mr O'Callaghan on behalf of the Player emphasised the discretion available to the Judicial Officer under DR 6.7.41 and stated that the evidence was that the Player had not been indifferent to the incident, that he clearly knew Morgan Parra and had no reason to hurt him. The act of foul play was committed endeavouring to complete a legitimate action. Only as Mr Parra kicked the ball, did the legitimate action change to being one of foul play and he submitted the Player did not have time to react.

Decision as to disposal

The Judicial Officer retired to deliberate in private to decide if the acknowledged act of foul play was one which warranted a red card.

Law 10.4(f) under the heading "**Playing an Opponent without the ball**" reads, "...a player who is not in possession of the ball must hold, push or obstruct an opponent not carrying the ball".

In this incident the Player acknowledged that he had charged or obstructed Mr Parra at a time he did not have the ball and that in doing so, he used his shoulder.

The Judicial Officer was satisfied that the following had occurred in the incident.

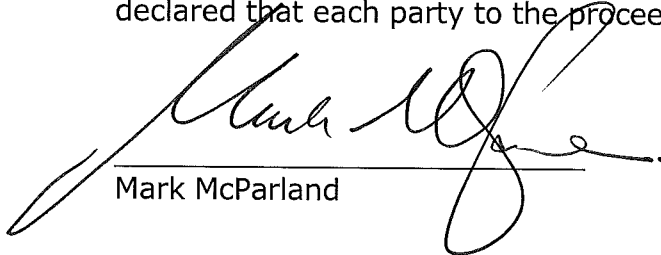
It was clear from the video evidence that Mr Parra is a lighter and a quicker opponent than the Player. In the video clips, Mr Parra is seen running cross field with the ball in both hands. The Player was not marking Mr Parra at the onset, but moved to do so as Mr Parra ran cross field. At the time Mr Parra kicked the ball down field, the Player was approximately 1.2 metres from him in crouched position with his head lowered committed to tackling Mr Parra. In Mr Parra's original statement, he very specifically states "I decided to crosskick and I was tackled at around the same moment". From the video evidence, it appeared that immediately prior to the incident, the Player was crouched at a 70 degree angle to the ground (and not upright) as Mr Parra kicked the ball. It also appeared that while the Player used one arm, he did not use his injured arm in the manner in which he should have. This is consistent with the fact that he sustained an injury to such arm four minutes earlier as is shown on the video.

The Player having acknowledged that he committed an act of foul play, the Judicial Officer upheld the citing complaint, but in all circumstances outlined above decided that the acknowledged act of foul play was not one which merited a red card.

The Judicial Officer considered that no suspension should be imposed on the Player and the Player is free to play.

The Judicial Officer reminded the Disciplinary Office of his right to appeal further to DR 7.1.1.

As no application for costs having been made by either party, the Judicial Officer declared that each party to the proceedings should bear their own costs.



Mark McParland

19th May 2011

Date