

Decision of the Independent Judicial Officer

ERC

Held at Huguenot House, St Stephen's Green, Dublin
20th January 2011

In respect of

Jean Jo Marmouyet of Bayonne (“ the Player”)

And

An Ordering Off for a breach of Law 10(4)(a) , striking an opponent, in the match between Bayonne -v- Connacht played on 15th January 2011

Judicial Officer appointed to hear the case:

Roger Morris (Wales) “ the Judicial Officer”

Decision of the Judicial Officer:

- (i) As the Player had accepted that the Referee was correct to order him off, the Judicial Officer had to determine what suspension or other sanction should be imposed upon the Player, if any;
- (ii) The Judicial Officer considered that there was no reason not to impose a suspension on the Player and as such the Player was suspended from taking part in the game of rugby up to and including 23rd January 2011. This represents a one week suspension commencing on 15th January 2011.
- (iii) The Judicial Officer ordered that the Player pay the costs incurred in convening the Hearing limited to the Judicial Officer's travel and accommodation expenses.

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 Ordering Off of the Player in the match played between Bayonne and Connacht Rugby on 15th January 2011 in the Amlin Challenge Cup 2010/2011. Peter Allan (SRFU) was appointed as referee to this match and had ordered the Player off for striking an opponent with his elbow contrary to Law 10 (4)(a).

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

- Roger O'Connor, Disciplinary Officer, ERC ;
- Paul Antoine, ERC (observing) ;
- the Player ;
- Nicolas Bridoux , Bayonne ;
- Paul Mauriac, the Player's lawyer (by telephone) .

Preliminary matters & procedure

At the commencement of the hearing the Judicial Officer noted the identities of all present and the offence for which the Player was Ordered Off, being striking an opponent with his elbow in breach of Law 10 (4) (a) of the Laws of the Game.

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement for 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 to determine 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 the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented before him. This evidence was as follows:

- the Referee's Report , in standard form , completed by Peter Allan ;
- email from Tim Allnutt (Connacht Rugby) addressed to Roger O'Connor, dated 19th of January 2011 and timed at 11.39 a.m. ;
- email from Sandrine Jallet (FFR) confirming the Player's disciplinary record ;
- letter dated 19th of January 2011 (in French with English translation) from Paul Mauriac addressed to the Judicial Officer ;
- video clips of the alleged incident .

The Player had not responded in formal terms to the standing directions found at Appendix 6 of the Disciplinary Rules ("the Directions") but the Judicial Officer accepted the letter sent to him by M. Mauriac in substitution for such formal response. The essence of M. Mauriac's letter was that the Player accepted the Referee was correct to order him off but that the strike was to the chest of the Connacht player ,Michael Swift ("C19") , and not the face.

The Disciplinary Officer had not had sufficient time to respond to the letter containing the Player's response to the Directions but there was no substantive response he wished to make and the lack of response would not inconvenience the Hearing.

The Judicial Officer invited the Player and Disciplinary Officer to confirm whether or not they had any preliminary issues that they wished to raise. There were none on their parts. However, the Judicial Officer said that he considered it important to clarify and, if possible, achieve consensus as to exactly where the Player's elbow had struck C19. He would first prefer to hear the Disciplinary Officer's view of the Connacht Rugby email and its relevance to the allegation in the Referee's Report that the elbow had struck C19 in the face. Subject to formally reviewing the video evidence during the Hearing (although he had already viewed the same and confirmed it did not support the allegation of a

strike to the face) , the Disciplinary Officer said that he accepted what Connacht Rugby had said , namely that the Player's left elbow had struck C19 in the high chest area just below his neck. This was consistent with what M. Mauriac claimed on behalf of the Player in the letter previously referred to. It was pointed out that the Referee had one opportunity only to view what had happened and from his angle – and the position of the Player and C19 – it was perfectly understandable that he had formed the view that the elbow had struck the face. There was therefore no criticism of the Referee.

In accordance with DR 6.2.2 the Judicial Officer reviewed the Ordering Off including the Referee's reasons for the Ordering Off. In accordance with DR 6.2.8 the Judicial Officer referred to the Official Report of the Referee and asked the Player whether he accepted the Official Report as a true and accurate account of the incident and the facts surrounding the incident and separately whether the Player accepted that he should have been Ordered Off. The Player stated that he accepted that he ought to have been Ordered Off but he had struck C19 in the chest and not the face.

Evidence supporting Ordering Off

Pursuant to DR 6.2.9 the Judicial Officer directed that the video footage of the incident should be shown. The parties watched the video footage with the sound off. The video showed as follows.

- Bayonne, in possession of the ball , were attacking from a position about 15 metres inside their own half. A tackle was executed by a Connacht player as a result of which the Bayonne ball carrier fell to the ground.
- C19 , still on his feet, bent over the tackled player and attempted to steal the ball.
- Two Bayonne players – No 10 and the Player – made to "clean out " and remove C19 from the tackle area and the forming ruck. The Bayonne No 10 made contact with C19 momentarily before the Player did.
- As a consequence, C19 was being pushed to the ground momentarily before the Player made contact with him. The Player and C19 both tumbled to the ground, away from the ball, so that C19 was on his back on the ground, with the Player, on his knees, leaning over C19's head and facing towards his feet.
- As C19 made to lift himself from the floor, the Player lifted his left arm and struck downwards with his elbow so making contact with C19.
- The video did not clearly show the exact point of contact on C19's body However it confirmed that contact was somewhere in the upper chest area but clearly not to the face.
- In one of the clips, C19 is seen, in facial close up, immediately after the incident and there were no marks of any sort apparent on his face such as might have been present had he been struck in the face with an elbow.

The parties then considered all other evidence supporting the Ordering Off in the form of the Official Report from the Referee.

The Referee stated:

“In the closing stages of the match a tackle situation occurred approximately 15 metres inside the Connacht half with Bayonne attacking. At this tackle the Bayonne replacement flanker number 20 was lying on top of an opponent on the ground. The Player subsequently struck his opponent with his elbow making contact with the face of the Connacht player laying beneath him.

The Player was guilty of Law 10.4.(a) striking an opponent and was subsequently shown a red card and dismissed from the field of play”.

The parties also considered the email from Connacht which read as follows:

“On Saturday the 15th of January 2011 Connacht Rugby played Bayonne in the Amlin Challenge Cup in Stade de Jaeger in Bayonne. Our number 19 Michael Swift was subject to an elbow by Bayonne number 19 in the last minute of play for which he received a red card.

Michael Swift made a tackle and rolled away but as he was lying on his back the player in question hovered above him and then proceeded to raise his left elbow and strike him in the high chest area just below his neck.

Michael suffered no ill effects after the incident and did not require medical attention”.

It was noted that the reference to “Bayonne number 19” was an error and accepted by all the parties that the reference was to the Player who was in fact wearing No 20.

Player’s position

M. Mauriac was invited to address the Hearing but he preferred that the Player did so himself. The Player narrated his position in relation to the offending as follows:

- he fully accepted his culpability;
- he had committed what he described as a ridiculous act in the last second of the game and in instant reaction to the frustration of having lost badly;
- it had happened in the last movement of the game and as the Referee was about to blow the final whistle;
- he was ashamed and embarrassed at what had happened;
- he had never been in any sort of disciplinary trouble previously apart from as a junior player when, as captain of a junior team, he (with the other captain) was sanctioned for offences by the players of their two teams;
- he had played rugby for 10 years and was in his third professional contract with Bayonne;
- he was a native of Bayonne and had always been a Bayonne player;

- he was very sorry for what had happened and was pleased and relieved that the other player had suffered no injury;
- there was no bad feeling between the players at the end of the game.

In response to questions from the Judicial Officer, the Player confirmed that he had been on the field as substitute for some 30 minutes before the incident occurred. The game had been played in a fair although competitive spirit. It was a hard game but not a dirty game and there had been no instances of friction between the teams. This incident was an isolated, momentary aberration on the part of the Player, for which he was sorry and took full responsibility.

Submissions on sanction

Once all of the evidence had been heard on what had happened, the Judicial Officer invited the Player and the Disciplinary Officer to make submissions as to sanction.

M. Mauriac addressed the Hearing by reference to the relevant provisions of DR 6.7.32.

He said that the Player was guilty of the offence and accepted his culpability. The strike with the elbow had been petulant rather than powerful and an act of frustration and not of malice. It had struck the other player in the chest, not the face, and had caused no injury. In the circumstances Mr Mauriac urged that a low end sanction was the appropriate starting point in this case.

M. Mauriac considered there to be no factors aggravating to the offence but that there were strong mitigating features. The Player had an exemplary record and his conduct at the Hearing and in preparation for the Hearing was similarly exemplary. When the Player had asked M. Mauriac to represent him, he had asked him to do so on the basis that he accepted his guilt and wished Mr Mauriac to deal only with the question of sanction.

The Disciplinary Officer's submissions were:

- he did not advocate a particular entry point;
- the offending was intentional but reckless as to where the blow landed;
- the offence was committed with the elbow;
- there was no provocation;
- there was no injury and no effect either on the Player or the game;
- he confirmed the Player's record was clean;
- in accordance with ERC policy he applied for costs to be ordered against the Player.

Decision as to disposal

The Judicial Officer retired to deliberate in private so as to decide what, if any, sanction would be appropriate in the circumstances. The Judicial Officer was satisfied to the requisite standard of proof that the Player had struck C19 with his left elbow, as described by the Referee in his written report. However, the contact with C19 was not to his face but to his upper chest. The Judicial Officer made this finding with the benefit of having viewed video clips of the incident from six different angles, in slow motion and many times. It was also reached with the benefit of having read the evidence supplied by Connacht Rugby. The Referee did not have these luxuries and made his decision instantaneously. There is therefore no criticism whatsoever of the Referee's mistake in respect of the point of contact of the striking elbow and the Judicial Officer is happy to indicate that had the Player, because of this mistake of detail, disputed the Ordering Off, he would have upheld the Referee's decision in any event.

In turning to the question of sanction, the Judicial Officer considered the terms of the Disciplinary Rules including DR 6.7.29 through to DR 6.7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

The Judicial Officer noted that the offence of striking with an elbow in contravention of Law 10(4)(a) 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 – 2 weeks
- Mid Range – 5 weeks
- Top End – 9+ weeks
- Maximum Sanction – 52weeks

To decide upon the appropriate entry point the Judicial Officer assessed the seriousness of the Player's conduct by reference to the following factors as required to be considered under DR 6.7.32 :

- the act of foul play was deliberate, albeit perpetrated on the spur of a frustrated moment;
- the strike with the elbow was firm rather than powerful and connected with C19's upper chest;
- there was no provocation of the Player or any question of self defence on his part;
- there was no effect on the victim either in terms of his participation in the game or physical injury;
- there was no effect on the Match – in fact, the incident happened in the last seconds of the game;
- the victim was in a vulnerable position – prone and below the Player;
- the Player participated fully in the offence although there was no premeditation and the action of the Player was out of sympathy with the temper of the Match;
- the Player's action was completed.

In light of the same the Judicial Officer determined that the appropriate entry point for this matter was Two Weeks being the Lower End.

The Judicial Officer then considered the "off-field" issues and in doing so looked at whether there were any "aggravating" or "mitigating" factors.

The Judicial Officer considered that there were no off-field aggravating factors to take into account in determining the appropriate period of suspension.

The Judicial Officer considered that the following were off-field mitigating factors to take into account in determining the appropriate period of suspension:

- although the Player had not responded in a formal way to the Standard Directions, the Judicial Officer considered this to be a failing of his Club and advisers and should not be held against the Player himself. He had indicated his acceptance of the Ordering Off at an early stage and accepted his culpability without any attempt to excuse his behaviour;
- the Player's previous record was clean such that the Judicial Officer was able to accept that this incident was an isolated aberration;
- the Player was a player of some experience who should have known better and the Player accepted that to be the case;
- the Player's demeanour and conduct at the Hearing was exemplary so as to demonstrate to the Judicial Officer that the Player took these matters very seriously and that he was ashamed and embarrassed to be appearing before him;
- the Player showed genuine remorse and was relieved that his actions had not caused injury

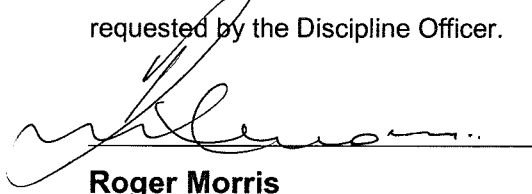
Having determined that the Low End entry point was appropriate, the Judicial Officer, if he is inclined to discount the period of suspension, must consider DR 6.7.36. The Judicial Officer was satisfied that there were no aggravating features as contemplated by DR 6.7.34 and that the mitigating features were such that he should feel compelled to take them into account. Consequently, a period of one week was to be deducted.

In all of the circumstances the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension representing one week commencing on 15th January 2011 and ending on 23rd January 2011 (inclusive).

The Player and the Disciplinary Officer are reminded that DR 7.1.1 provides for a right of appeal against this decision.

Costs

The Discipline Officer applied for costs (limited to the Judicial Officer's travel and accommodation costs in connection with the Hearing) to be awarded against the Player. The Player made no argument that the costs should not be so awarded and the Judicial Officer therefore ordered as requested by the Discipline Officer.



Roger Morris
Judicial Officer

25th January 2011
Date