

EUROPEAN RUGBY CUP

Decision of the Disciplinary Committee in the matter of

ERC

v

**Guilem Guirado
USA Perpignan**

**HELD IN THE OFFICES OF THE JUDGE ADVOCATE
GENERAL, 81 CHANCERY LANE, LONDON WC2A 4BQ**

on

23rd October 2008

Disciplinary Committee:

His Honour Judge Jeff Blackett (Chairman)
Mr Robert Horner
Dr Barry O'Driscoll

Representing ERC:

Roger O'Connor (ERC Disciplinary Officer)
Max Duthie (Counsel)

Representing Guilem Guirado (The Player):

Pierre Becque (Counsel)
The Player

Introduction and Preliminary Matters

This citing concerned an incident in the 73rd minute of the match between Ospreys and USA Perpignan played at Liberty Stadium on 18 October 2008. It was brought under Disciplinary Rule 6.5 and the Disciplinary Committee appointed in accordance with Disciplinary Rule 6.1.3. The Player did not object the composition of the Committee.

Charge and Plea

The Player was cited for an act contrary to good sportsmanship in that he made contact with the eye or eye area of an opponent contrary to Law 10(4)(k). He denied the offence.

The Citing Complaint

The Citing complaint stated:

“Ospreys 18 (Gough) goes to ground beyond Perpignan 9 who has fielded the ball and was tackled. O18 then covers his head with his hands. The ball is not immediately proximate to him. P1 then moves towards O18 and appears to make contact with the eye area of O18 with his hands, particularly his left hand. O18 reacts to this by grabbing P16’s left ankle with his hand as O18 is dragged away by P7. Once O18 gets to his feet you can clearly see on the DVD that he indicates to the touch judge that his eye(s) were interfered with. In addition you can clearly hear him state “eye gouging” or words to that effect.”

The victim player, Gough, provided a written statement and also gave oral evidence by telephone conference. In his written statement he said:

“..... I came in, hit the ruck and came off my feet. I heard a bit of a commotion and then felt what felt like two sets of hands over my face and fingers in my eyes. I grabbed the ankle of the player I thought had done it.”

In his oral evidence, he said that he could remember the incident and that as he went into the ruck he made contact with an opponent and then heard the whistle blow as he was penalised. He then felt fingers dragged across his face and into his eyes. He said that the fingers went straight through the eyes but made contact with the eye balls. It was very quick, like a raking motion, catching both eyes. He said that he was manhandled by two people and he got up and grabbed the person he thought had done this straight away, remonstrating with him and the touch judge about the contact. However, he now believes he grabbed the wrong person. He said that he has subsequently watched the DVD recording of the incident and is now sure in his own mind that the person who made contact with his eyes was the person whom he cleared out when he first hit the ruck (the Player). He carried on playing for the rest of the match and the doctor examined his eyes at the end. He said he had a small scratch on one of his eyelids but suffered no other injury or discomfort.

The DVD was helpful but not entirely clear. It showed the Player being cleared out by Gough. The Player then started to get up while Gough remained on the floor with his hands over his head as though to protect his head from contact. The Player leaned forward and made contact with his right hand on Gough’s head – it appears that this was on the top of his head. As he continued to get up he pushed his left hand forward towards Gough’s face. It is difficult to see from any angle whether there was any contact. On the view from the side one could see the right hand moving forward, but another player obscured any contact there may have been. On the view from behind it appeared as though the hand moved towards Gough’s face, but it was difficult to see whether there was any contact. As the Player’s left hand moved forward towards

Gough's face, Perpignan No 7 (Gerrie Bretz) started to pull Gough upwards from behind. His right hand appeared to grab the top of Gough's right shoulder and his left hand appeared to grab him around the face or head area. Again the DVD was not entirely clear, but the Committee could not rule out the possibility that Bretz's left hand came into contact with Gough's eyes. After the movement of the Player's left hand, and as Bretz started to grab him, Gough briefly caught hold of the Player's ankle. He let go immediately as he was being pulled upwards by Bretz and, as he got to his feet, Gough threw a punch in Bretz's direction, pointed at him, briefly wrestled with him and indicated to the nearby touch judge and to Bretz that he had been poked in the eye. It was clear from this scene that, at the time of the incident, Gough thought that Bretz had made contact with his eyes.

None of the match officials saw any incident involving contact with the eyes, but the referee reported that Ospreys players complained to him at least three times during the match of contact with the eyes/gouging including at the time of this incident.

Mr Duthie submitted that there was sufficient evidence for the Committee to conclude that the Player had made contact with Gough's eyes or eye area. He said that Gough's immediate reaction in grabbing the Player's ankle took place before Bretz started to pull him upwards and Gough, in giving evidence, was sure that the person who made contact with his eyes was the person he cleared out of the ruck – that is the Player. Mr Duthie submitted that the Committee should accept that Gough was in the best position to interpret the DVD because he was there.

The Player's Case

The Player denied that he made contact with Gough's eyes. He said that after he had been cleared out the referee penalised Gough for diving over the ball. He tapped him on the head a couple of times to remind him that he should not do that – contact was on the scrum cap. He said it was not a heavy tap and he then got up and moved away. He said that he used both his right hand and his left hand to tap him in this way and there was no possibility that he could have made contact with Gough's eyes or eye area.

Mr Becque submitted first that the Player is a man of good character having played professional rugby for 4 years with one international cap. He does not have a reputation for being a dirty player. He said that the DVD recording was not conclusive but that it appeared that Gough put his hands over his head before the Player tapped his head and it would have been impossible for there to have been contact with the eyes because Gough's hands were in the way. He submitted that it is clear from the video that Gough's immediate reaction was to remonstrate with Bretz. Further it would not be safe to place too much reliance on his oral testimony that he had got the wrong man because he had not said when he changed his mind, when he had viewed the DVD or whether he knew that the Player had been cited before he viewed the DVD. He said Gough grabbing the Player's ankle could be explained as an instinctive reaction to being pulled upwards by Bretz. In short, the evidence was insufficiently strong for the Committee to be able to rely upon it.

Decision

ERC Disciplinary Rule 6.7.11 specifies that “in a citing case, the burden shall be on the Disciplinary Officer to prove, on the balance of probabilities, that the Person cited committed the acts of Foul Play specified in the complaint.” The balance of probabilities is a sliding scale: the more serious the allegation, the less likely it is that the event occurred and hence the stronger the evidence needed to prove that it did occur. Allegations of contact with the eyes are serious and carry significant sanctions if proved. In such cases, therefore, disciplinary committees need stronger evidence than just sufficient to show that the events were more likely than not to have occurred.

In this case the Committee had no doubt that there was contact with Gough’s eyes. It was fleeting and there were no injuries apart from a small scratch on one of his eyelids. However somebody did deliberately place their fingers around his eyes to put him in some discomfort. The Committee also had no doubt that contact was made either by the Player or by Gerrie Bretz.

Gough’s immediate reaction at the time of the contact was that it was Bretz who had touched his eyes. That much was clear from the DVD footage, but in oral evidence he said that he had remonstrated with the wrong person. The DVD shows the Player’s left hand move toward Gough’s head but it also shows Bretz’s left hand in the vicinity of Gough’s head. Either could have made contact with Gough’s eyes. Although Gough in oral testimony said he was sure he got the wrong person immediately after the event, we were unsure as to when or why he changed his mind. He may just have made a mistake having viewed the DVD footage which was not entirely clear, particularly as the whole incident occurred very quickly.

In all the circumstances, therefore, the Committee were not satisfied to the requisite standard that it was the Player who made contact with Gough’s eye. It may have been him, but that is not sufficient for the Committee to uphold the citing. **Therefore the citing is dismissed and no further action may be taken against the Player.**

Costs

Neither party made any application for costs which should lie where they fall.

Comment

The Committee makes no criticism of the decision to cite the Player or the conduct of the case by ERC. This was a difficult case and required very detailed examination of the DVD footage from several angles and frame by frame. Even then it was difficult to ascertain precisely what occurred – it was a case where it was clear one of two people committed an act of foul play but it was impossible to decide which of them was guilty.

The Committee notes with concern an apparent increase in the incidence of players targeting opponents’ faces, and particularly the eye area, to cause them some discomfort during close contests for the ball. This sort of conduct is insidious and, when proven against a player, should be discouraged with significant deterrent sanctions.

Jeff Blackett
Chairman

Robert Horner
Member

Barry O'Driscoll
Member

Date: 26 October 2008