

EUROPEAN RUGBY CUP

DECISION OF DISCIPLINE COMMITTEE

HELD AT ERC OFFICES, DUBLIN, *IRELAND*

20th December 2006 – 14.10

IN RESPECT OF:-

Alan Quinlan (“the Player”)

AND

A citing complaint brought by Alan Mansell, the independent Citing Commissioner in respect of an infringement of Law 10.4(b) in the Heineken Cup match between Munster Rugby and Cardiff Blues played on the 16th of December 2006 at Thomond Park, Ireland.

MEMBERS OF THE DISCIPLINE COMMITTEE:- (*“the Committee”*)

Christopher Quinlan (Chairman) (RFU)

Bruce Reece-Russel (RFU)

Iain Goodall (SRU)

DECISION OF THE COMMITTEE:

- (i) The Committee found that the Player committed an act of Foul Play which merited a Red Card (Ordering Off).
- (ii) The Player is suspended from taking part in the game of rugby union up to and including 30th January 2007. This represents a six week suspension commencing from today (20th December 2006).

- (iii) The Committee made no award of costs against Player.
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INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the *ERC* Discipline Panel pursuant to the discipline regulations of ERC in respect of a citing complaint made by Mr Alan Mansell, the independent Citing Commissioner. The citing complaint concerned the conduct of the Player during a fourth round Heineken Cup match played between Munster and Cardiff Blues on 16th December 2006 at Thomond Park. The citing complaint alleged that the Player stamped on the left leg of the Cardiff Blues No. 18, Mark Lewis.

Present at the hearing on 20th December 2006, in addition to the members of the Committee were:-

Roger O'Connor ERC Disciplinary Officer
Max Duthie, Solicitor instructed by ERC

The Player
Jim O'Callaghan, Barrister, representing the Player
Garrett Fitzgerald, Chief Executive, Munster Rugby

HEARING

Introduction and Preliminaries

At the commencement of the hearing the Chairman confirmed the identities of all present and established that the Player was before the Committee to answer a citing complaint. The Chairman outlined the procedure to be adopted by the Committee for the hearing and that the provisions of the ERC Heineken Cup Disciplinary Rules 2006/07 ("the Rules") would apply. The Player and all present agreed to proceeding on that basis.

Prior to the commencement of the formal hearing the Chairman invited the Player and his representative to confirm that they wished to raise no preliminary issues. There was none; in particular no issue was taken as to the procedural requirements in relation to the bringing of the citing complaint. In addition, no objection was taken to the composition of the Disciplinary Committee.

The medical evidence

The Chairman established that the evidence to be placed before the Committee (and which had been received prior to the hearing) comprised

- DVD footage of the incident (from “Sky”)
- Letter from Roger O’Connor to Professor Crerar (dated 18th December 2006) together with Citing Commissioner’s written report
- An email from Robert Norster, Chief Executive, Cardiff Blues, dated 19th December 2006, timed at 16.20
- An email from Robert Norster, Chief Executive, Cardiff Blues, dated 20th December 2006, timed at 10.01, in which he related the medical position of the injured player

The Player had received the same. Upon the Chairman seeking to confirm that no additional evidence was to be presented before the Committee, save for the Player’s account, Mr O’Callaghan disclosed that he proposed to call live medical evidence. When asked, he said he had no written account of the evidence he proposed to call, but had spoken with the doctor in question and knew what he proposed to say. By way of explanation, he said he had received the “Norster email” (20/12/06, 10.01) very shortly before the hearing. He disclosed the general nature of the evidence, namely that it went to the issue of “causation”; he anticipated his medical expert would say that the stamp was unlikely to have been the cause of the injury. The doctor had not seen the incident nor the recorded footage.

Mr Duthie explained that the ERC did not object to admission of this evidence (notwithstanding Rule 7.4.5) and he indicated a preparedness to proceed. He did so because

- (1) He believed that the source of the information conveyed in Mr Norster's email (20.12.06, 10.01), namely Mr Richard Evans, Consultant Trauma & Orthopaedic Surgeon, was available to give evidence by telephone.
- (2) Neither expert was saying that the injury could not have been caused by the stamp
- (3) The ERC had convened the hearing at short notice and with such expedition (four days after the match) at the specific request of Munster Rugby.

The Committee adjourned to consider the position and asked Mr Duthie to ascertain whether Mr Evans was in fact available. Upon reconvening Mr Duthie confirmed that he was and added that he, Mr Evans, had seen footage of the incident. Knowing all of the above, Mr O'Callaghan's position remained that he wanted the hearing to proceed.

The options available to the Committee in summary were as follows -

- (1) Admit the evidence and proceed
- (2) Refuse to admit the evidence and proceed
- (3) Adjourn the hearing for the parties to obtain and serve on all concerned, written medical reports

The Committee was not attracted by (2). In short, we were satisfied there was a reasonable explanation for the failure to meet the twenty-four hour deadline (*per* Rule 7.4.5). As to (3), though not determinative, neither side invited us to adjourn. In fact, Mr O'Callaghan said the club was anxious for the hearing to take place, putting it in this (strong) way: he was "adamant" that the hearing should not be adjourned. The Chairman asked whether he and the Player appreciated that this was (potentially and without forming any view) a serious case, the medical evidence was of some importance and that he (Mr Alan Quinlan) understood the implications of proceeding today. Knowing all of that and after taking instructions in front of us, Mr O'Callaghan insisted that he wanted the hearing to proceed. Since

- (1) There would be expert evidence on causation available to the Committee
- (2) Both medics were available to give live evidence and so be questioned
- (3) There was a reasonable explanation for late provision of the evidence
- (4) Late "service" caused no unfairness

(5) The Player wanted the case to proceed

we decided to admit the evidence and proceed.

Plea

The Chairman put the allegation of foul play and asked the Player how he wished to plead. He admitted the act of foul play, namely that he stamped on the player as alleged, contrary to Law 10(4)(b). There being no issue that the player committed the alleged act of foul play, the Committee upheld the citing complaint. The central question was whether that act of foul play warranted sanction and as to that and the circumstances of the foul play, the Committee heard a deal of evidence. In light of the Committee's findings it is necessary to set out that evidence in some detail.

Citing Complaint

The citing report & DVD

Mr Duthie invited the Committee to the written, lengthy and detailed citing report prepared by Mr Mansell. Therein, Mr Mansell records that after the match he was approached by Robert Norster who asked him to review an act of stamping by the Player. He alleged that the Player had stamped on the leg of the Cardiff No 18, Mark Lewis, causing injury which resulted in his having to leave the field of play. The Munster manager, Gerry Holland was so informed. Mr Mansell obtained from the match broadcaster Sky, footage of the incident from various different camera angles, which footage was recorded on a DVD.

The Committee had read Mr Mansell report. Mr Duthie took the Committee through the DVD footage (without sound) provided by Sky. The DVD showed events immediately leading up to and a little beyond the incident. It comprised a series of clips of the incident from different cameras operated by Sky. They showed the incident in real time and slow motion. The reverse camera angles show most clearly the Player's actions.

The incident occurred in the seventieth minute of the second half. Munster won possession at a lineout close to the Cardiff 22 metre line. A maul developed, Munster drove the maul forward towards the Cardiff goal line. As it moves forward, the maul wheeled to the right. The Player was on the blind side of the maul and bound onto the Cardiff No 18, Mark Lewis. The Player is seen to complain twice to the adjacent touch judge about the position of Mr Lewis, whom he believed had entered the maul from an offside position. Mr Lewis reached over the top of the maul attempting to interfere with possession. The maul moved further to the right, such that the Player moved behind Mr Lewis. As Mr Mansell recorded (accurately) in his citing report, the main camera angle shows the Player to look down. It is then (from that main camera) all but impossible to see the admitted stamp.

However, the reverse camera angle shows it clearly. He looked down and then stamped ("heavily" reported Mr Mansell) once on the side and back of Mr Lewis's left calf. At the moment of impact the lower left leg was exposed, almost parallel to and above the ground. The leg was bent at the knee, such that the upper part was vertical rather than horizontal. The force of the impact drove his lower leg down and onto the ground. The footage clearly shows Mr Lewis cry out in pain at the time of the impact. In fact, he shouts or screams at least once more, possibly twice and appears from the footage to be in pain thereafter.

The maul goes to ground, as does Mr Lewis and a number of other players. On the ground, Mr Lewis makes as if to clutch at his left leg. He is in obvious pain and the player bent over him, as if to see if he was all right. The referee then blew his whistle and awarded a penalty to Munster for offside entry to the maul on the blind side. The Player returned to Mr Lewis, as if concerned for him. Mr Lewis received some medical attention on the pitch and was then removed on a stretcher. He played no further part in the game. Mr Mansell recorded in his report that the referee and touch judge did not see the stamp.

The email from Robert Norster, dated 19th December 2006, timed at 16.20 records the recollections of Mark Lewis. He could not recall anything being said by the Player at the time of the incident. However, he said the Player apologised to him whilst was receiving treatment on the pitch and indeed visited him in the treatment room where he repeated the apology. Mr Lewis said Mr Quinlan said he had acted "in the heat of the moment". He stated the Player called him the following day to repeat his apology and ask after him.

Medical evidence

The email from Robert Norster, (20/12/06, 10.01) reported the result of an MRI scan carried out late on Monday 18 December. Therein he stated that the Player “suffered a torn medial collateral ligament and has capsule damage with significant levels of fluid on the knee”. He goes on to state that the “valgus” injury resulted from the knee being forced to “buckle inwards causing a grade 2/3 level” damage to the ligament and capsule.

For reasons of convenience and with the consent of both parties, we heard the experts “back to back”. Mr Duthie called (by telephone conference) the source of this evidence, Mr Richard Evans, Consultant Trauma & Orthopaedic Surgeon, University Hospital of Wales, Cardiff. He has a specialist interest in knee and shoulder injuries and is a surgeon to WRU and Cardiff Blues. He was at the game as duty doctor for Cardiff Blues. He saw footage of the incident in the tunnel after the game and in cross-examination made clear that he saw both main and reverse angle views. He saw the stamp. He helped the injured player from the pitch, was with him in the treatment room and accompanied him to hospital when they returned to Cardiff late that evening. He arranged the said MRI scan and related the results, relying on the findings of a radiologist (he had not seen the films).

He confirmed that Mr Evans suffered injury to the inner border of the left knee, namely grade 2 or possibly grade 3 collateral ligament damage and a further injury to the medial capsule. He said a direct lateral blow causes an injury of that kind. After the game he examined Mr Lewis and saw stud marks on the lateral aspect of his left calf, where he had been stamped. Having seen the DVD footage, it was his opinion that the stamp to the lower left calf caused that injury. An injury caused by falling under the weight of other players is more likely to result in a twisting type injury such a torn cruciate ligament. As for prognosis, he said it was very unlikely that he would need an operation. The player’s knee would be in a brace for the next three weeks and he would “hopefully” be playing in “about six weeks”.

He repeated his account when asked questions by Mr O’Callaghan. He was clear and firm that a lateral blow such as the stamp causes collateral ligament damage of the kind suffered by Mr Lewis. He likened it to being hit on the leg by a car bumper: whatever height you are hit by a car bumper, this is the type of injury which results. It is caused by a lateral blow, which forces the knee inwards. A stamp on the calf was entirely consistent with an injury of this type to the knee. He said that after the game Mr Lewis would not let a Munster medical

assistant clean the area where he had been stamped, complaining of the greater (“excruciating” was how he described it) pain to his knee. He accepted he had a “fleeting” look at the video and that it was impossible for him to say that players falling on Mr Lewis did not cause the injury. However, when he combined the (1) location and mechanism of the stamp and (2) the immediate complaint of pain on inner border left knee, together with (3) the available pathology, his expert opinion remained the same: the stamp caused the knee injury. The fall might have exacerbated, but in his view not caused, it.

The Committee heard Dr Connor McCarthy, Consultant Rheumatologist, Faculty Sports and Exercise Medicine, Dublin and Medical Officer IRFU, called on behalf of the Player. He had not seen the incident nor examined the injured player. He said that a stamp on the calf was unlikely to cause the degree of stress to the knee necessary to cause this type of injury. It would require significant inward force. He said a valgus injury to the knee is more likely to be caused by direct lateral blow or trauma to the outside of and usually at ninety degrees to the knee. It was impact to the knee, which caused that type of injury, not impact to the calf. Two large players falling the player was more likely to cause that sort of injury if such an event placed a lateral or valgus strain on the knee.

Questioned by Mr Duthie he said that such player or players would have had to fall “on top of the outside the knee” to cause such an injury. A stamp to the calf, of the kind described could cause the injury but only if it pushed the knee inwards.

The player’s case

The Player did not dispute that he stamped on Mr Lewis. He is thirty-two years of age, has played for Munster since 1997. He has twenty-three Ireland caps and an exemplary disciplinary record. There was little factual dispute in relation to the circumstances of the stamping. He admitted stamping down on Mr Lewis’s lower left calf, as shown in the DVD recording. He said it was deliberate but in the spur of the moment, born of frustration at Cardiff’s repeated offside at the maul, of which this was just one example. Mr Lewis was offside, he gesticulated to the touch judge, which had no effect. He heard Mr Lewis shout when he stamped on him and heard him scream when he went to ground. He said he was concerned and worried for him. He did not intend to cause Mr Lewis injury. There was no force in his stamp, he said, and he regretted what he did. He would never intend to hurt

another player. He himself had just returned from a significant lay-off caused by a similar injury and had no wish for another player to suffer as he had.

In so far as he could say, he did not think he caused the knee injury. He apologised to Mr Lewis on the pitch, after the game and by telephone the following day. Mr Lewis was a friend. He told us this was an extremely important time for him with Heineken Cup matches in the New Year; he was anxious to return to the Ireland squad for the Six Nations and beyond.

Questioned by Mr Duthie, he said he could not really say what he thought immediately before stamping down on Mr Lewis. If he thought anything it was along the lines of “give the player a nick and hopefully he would get out of there”. He agreed he must have intended to make contact with the player and accepted it was a deliberate act, though not premeditated.

Sanction

Submissions

Mr Duthie reminded us of the relevant entry points as provided in Appendix 3 to the Rules. The ERC’s submission was that this was a deliberate stamp, which caused the not insignificant knee injury to the victim player. The ERC did not accept that the player falling under the weight of others caused the knee injury. There was little if any provocation, he submitted.

In a passionate plea, Mr O’Callaghan submitted that but for the injury, the act of foul play would not have been cited. He explained that submission in this way: it did not pass the “red card test”. He invited us to consider alternative sanctions to suspension as provided by Rule 7.6.22. In relation to the question of suspension, he urged the Committee to decide it was low end offence. He said it was intentional, but spontaneous, had no effect on the game and was a reaction to Mr Lewis’s offside position in the maul. Throughout the course of the hearing he described it as a “soft” or “small” stamp and invited the Committee to that view. He submitted the video clearly showed Mr Lewis screaming for a second time and some little time after the stamp, thereby supporting the Player’s case that the injury was caused then and not by him. In light of that, the Player’s own account and the conflicting medical evidence, he invited the Committee to say it could not be satisfied to the requisite standard that the

stamp caused the injury. He invited the Committee to find no aggravating factors and have regard to all of the mitigation.

Decision

The Committee must consider what, if any, sanction would be appropriate in the circumstances. In this regard the Committee took into account the evidence and submissions and considered the terms of Rules 7.6.5, 7.6.22, 7.6.23 and 7.6.32. The Committee unanimously rejected the submission that the act of foul play did not merit a red card. In our judgment, it did, and plainly so. It need hardly be said that a deliberate stamp on an exposed limb can cause serious and long term injury.

The regulations provide for three entry points based on the seriousness of the player's offending. These are as follows –

- 1 month - lower end
- 3 months - mid range
- 9 months - top end

In assessing the seriousness of the foul play we considered the provisions of Rule 7.6.24. and concluded that

- (1) It was a deliberate act (which the Player admitted)
- (2) The victim was vulnerable in that he could not see what was coming nor was he in a position to defend himself
- (3) It was stamp on an exposed, unprotected lower limb
- (4) It was a completed act of foul play
- (5) It caused injury which resulted in the player having to leave the field of play and being unable to play for approximately six weeks

As to point (5), the Committee considered with care the medical and other evidence. The footage shows clearly the stamp, which cannot properly be described as “soft”. It was a downward stamp designed at the very least to cause pain: it had no purpose otherwise. It left stud marks on his calf. Mr Lewis is seen to react immediately with a shout or scream; an

exclamation of pain. It is wrong to say (as Mr O'Callaghan did) that after the match Mr Lewis did not complain of pain in that area. He did, just more from the knee. The Committee concluded that on the balance of probabilities the stamp caused the knee injury. The Committee so concluded because

- (1) Of our own interpretation of the DVD
- (2) We accepted Mr Evans's factual evidence of what he saw and heard at the time.
- (3) In addition, we accepted his opinion
 - a. He had the advantage of seeing Mr Lewis at the time
 - b. He had seen the incident in question and so his opinion was not theoretical but based on the actual events
 - c. His expert evidence as to causation and his explanation of the mechanism by which such injuries are caused fitted the factual evidence
- (4) Mr Evans did not rule out the possibility that a fall under bodies could have caused the injury but did not think it likely. Put another way, not probable.
- (5) Mr McCarthy's evidence was to the effect that a fall under bodies could have caused the knee injury *if* it placed a lateral or valgus strain on the knee. That would require direct lateral impact on the knee. It is right that Mr Lewis and the maul went to ground, but close analysis of the DVD shows that Mr Lewis's left knee was not caught beneath or trapped by another or other bodies. If anything his foot, lower leg was so trapped causing his knee to twist. That twisting would not have caused an injury of this type but might well have exacerbated the pain so leading to a further scream or screams.

This was a deliberate stamp on an exposed limb, which we found caused not insignificant injury. It is right that it did not have any effect on the game and was "relatively spontaneous". The Committee gave anxious consideration as to whether this case merited a low end entry point, as urged by Mr O'Callaghan. It would take a hard heart not possessed by any member of the Committee to feel no sympathy for a man as remorseful and contrite as Mr Quinlan presented. He appeared genuinely crestfallen. However, in light of the factual findings, the Committee was driven, by application of the provisions Rule 7.6.24, to conclude that the appropriate starting point was mid range, namely three months, taken to be a period of twelve weeks (*per* Rule 7.6.25).

The Committee considered there were no aggravating circumstances (*per* Rule 7.6.26).

Thereafter the Committee considered the following the mitigating circumstances (*per* Rule 7.6.27) -

- (1) His immediate admission of guilt
- (2) His exemplary record
- (3) His good character
- (4) The fact he has played the game at the highest level with distinction for a number of years
- (5) His conduct at the hearing, which could not have been more impressive
- (6) His immediate and repeated apology
- (7) His remorse, which was accepted as genuine

The Committee resolved that the Player was entitled to the maximum possible credit for all the matters adumbrated above. In the circumstances of this case, (having determined the appropriate entry point to be mid-range) the maximum possible credit equates to discount of fifty percent of the starting point: six weeks.

In all the circumstances the Committee determined that an appropriate sanction was the imposition of a period of suspension of six weeks (i.e. twelve minus six). That suspension commences with immediate effect. The Committee imposes a period of suspension from playing rugby union of six weeks (forty-two days) commencing on 20th December 2006, up to and including the 30th January 2007. He is free to play on 31st January 2007.

The Disciplinary Officer made no application for costs, and accordingly we made no order against the Player, or at all.

The Player was informed of his right of appeal against this decision, as provided by Rule 8.

We record our gratitude for the submissions and assistance of Mr Duthie and Mr O'Callaghan.

Christopher Quinlan

20 December 2006

Christopher Quinlan
Chairman
Discipline Committee