

**EUROPEAN RUGBY CUP
DECISION OF DISCIPLINE COMMITTEE
HELD AT ERC OFFICES, DUBLIN, IRELAND**

20th December 2006 – 12.00

IN RESPECT OF:-

Ben Gissing (“the Player”)

AND

A club citing complaint brought by Ospreys, and reviewed by Steven Griffiths, the independent Citing Commissioner in respect of an infringement of Law 10.4(a) in the Heineken Cup match between Rugby Calvisano and Ospreys played on the 9th of December 2006 in Calvisano, Italy.

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

Christopher Quinlan (Chairman) (RFU)

Bruce Reece-Russel (RFU)

Caleb Powell (IRFU)

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 2nd January 2007. This represents a two-week suspension commencing on 20th December 2006.
- (iii) The Committee made no award of costs against Player.

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 Ospreys and reviewed by Steve Griffiths, the independent Citing Commissioner. The citing complaint concerned the conduct of the Player during a third round Heineken Cup match played between match between Calvisano and Ospreys played on the 9th of December 2006 at Calvisano, Italy. The citing complaint alleged that the Player struck with his fist the Ospreys No.5, Ian Evans.

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

Roger O'Connor ERC Disciplinary Officer

The Player

Massimo Borra, Rugby Calvisano

HEARING

Introduction and Preliminaries

At the commencement of the hearing Massimo Borra requested the services of an interpreter. The ERC was able to provide such an interpreter and we record here our gratitude.

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 Mr O'Connor to set out the procedure by which the complaint came to be heard. In short no citing commissioner was appointed and therefore present at the game. Ospreys initiated the citing within fifty hours of the start of the game in question (*per* Rule 7.2.2). Thereafter, a citing officer reviewed the citing complaint expeditiously and decided the Player had a case to answer (*per* Rule 7.2.4). Thereafter he notified the Disciplinary Officer and ultimately the hearing was convened.

The Player and his representative were then asked if they wished to raise any 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 Chairman established that the evidence to be placed before the Committee (and which had been received prior to the hearing) comprised

- Video footage of the incident, from BBC Wales and Ospreys
- Letter from Roger O'Connor to Professor Crerar (dated 14th December 2006) together with the written
 - Club Citing Complaint completed by Keith Hopkins, Director of Rugby, Ospreys dated 11th December 2006
 - The Citing Review form completed by Steve Griffiths, dated 14 December 2006
- A typed and signed statement from Ian Evans (Ospreys No. 5), dated 11th December 2006
- A typed, signed but undated statement from Brian Downey (Ospreys Head Physiotherapist)
- An email from Jim Fleming dated and timed 14th December 2006, 08.32 which recorded that none of the match officials saw the incident

The Player had received the same in good time. In advance of the hearing Calvisano proved the Committee and ERC with copies of a statement from Ben Gissing and typed submissions from Massimo Borra. Mr O'Connor explained that the ERC did not object to admission of this evidence (notwithstanding Rule 7.4.5) and the Committee was prepared to admit it.

The Chairman narrated the terms of the citing complaint. The Chairman asked the Player how he wished to plead in relation to the allegation that he had committed an act of foul play, namely struck Ian Evans contrary to Law 10(4)(a). The Player denied that he had committed an act of foul play.

Citing Complaint

Evidence & Submissions

In his citing complaint form Mr Hopkins described the incident thus:

“Ospreys were going forward with momentum when a quick ruck developed. On arrival at the ruck the Ospreys No. 5 was punched from behind by a Calvisano player (No. 20) who was running back but alongside the Ospreys No.5. the incident took place on the Calvisano 22m - play continued, Ospreys player stays down.”

Having reviewed footage of the incident, Mr Griffiths, in his citing review form described it in this way -

“The Calvisano number 20 struck the Ospreys number five from behind whilst the number 5 was defenceless and the strike was with forceful (*sic*) with the arm and fist on contravention of Law 10(4)(a).”

In his statement Ian Evans recalled running towards the ruck at which point he “felt a powerful blow to [his] cheek” which sent him to the ground. He received treatment on the pitch and completed the match.

The DVD footage was consistent with the above descriptions. Mr O’Connor took the Committee through the three clips, the longest of which lasted thirty-one seconds. It showed the Player running along side, but slightly behind the Ospreys No 5. He submitted there was no contact between the two players. As the Ospreys No.5 reached the lock, the player who was on Mr Evans’s left, and slightly behind, swung his left arm round and into the Mr Evans’s face. He went to ground and as the camera followed the ball he disappeared from view. When the camera panned back on him fourteen or so seconds later he was getting to his feet.

Mr Brian Downey attended to Ian Evans on the pitch. Mr Evans was momentarily stunned, did not lose consciousness, but was slightly dazed. There was a “small area of redness inferior to the left orbit and tenderness on palpation of the zygoma and overlying tissues. Biting down was painful.” He played on and after the game was treated for a swollen and tender left cheek.

That was the ERC’s case: a single unprovoked blow contrary to law 10(4)(a). The Committee decided that a *prima facie* case of foul play had been established (*per* Rule 7.6.10) and invited the Player to present his case.

Massimo Borra said Ian Evans was obstructing and holding the Player. The Player reacted to that by trying to free himself. In so doing he made contact with Ian Evans. He insisted

the email from Jim Fleming was to be interpreted as meaning the referee saw the incident (after all it happened right in front of him) and considered it to be “part and parcel of the game”ie.e. not an act of foul play.

The Committee invited the Player to tell us what happened. Using the DVD footage, he said that as they both approached the ruck, Evans was obstructing his running line and holding him. He complained that Ospreys players behaved like that throughout the match. He agreed that the DVD showed him making contact with Mr Evans’s face but he said he did not know which part of his arm or hand made contact. The contact was accidental, an unintended consequence of his effort to free himself.

Questioned by Mr O’Connor and the Committee, he denied he swung his arm deliberately into the face of Mr Evans. Asked if he accepted striking Ian Evans he said that he did not; he accepted contact but insisted it was accidental. At one stage he agreed with the Chairman that he was not being held in the immediate lead up to the contact. He then moved from that position, claiming that he was being held when he swung his arm.

Massimo Borra wished the Committee to view clips of the twenty-three acts of Ospreys infringements, obstructions and foul play listed in the typed submissions he provided in advance of the hearing. Save for incident number seventeen, which was the one in question, the Committee could not see the relevance of any of the clips. Mr O’Connor did not object, though shared the same view. As a concession to the Player the Committee was prepared to view the clips. We did. They did not advance the Player’s case.

In his closing submissions Mr O’Connor said the DVD supported the citing. It was clear from the available footage that the Player struck Ian Evans.

The Player replied. He said he had never received a red card and did not strike Ian Evans.

Decision

The Committee retired to deliberate in private in respect of whether the Player had committed an act of Foul Play. The Committee considered all of the evidence and submissions summarised above. We concluded on the balance of probabilities that -

- (1) As Mr Evans and the Player approached the ruck, no contact between the two of them could be seen on the DVD. If there was any it was minimal and in any event there was none immediately before the blow was struck.
- (2) As Mr Evans slowed to a stop, the Player grabbed his back (in the region of his shoulder blades) with his right hand.
- (3) He then went off both feet and from slightly behind and to Mr Evans's left, he swung his left arm round and into the Mr Evans's face.
- (4) In all probability it was a punch, which landed to the left side of Mr Evans's face.

If it is not clear from the above, the Committee rejected the Player's case that contact was accidental and "all part and parcel" of his attempt to free himself from Mr Evans. In our judgment Mr Evans did not have hold of the Player immediately before he struck him, or indeed at the time the blow landed. In any event, the swinging action of his left arm, across his own body and into the face of Mr Evans was wholly inconsistent with an attempt to free himself. He could not explain why if he was held on his right side, he tried to free himself by swinging his left arm. It looked like what it was: a deliberate blow to the face. Accordingly it was an act of foul play contrary to Law 10(4)(a) and the Committee upheld the citing complaint.

As the Committee found (on the balance of probabilities) that the Player had committed an act of foul play, we were required to consider whether any sanction should be imposed. In this regard the Committee reconvened and heard submissions as to sanction.

Sanction

Mr O'Connor reminded us of Rule 7.6.24 and submitted the act of foul play was deliberate, completed, and involved a blow to the face of a vulnerable player. He said the only matter recorded against the Player was a two-week suspension for striking some six years ago.

The Committee invited Massimo Borra and the Player (who had a copy of the Rules in front of them) to address us in relation to Rules 7.6.24 to 7.6.27 inclusive and Appendix 3. Mr Gissing did not wish to add to what he had already said. He told the Committee he was a thirty-one years of age and had been a professional player for five years. Massimo

Borra insisted the offence was not grave and in effect invited us to consider a low entry point.

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 7.6.22, 7.6.23 and 7.6.32. The regulations provide for three entry points based on the seriousness of the player's offending. These are as follows –

- 2 weeks - lower end
- 3 months - mid range
- 6 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
- (2) It caused some injury, though did not result in the injured player's removal from the game
- (3) The victim was vulnerable in that he could not see what was coming nor was he in a position to defend himself

In our judgment, the act of foul play merited a red card. We considered whether this case merited a mid range entry point. Had the injury been more serious we would, unhesitatingly, have concluded that it did. However, here the victim was able to play on for the remainder of the game, and the conduct had no effect on the game. In those circumstances we concluded that the appropriate entry point was one of two weeks, namely the lower end (*per* Rule 7.6.25).

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

Thereafter the Committee considered the only mitigating circumstance was his good (not exemplary) record (*per* Rule 7.6.27). His previous sending off is somewhat stale, and he was entitled in our judgment to advance himself as having a good record; we treated him

as such. However, that being the only mitigation, we resolved that he was not entitled to any discount from the starting point of two weeks.

In all the circumstances the Committee determined that the appropriate sanction was the imposition of a period of suspension of two weeks. Unsurprisingly given that he contested the case, Rugby Calvisano had not suspended him and so the suspension commences with immediate effect. The Committee imposes a period of suspension from playing rugby union of two weeks (fourteen days) commencing on 20th December 2006 and ending on 2nd January 2007 (inclusive). He is free to play on 3rd 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.

Christopher Quinlan

21st December 2006

Christopher Quinlan

Chairman