

## EUROPEAN RUGBY CUP

### DECISION OF THE DISCIPLINARY COMMITTEE

Held at Huguenot House, 35 – 38 St Stephens Green, Dublin

Thursday 22 January 2009

#### In respect of:

Mickael Bert (“the player”)

#### And

The citing complaint brought by Geraint Edwards (WRU) that the player had breached law 10.4.(a) of the laws of the game in the match London Irish v. US Dax Rugby Landes played on the 11 December 2008 in that he had struck (punched) an opponent James Buckland

#### Members of the Disciplinary Committee (“the committee”)

Rod McKenzie (SRU) (“the chairman”)

George Spotswood (IRFU)

Robert H P Williams (WRU)

#### Decision of the Committee

- 1) The citing complaint was upheld – the player having admitted during the course of the hearing that he had committed the cited act of foul play
- 2) The player be suspended for 3 weeks from the date of the hearing until midnight 11 February 2009
- 3) That the player do pay:
  - a) the legal costs of the Disciplinary Officer to be assessed by the chairman
  - b) one-third of the costs of convening the hearing including the costs of the translators and the members of the committee

#### Introduction

The committee was conveyed by Professor Lorne Crerar chairman of ERC Discipline Panel pursuant to the Discipline Regulations of ERC 2008/09 in respect of the citing complaint made by the citing commissioner, Mr Geraint Edwards of the Welsh Rugby Union. The citing complaint concerned the conduct of the player during a Heineken Cup Round Match between London Irish and US DAX Rugby Landes played at The Madejski Stadium on 11 December 2008. The citing complaint alleged that the player had punched the London Irish player James Buckland – (the number 2 hooker) infringing law 10.4.(a).

Present at the hearing in addition to the members of the committee were:

Roger O’Connor (disciplinary officer, ERC)

Mickael Bert – (the player)

Thomas Lieveront (representative from US DAX Rugby Landes)

Also in attendance:-

The translators and technician

### **The Hearing**

At the commencement of the hearing, the chairman confirmed the identities of all present and established that the player before the committee was the player referred to in the citing complaint. The chairman outlined the procedures to be adopted by the committee for the hearing and confirmed that the provisions of the ERC disciplinary regulations 2008/09 would apply. The player and all present agreed to proceed on that basis.

The chairman established what evidence had been placed before the committee prior to the hearing and that all parties were in possession of the relevant paperwork. It comprised:

1. The charge letter and citing form
2. The hearing notice and directions
3. The referee comments
4. The touch judge comments
5. The James Buckland statement
6. The medical report
7. The player's statement in French and its translation dated 17 January 2009.

The chairman then confirmed the video footage and that it had been seen by the player and his representative.

The chairman asked the disciplinary officer and the player whether they had any preliminary issues and the disciplinary officer referred to the failure to comply with the automatic directions. The chairman stated that this would be dealt with if and when the question of costs arose. The player had no preliminary issues.

The chairman put the allegation of the citing complaint to the player and he was asked whether he admitted that he had committed an act of foul play by striking an opponent. The player denied that there was foul play.

The chairman pointed out that the first issue for the committee was to come to a conclusion as to whether or not there was foul play. He called upon the disciplinary officer to present the case reminding the hearing that the onus lay on the disciplinary officer to establish the foul play on the balance of probabilities and that if he failed to do so, the matter would be concluded at that point. If foul play was established, the committee would then move to deal with the issue of sanction.

### **The Case by the Disciplinary Officer**

The disciplinary officer referred to:

- 1) The citing complaint in summary stated:

"The London Irish (number 2) was following behind (i.e. the maul) and overran the maul and was seen to be clearly punched by the Dax (number 4) possibly because his jersey was being pulled and that the London Irish (number 2) was temporarily replaced on three occasions. Receiving a severe eye injury. He had been attended by the club doctor and received sutures on eyebrow/eyelid. Eye swollen and closed.

The referee had not seen the incident. The touch judge had not seen the incident clearly but thought it was accidental.”

2) The statement of James Buckland in summary states:

“...I was following the London Irish drive maul which became a ruck: my forward momentum led me to clean out a Dax player, simultaneously grabbing him by his shirt. As I turned to see where the ball was, a Dax player swung around and hit me above my right eye which knocked me flat on the ground.... Was treated by the London Irish medical team who took me off the pitch for stitching.....I subsequently returned to the field of play received treatment for bleeding on two further occasions during the game.....After the game we shook hands but I did not understand the few words that he uttered in French”

3) The club doctor referred (summarised) to a 3 cm vertical deep laceration extending through the inner one third of the right eyebrow distally also a severe swelling and bruising around the right eye with associated limited vision but no damage to the eye itself or eye movement – 8 sutures – player advised that likely to leave permanent scar”.

4) The letter from Mickael Bert in French together with the translation part of which states :

“ .....London Irish number 2 grabbed my jersey, thus preventing me from joining my team in our defensive efforts. As I turned around, I unintentionally punched him .....I recognise that I punched a player but only in self defence and I regret I have slightly injured the player who immediately went on playing”

The disciplinary officer submitted that the letter from the player was in itself an admission of the punch and whether or not it was unintentional such an action is an act of foul play and that the player’s admission had therefore established the case against himself.

The player’s representative asked for clarification on the point submitted by the disciplinary officer i.e. that it was foul play even if it was unintentional.

The chairman informed the player that it is contrary to law 10.4(a) to strike an opponent. The question of whether it was intentional or reckless may influence the sanction. The chairman reminded the player that in the English translation of his letter, he refers to “I punched the player but only in self defence”. For there to be self defence, the player would have to be defending an actual or apprehended physical act upon him and not simply responding to an act already perpetrated on him. If, however, the player meant to say that he struck the opponent because he had been provoked, then he is guilty of the act of foul play but the provocation would be relevant to the sanction. The translator was asked to confirm the meaning of the French words in the original French letter from the player “dans un geste de auto defense” and the translator responded by saying that it meant a gesture of self defence.

The player’s representative referred to the player making a reflexive action because his shirt was being pulled. The chairman pointed out that the letter is inconsistent with a reflexive action as it refers to self defence and that if he accepts that he punched his opponent in response to a shirt being pulled, then the punch/strike is an act of foul play and the jersey being pulled would be taken into account when the sanction is considered.

The chairman asked the player and his representative whether they wanted time to consider the matter. They conferred together and the representative said the player accepts that he did commit an act of foul play because he wanted to free himself.

The chairman directed the question to the player: Do you accept that you committed the cited an act of foul play? The player responded in the affirmative. The committee accordingly upheld the citing.

The chairman therefore advised that the disciplinary officer would now deal with the issue of sanction.

The disciplinary officer referred to Rule 6.7.32 and submitted as follows:

- a) The offending was intentional in that the player intended to strike his opponent
- b) As it was intentional, he did not submit on the issue of recklessness
- c) (i) The player used his fist
  - (ii) With regard to provocation, the player has referred to his jersey being grabbed
- d) The medical report on James Buckland refers to the sutures and the injury leaving a permanent scar
- e) The incident did not affect the outcome of the game
- f) The victim was vulnerable in that the blow was to his face which is unprotected
- g) The video evidence indicated that the strike was instantaneous i.e. no pre-meditation
- h) The action was completed in that the strike landed
  - The statement of the victim refers to the player approaching him after the game and shaking his hands and saying some words in French

The chairman invited the disciplinary officer to address the committee on the absence of a response to the standard directions. The disciplinary officer asked that this be considered with regard to the costs because without a response to the standard directions, he was not aware of what issues the player would raise. He therefore had to "cover all bases".

The chairman invited the disciplinary officer to go through the video evidence and particularly with regard to the incident itself which was shown on a frame by frame and live speed basis and the disciplinary officer pointed out that it shows the player being held by his jersey and then responding by punching to the face of Mr Buckland, requiring the medical treatment already referred to.

The chairman invited the player and his representative to address the committee.

The player's representative said that as a club they condemn foul play. He asked for irreproachable behaviour. He does not want negative images. He wants discipline both on and off the field. The match was physical but played with an excellent spirit by both teams. He was disappointed that he and the player had to appear before the committee and asked the committee to accept that denying the act of foul play at the outset was not because he and the player wanted to be awkward but was due to his lack of experience in dealing with such matters and that the club did try to be honourable and act with goodwill.

The chairman invited the player to address the committee and asked that, in particular, he explain that when he wanted to be free of Mr James Buckland impeding him, why he had, for instance, not struck his arm.

The player responded by saying that he was attempting to adopt a defensive position when he was held by James Buckland. The striking was not intentional. He did not intend to hit the face and it could easily have been the arm. The strike to the face was not what he had wanted.

The player explained that he was 29 years old and had been a professional since 2003. He had a clean disciplinary record. He normally played second row.

The player concluded by stating that he apologised to James Buckland after the game for the "gesture" and wished him good luck in the competition.

The player, his representative and the disciplinary officer retired from the proceedings and the committee deliberated the matter in private.

### **The Committee's conclusions**

The committee reviewed the evidence and considered the submissions by the disciplinary officer and the player and concluded as follows:

- 1) This is not a case where 6.7.41 would apply in that the incident would have warranted a red card. Also it was noted that the player and his representative had not suggested that there be no sanction.
- 2) Under 6.7.32:
  - a) The offending was intentional in that the player intended to move his arm in the way that he did and to strike his opponent albeit that his action might have been impulsive
  - b) The committee did not consider recklessness as they had already concluded the offending was intentional
  - c) With regard to the gravity of the offence:
    - (i) The evidence showed that the player had committed the offending act with his fist
    - (ii) There was some provocation in the sense that James Buckland had committed an act of foul play by holding the player's jersey to prevent him from taking up a defensive position. It was not retaliation nor was it self defence. The player was not defending himself from a physical attack that put him in danger and it cannot be said that the player was in danger by what James Buckland was doing. He could have swiped away the player's hand. In the overall scheme that is seen on the rugby field this was lower end provocation.
  - d) It was a serious injury requiring 8 sutures and the medical evidence stated that the player would be left with a permanent scar.
  - e) There was no evidence that it had an adverse effect on the game and the committee were aware that London Irish had won the game.
  - f) The part of the body which was struck was the face (the eyelid) which was unprotected and to that extent, therefore, it is a vulnerable part. Even though a player might not have intended to strike a vulnerable part so that the particular injury was not intended to be inflicted, if one is going to punch a player in the face then from time to time it is inevitable that it will land on an area which is likely to be cut.
  - g) It was accepted there was no premeditation/no deliberation.
  - h) The action was completed in that the strike hit the player's eye.
  - i) There were no additional features that constituted the offending.

Under Rule 6.7.33 the committee considered the level of offending as per Appendix 3 and law 10.4.(a) for striking another player has the lower end 2 weeks, the mid at 5 weeks and the top end at 9 or more weeks. The committee concluded that this was a mid range offence i.e. 5 weeks.

The committee considered 6.7.34 and came to the conclusion that there were no aggravating features.

The committee considered 6.7.35 with regard to mitigating factors and concluded:

- 1) The acknowledgement of the commission of the act of foul play was only made during the hearing
- 2) The player has a good disciplinary record
- 3) He has been playing professional rugby for 6 years and therefore is a player of some experience.
- 4) He had conducted himself well during the hearing
- 5) He had shown remorse having approached James Buckland following the game

Following the provisions of Rule 6.7.37, the committee applied a reduction of 40% from the entry point suspension which would lead to a suspension of 3 weeks. Had he had the 50% reduction, he would have had 2.5 weeks but this would then have been rounded up under 6.7.38 to 3 weeks.

As it was a citing matter, the suspension would take effect from the date of the hearing (22 January 2009) until midnight Wednesday 11 February 2009.

With regard to the failure to deal with the automatic directions, there would be no additional sanctions save for the payment of costs. The player has already suffered a 10% limitation in the possible mitigation because of the lateness of his acceptance of having committed an act of Foul Play. The costs would be the legal costs incurred by the disciplinary officer which would, however, be subject to assessment by the disciplinary chairman together with one third of the costs of convening the committee and those of the translators.

### **The Decision**

The player, his representative and the disciplinary officer re-joined the meeting

The chairman referred to the conclusions of the committee as set out above and announced that:

in all the circumstances, the committee had determined:

- 1) The player had on his own admission committed the act of foul play
- 2) The act would have merited a red card and a sanction should be imposed.
- 3) The entry point would be mid range which for 10.4.(a) is 5 weeks but having regard to the mitigating factors, he would have a reduction of 40%
- 4) The appropriate sanction was the imposition of a period of suspension of 3 weeks from 22 January 2009 until midnight Wednesday 11 February 2009.
- 5) That he pay the legal costs of the Disciplinary Officer which would be assessed by the chairman
- 6) That he pay one third of the costs of convening the meeting including the translators costs.

**Right of Appeal**

The chairman concluded the hearing by reminding the parties of their right to appeal pursuant to Regulation 7.



Rod McKenzie

**Chairman of the Disciplinary Committee**

**DATED 27<sup>th</sup> January 2009**

**Written Decision prepared by Mr Robert H P Williams**