

EUROPEAN RUGBY CUP

DECISION OF DISCIPLINE COMMITTEE

**HELD AT OFFICES OF THE EUROPEAN RUGBY CUP
3RD FLOOR HUGUENOT HOUSE, 35-38 ST STEPHENS
GREEN, DUBLIN 2, IRELAND**

DATED 16 OCTOBER 2008 AT 3.30PM

IN RESPECT OF:-

BYRON KELLEHER (“the Player”)

AND

A citing complaint brought by Mr Raymond Wilton, the Independent Citing Commissioner in respect of an alleged infringement of Law 10(4)(b) in the Heineken Cup Match between Toulouse and Bath played on 12 October 2008 at Stade Municipal, Toulouse, France.

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

Simon Thomas (Chairman) (WRU)

Mark McParland (IRFU)

Robert Williams (WRU)

DECISION OF THE COMMITTEE:-

1. The Committee found that the player had not committed an act of foul play.
2. The Committee made no order as to costs.

INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the European Rugby Cup Discipline Panel pursuant to the ERC Heineken Cup Disciplinary Rules 2008 - 2009 (“the Rules”) in respect of a citing complaint made by Mr Raymond Wilton, the Independent

Citing Commissioner. The citing complaint concerned the conduct of the Player during a first round Heineken Cup Match played between Stade Toulousin (“Toulouse”) and Bath Rugby (“Bath”) on 12 October 2008 at Stade Municipal, Toulouse, France. The citing complaint alleged that in the 41st minute of the second half of the match after Bath number 10 Mr Butch James (“Mr James”) had tackled a Toulouse ball carrier from behind, the Player stamped 3 times upon Mr James.

Present at the hearing on 16 October 2008, in addition to the members of the Committee were:-

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

The Player:-

M. Guy Noves (Toulouse Head Coach)
M. Rene Bouscatel (Toulouse Chairman)
M. Gilles Fabres, Translator

Mr Rob Flockhart (SRU, observing)

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 Disciplinary Regulations would apply.

The Chairman established what evidence had been placed before the Committee prior to the hearing and enquired as to whether all present had received the same in good time.

The Chairman confirmed with M. Bouscatel that the automatic directions in Appendix 6 of the Rules had not been complied with by Toulouse. M. Bouscatel confirmed that this was the case

and apologised but indicated that he had been attending meetings away from Toulouse in the days leading up to the citing and there had been insufficient time to prepare. The Committee accepted the reasons given as these difficulties had been raised in correspondence between Toulouse and the Chairman of the Committee in the days prior to the hearing.

CITING COMPLAINT

At the commencement of the hearing, the Chairman put the allegation of foul play in the terms alleged by the citing complaint and asked the Player to whether he admitted or denied the allegation. The Player denied the allegation.

THE EVIDENCE

ERC

Mr Duthie opened the case on the part of ERC and confirmed that the evidence relied upon was the citing report and the video footage.

Citing Report

The incident occurred in the 41st minute of the second half of the match. In his report Mr Wilton states

“Number 10 Bath tackled ball carrier from behind on the Bath 5 metre line, 5 metres from touch. His legs (number 10) were on the Toulouse side on side of pile of bodies. Number 9 Toulouse (B Kelleher) stamped on back of legs. He is then pushed away but comes back and stamps twice more. Ball becomes free to the side of Bath (10)”.

Video

The Committee then viewed the video evidence. Mr Duthie provided commentary on the footage confirming that a ruck formed near the Bath try line in the last minute of the game. Toulouse players arrived to join the ruck. A Toulouse player then rushes towards the ruck as if

he is about to stamp but the camera angle then widens at the critical time. It was not possible to determine from the footage whether this was a stamp and where this player's foot landed.

The camera angle then moves in focusing on the ruck area and the Player (Mr Kelleher) can be seen close to the ruck trying to secure the ball. He is then seen being pushed away by a Bath player. At this point on the sound recording, the referee shouts "Advantage" in favour of Toulouse and the Player is seen at the back of the ruck.

Mr Duthie then commented that the footage shows the legs of a Mr James lying on the Toulouse side. The Player appears to look down then is seen raising his leg and brings it down upon the knee area of Mr James. The ball is then released. Mr Kelleher then picks up the ball from the base of the ruck and throws a diving pass to his outside half.

Mr Duthie confirmed that there was also evidence from the referee, Mr George Clancy, who he did not rely upon. He had provided a written statement as follows:-

"I was initially quite close to the incident but then moved infield. The Bath number 10 had made a tackle and then did not roll away, obstructing the ball as it came back on the Toulouse side. I deemed the actions of the Bath number 10 to be an offence and so played advantage. From my position, I then saw the Toulouse number 9 attempting to free up the ball using his feet, but I did not see anything to sanction".

Mr Duthie submitted that either the referee did not see the foul play i.e. he did not see a stamp on Mr James' leg, or he saw it and did not regard it as foul play which would be a mistake in law. It was the role of the Committee to decide whether in fact there was foul play.

The other evidence (which Mr Duthie did not rely upon) and available to the Committee were the comments of Mr James, in written form as follows :-

"I sustained no injury as a result of the incident. I was lying close to ball during the incident in a situation where I would expected to be rucked out."

At the conclusion of his case Mr Duthie on behalf of ERC acknowledged that there was insufficient evidence to demonstrate there had been 3 incidents of stamping by the Player and

that the only incident that Committee should concentrate on was the alleged stamp that occurred 80mins 20secs as timed by the video footage.

The Player's Case

Mr Noves on behalf of the Player confirmed to the Committee that he had brought to the hearing better quality video footage of the incident which he asked be admitted as evidence. Mr Duthie confirmed he had no objection and this request was granted.

The new video was played and Mr Kelleher gave his account describing the sequence of events. He stated that when he first arrived at the ruck he brought his foot forcefully to the ground, close to the ball in order to give himself a solid platform and balance to try and secure the ball. He said that he could see that the ball was trapped and Mr James starting to wrap his body around the ball. At this point he was pushed away and out of the ruck by another Bath player who had driven through. He then went back into the ruck and could see the ball. He said that Mr James' leg began to move as he began to plant his right foot onto the ground into the ruck in order to get closer to the ball to secure possession. He said that as his foot began its downward motion, the Bath number 10 again moved his own leg closer to the ball. Mr Kelleher vehemently denied that he had stamped at any time.

Under cross examination from Mr Duthie, Mr Kelleher denied that at the time of the alleged stamp he had been frustrated because the ball was being held in the ruck by Mr James. He said he was concentrating on getting the ball as quickly as possible to release to his backline so that they could win the game. He stated that he had tried to put his foot in the space on the ground near the ball. He also stated that he did not hear the referee calling a penalty advantage to Toulouse as it was very noisy. He also pointed out on the new video footage how he could be seen carefully placing his feet in and around the ruck and carefully avoiding the Bath No.10 with his left foot as he stepped back over him immediately after he had picked up the ball.

When asked by the Committee whether he accepted that his right boot had come into contact with Mr James' leg, the Player confirmed that it had but that it was accidental and caused by Mr James moving his leg at the same time as he was trying to put his foot down close the ball to secure it.

Mr Noves made submissions emphasising the content of the referees report and stating that there was a touch judge very close to the incident who had not reported any foul play by Mr Kelleher. He also relied upon the statement of Mr James.

In closing submissions, the Committee were reminded of what constituted foul play at rucks and in particular the IRB ruling No.1 of 2005 concerning IRB Law 16-Ruck and the SANZAR appeal decision of 30th April 2005 in the case of Mr Ali Williams.

THE DECISION

Following the submissions the Committee retired to deliberate in private in respect of whether or not the Player had committed an act of foul play.

The only alleged act of foul play (an alleged stamp) that the Committee were asked to consider was the single instance timed at 80m20s by the video at the ruck where the Player's right boot had come into contact in a downward motion upon the leg of Mr James who was lying close to and obstructing the ball.

The Committee were not satisfied that the Disciplinary Officer had discharged his burden of demonstrating on the balance of probabilities that the Player had committed the offence contrary to Rule 10.4(b) as required under Rule 6.7.11 for the following reasons :

1. The Player's evidence before the Committee in conjunction with the new video evidence produced at the hearing by Toulouse supported his case that Mr James had rolled closer to the ball before the Player's boot made contact with him.
2. The Player's evidence before the Committee was borne out by the new video evidence that he had exercised care as to where he was placing his feet immediately before and after the alleged stamp and in particular carefully avoiding Mr James.
3. That the experienced referee (who would know that a stamp on a player at a ruck constituted foul play) had penalised Mr James and so clearly had a good view of what was happening at the ruck. He had observed the Player at the critical time and did not consider his actions to be foul play.

4. That there were no inconsistencies in the Player's evidence which might have suggested his evidence was unreliable.

Rather, having considered all of the available evidence, the Committee was satisfied that the Player's actions were neither intentional or reckless but were accidental and an inadvertent and unintentional consequence of his lawful attempt to secure possession of the ball from the ruck. Accordingly the Citing Complaint was dismissed.

COSTS

The Committee having delivered its decision, Mr Bouscatel on behalf of Toulouse applied for costs against ERC. The application was opposed by Mr Duthie.

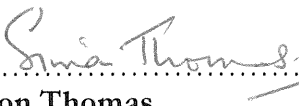
The Committee retired and deliberated in private on the application. On the basis of the available evidence to the Independent Citing Commissioner and in the absence of the new video evidence, the Committee were more than satisfied that the citing complaint was properly brought as there was clearly a case to answer. The Player's actions had required an explanation from him.

The Committee recognised that in regulatory proceedings such as these there is no presumption that costs follow the event and in the circumstances of this case it would not have been appropriate to award costs against ERC. Accordingly no order as to costs was made.

APPEAL

Both parties are reminded of their right to appeal under Rule 7.1.1.

DATED 20th October 2008.

SIGNED 
Simon Thomas
Chairman