

EUROPEAN RUGBY CUP

Decision of Appeal Committee

In respect of Daniel Grewcock (“The Appellant”)

Members of the Appeal Committee (“The Appeal Committee”):

Mr Justice Wyn Williams (Chairman) (WRU)

Mr Peter Brown (SRU)

Mr Mark McParland (IRFU)

The Decision of the Disciplinary Committee

On the 8th June 2007 a Disciplinary Committee convened under the Rules of ERC (hereinafter referred to as “the Committee”) found that the Appellant had committed an act of illegal and/or foul play namely that he had struck an opponent with a punch of his fist during the course of a game between Bath Rugby and ASM Clermont Auvergne on 19th May 2007. The Appellant admitted the act in question before the Committee.

The Committee resolved that the Appellant should be suspended from taking part in a game of rugby with effect from 8th June 2007 up to and including Saturday 15th September 2007. In its decision the Disciplinary Committee made it clear that the period of suspension took into account Rule 7.6.34 of the Disciplinary Rules of the European Challenge Cup so that in computing the period of suspension the Committee excluded “the close season periods of inactivity for the Appellant” which it resolved was until 4th August 2007. The consequence was that the Appellant was suspended from playing rugby for a period of seven weeks.

Decision of the Appeal Committee

At the hearing the Appeal Committee indicated that it had resolved to dismiss the Appellant’s appeal but that it would provide its reasons in writing. This is the written decision with reasons.

Introduction

1. We were convened under the relevant rules to hear an appeal against the decision of the Committee set out above. At the hearing before us the Appellant was represented by Mr Sheppard, his Solicitor, and he was accompanied by Mr. Nigel Lawton, the Operations Director of Bath Rugby. The European Rugby Cup Disciplinary Officer Mr Roger O’Connor appeared together with Mr Max Duthie, his Solicitor. We heard representations from Mr Sheppard and we also heard the Appellant’s own description of the incident and his views about other aspects of the game. We viewed a video of the incident and other clips of incidents within the

game. We also heard from Mr Duthie. There were no contentious preliminary issues or procedural debates.

The Crucial Issues

2. It seems to us that the crucial issues in this appeal are:-
 - (1) Whether or not the Disciplinary Committee was in error in its approach to ascertaining the entry point for the appropriate sanction in respect of this admitted punch;
 - (2) Whether the Disciplinary Committee was in error in its approach and/or determination in respect of the aggravating and mitigating features in this case;
 - (3) Whether the Disciplinary Committee was in error in concluding that the effective suspension of the Appellant would begin only on 4 August 2007.

We deal with each of these issues in turn.

Entry Point

3. The Committee set out their findings on this issue with admirable clarity on pages 10 and 11 of its written decision. We can do no better than repeat its findings.

“In assessing the seriousness of the player’s conduct which constituted the offending the Committee found with reference to DR 7.6.24 as follows:-

- (a) That the player’s offending was intentional;*
- (b) That recklessness was not an issue in this case;*
- (c) That the offence had been committed using the lower (side) part of the player’s fist and that no question of provocation of the player arose;*
- (d) That the opposing player had sustained a significant injury requiring him to be removed from the match and he took no further part in the match. Further, that the opposing player was unable to take part in contact sport for a further 10 days;*
- (e) That other than the substitution of the opposing player there was no direct effects on the match;*
- (f) That the opposing player by lying prostrate on the ground looking upward at the Player was vulnerable to the blow that was struck and could not reasonably be said to be in a position to defend himself;*

(g) That the Player directly participated in the offending and that it was not a reactive act of foul play and did involve some pre-meditation;

(h) That the conduct of the player was completed, and;

(i) There was no other feature relative to the offending.”

4. On the basis of that analysis the Committee concluded that the seriousness of the offence was to be categorised as mid-range and on that basis the entry point for a suspension was five weeks.
5. We would not ourselves have used the word premeditated to describe the punch which the Appellant landed. In our view, however, that is of no consequence. On any basis, the Appellant deliberately threw a punch. In all other respects, having viewed the video and having heard the Appellant's own description of the incident we agree completely with the findings made by the Committee as to entry point.
6. The Appellant urged upon us that he was provoked. He did not suggest that anything had occurred immediately before he threw the punch which constituted the provoking conduct. Rather he contended that during the course of the match the opposing team had been guilty of killing the ball at rucks repeatedly and immediately before he threw the punch the opposing player was engaged in that activity. The consequence was that he (and his team mates) had become frustrated and in that broader sense the punch had been provoked by illegal acts on the part of some of the players of the opposing team.
7. It is true that the punch appeared to have been thrown when an opposing player was in a position to kill the ball at a ruck. It is also true that the video clips shown to us demonstrated that there were a number of occasions when the players of Clermont Auvergne appeared to be killing the ball at the ruck. We wish to make it abundantly clear, however, that it is not for players to take the law into their own hands by resorting to violence. We accept that killing the ball at the ruck can lead the opposing team to become frustrated. Nonetheless the responsibility of players is to maintain discipline. What they cannot do, to repeat, is resort to violence in order to deter the opposing players from behaving illegally.
8. We unhesitatingly conclude that the Committee made no error when it chose the mid-range as its assessment of the seriousness of the offence and it was therefore correct to choose an entry point of five weeks suspension.

Aggravating and Mitigating Factors

9. The Committee dealt with these issues on pages 11 and 12 of its decision. It concluded that the aggravating factors present in this case weighed more heavily than the mitigating factors and the aggravating factors were such that the suspension should be increased from the entry point to a period of seven weeks.

10. An assessment of aggravating and mitigating features in any given case is an exercise of discretion. An Appeal Committee can only interfere with the exercise of that discretion if it concludes that the Disciplinary Committee fell into error. It is never an easy task for an Appellant to persuade an Appellate Committee that there has been an erroneous exercise of discretion.
11. It is clear that the Committee attached considerable significance to the Appellant's disciplinary record. It describes his record as very poor. The Rugby Football Union had provided to the Committee a discipline record in respect of the Appellant in written form. It reads as follows: -

"The above player has the following offences recorded on his disciplinary record: -

*Sending off – England v New Zealand (striking)
One match ban – 09 1200 – two foul play/ one technical offence
25/03/2003 - £500 fine (5.12)
19/06/2004 – six weeks suspension (striking)
25/06/2005 – eight weeks suspension (striking)
08/01/2007 – one week suspension (stamping)"*

At the hearing it was elucidated that the sending off in the England v New Zealand game had occurred in 1998 and had been followed by a five weeks suspension. Before the Disciplinary Committee the Appellant also accepted that he had been suspended for a period of 14 days following the European Challenge Cup final in 2003 in respect of an offence of punching.

12. At the hearing before the Committee the Appellant sought to argue that in the context of his playing career as a whole his disciplinary record was good. The Committee rejected that submission.
13. Before us that submission was renewed and a document was produced which set out with precision the number of games played at first class level by the Appellant. The document showed that the player has played 335 games and been a replacement in 33 others. He has played at the highest level over a significant number of years and he has represented the British Lions and England with distinction.
14. Despite the number of games played by the Appellant and his obvious talent and commitment as a player we cannot but agree with the Disciplinary Committee that his disciplinary record is poor. That is particularly so since 2003. There have been suspensions for foul play (prior to this incident), on four occasions so that this incident constitutes the fifth occasion upon which the Appellant has been sanctioned for foul play. On any view, in our judgment, that is a poor record.
15. It follows that the Committee was entitled to take into account the Appellant's discipline record in fixing the appropriate period of suspension. Indeed, it would have been remiss if the Committee had it not done so.

16. The only mitigating factor of importance was the fact that the Appellant immediately acknowledged his wrongdoing. He apologised to the player whom he injured and he admitted his offence before the Committee.
17. In our view there was no error on the part of the Committee in the exercise of its discretion in making an assessment of the aggravating and mitigating features in this case. It was perfectly entitled to conclude that a suspension above the entry point was justified in all the circumstances of this case. Accordingly, and again without hesitation, we reject the notion that a period of seven weeks suspension was wrong in this case.

The Effective Commencement Date of the Period of Suspension

18. The game in which the act of foul play took place was the last game of the season for Bath Rugby. English national teams were engaged in matches in late May and early June but the Appellant had not been selected for the squads from which the teams to participate in those matches would be selected. The Appellant presented a letter from Mr Rob Andrew to the Disciplinary Committee. In our judgment that letter made it clear that the prospects of the Appellant playing for any English representative team in May or June was remote. On the basis of that letter and the evidence and submissions before the Committee, it was perfectly entitled to conclude that any period of suspension in June or July was meaningless since there were no matches in which the Appellant was remotely likely to participate. Rule 7.6.34 directs a Disciplinary Committee to exclude periods of inactivity during the close season in computing a suspension and the Committee did no more than apply that rule to the facts as it found them to be.
19. The Committee chose an effective starting point of 4 August 2007 because on that date England are engaged in a match against Wales. In our judgment on the facts presented to the Committee that was a starting point for the suspension about which no complaint can be made. There was no real evidence that the Appellant was a contender for selection. However, it is not part of our remit to review that aspect of the Disciplinary Committee's assessment.
20. It seems to us that the Disciplinary Committee was wholly entitled to conclude as it did upon the issue of the effective period and starting point for this suspension.
21. The submission was made to us that under IRB rules the Appellant was suspended automatically from the date of his citing and that the period from the citing to the date of the hearing should form part of the period of suspension of seven weeks. It does not seem to us to be permissible to interpret IRB rules without first asking IRB for any submission it may have. Accordingly we decline to enter this arena in this case. That causes no injustice to the Appellant. If he was suspended automatically following the citing it was in a period when the Committee was of the view that the close season for the Appellant had begun. Accordingly, under rule 7.6.34 the Committee was bound to ignore the automatic suspension. If the Appellant was not automatically suspended the Committee was on any view correctly applying rule 7.6.34.

Wyn Williams
Peter Brown
Mark McParland