

HEINEKEN CUP

DECISION OF DISCIPLINARY COMMITTEE

Held at offices of Harper Macleod LLP, The Ca'd'oro, 45 Gordon Street,

Glasgow

Wednesday 19 December 2007

IN RESPECT OF:

Phil Vickery ("the Player") and the citing complaint that the Player's actions breached Law 10.4(b) of the Laws of the Game.

MEMBERS OF THE DISCIPLINE COMMITTEE: ("the Committee")

Rod McKenzie (SRU - Chairman)

Dr Barry O'Driscoll (IRFU)

Richard McGhee (SRU)

DECISION OF THE COMMITTEE:

- (i) The Player having accepted that he had committed the act of Foul Play (Law 10.4(b)) (trampling) for which he had been cited the Committee upheld the citing complaint against the Player.
- (ii) The Committee suspended the Player for a period of 2 weeks from Wednesday 12 December 2007 until Tuesday 25 December 2007 (inclusive).
- (iii) The Committee determined that the Player should bear the costs of the hearing and of the Disciplinary Officer (including legal costs). However, by reason of there being four hearings on the same day and in all four cases costs being awarded against the player concerned, the Player in this case is to bear one quarter of the costs of the day's hearings and the legal costs of the Disciplinary Officer.

INTRODUCTION

The Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel, pursuant to the Disciplinary Rules of the Heineken Cup 2007/2008 in respect of a citing complaint made by Mr Aurwell Morgan, who The European Rugby Cup Limited (“ERC”) appointed to act as the Citing Commissioner for a Match between ASM Clermont Auvergne (“ASM”) and London Wasps (“Wasps”) in the 2007/2008 Heineken Cup on 15 December 2007 at Clermont (“the Match”). The citing complaint alleged that the Player had stood on the thigh of the ASM number 5, Msr Thibault Privat. The Citing Commissioner cited the Player for infringement of Law 10.4(b) (trampling).

Present at the hearing, in addition to the members of the Committee, were:-

John Doubleday (RFU – observing)

Roger O’Connor (Disciplinary Officer, ERC)

Max Duthie (Lawyer for Disciplinary Officer)

The Player

Richard Smith QC (Counsel for the Player)

Ian McGeechan (Director of Rugby – London Wasps)

HEARING

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 complaint by the Disciplinary

Officer pursuant to a citing complaint arising out of the Match for which the ERC had appointed Mr Morgan as Citing Commissioner.

The Chairman confirmed that all present had in their possession all relevant written materials and video coverage of the incident which had been provided to the Chairman in connection with the citing complaint.

CITING COMPLAINT

The Player was asked whether he accepted that he had committed the act of Foul Play alleged against him and the Player accepted that he had committed that act of Foul Play. The Committee therefore upheld the citing and proceeded to determine what sanction, if any, should be imposed on the Player.

In partial compliance, because the communication was oral, the Player complied with the relevant part of the standard directions by advising the office of the clerk to the Committee in advance of the hearing that the Player would not be contesting the citing.

SANCTION

In determining the appropriate sanction, if any, to be imposed on the Player the Committee had regard to the video evidence made available to them, representations on that video evidence by Mr Duthie and Mr Smith, oral evidence from the Player and Mr McGeechan, a statement from Msr Privat and an email setting out the medical consequences of the incident in relation to Msr Privat. The Committee also considered submissions made on behalf of the Disciplinary Officer by Mr Duthie and on behalf of the Player by Mr Smith.

The Committee found it established that at approximately the seventieth minute of the Match the Player took hold of Msr Privat at the edge of a ruck. He threw him to the ground. As a consequence of the momentum involved in throwing Msr Privat to the ground the Player ended up on the ASM "side" of the ruck. The Player immediately then made to return to the Wasps side of the ruck. To do so the Player had to go past Msr Privat who was lying face down on the ground. The Player could easily have stepped over Msr Privat without touching him. However, the Player decided to stand on the back of the left leg of Msr Privat above the knee. No particular force was applied to the bringing down of the sole of the Player's boot onto Msr Privat's leg but the whole of the Player's weight was pressed upon the back of Msr Privat's left leg when the Player stepped onto and over Msr Privat. The Player intended to stand on Msr Privat's leg in the way which he did. The Player deliberately selected a part of Msr Privat's body which he thought would not result in any significant injury to Msr Privat.

The Player intended to cause pain to Msr Privat and to that extent injury was intended although no form of significant injury was intended.

In fact the injury to Msr Privat occasioned by the Player's action was sufficiently significant to require Msr Privat to be replaced some 7 minutes later.

Msr Privat's leg was strapped and iced immediately following the incident but this treatment was not sufficient to prevent him requiring to be replaced. The injury prevented Msr Privat from playing on the weekend of 15 December 2007.

At the time of the replacement of Msr Privat, ASM had already utilised their replacement second row and they required to replace Msr Privat with their substitute hooker. A back row player was

moved into the second row with the substitute hooker coming in to the second row. In fact, the result of the Match was a victory for ASM.

The Player claimed that he had received particular attention during the course of the Match as a consequence of his status as the captain of England. He had a substantial amount of vocal abuse and had also received a “shooing” as well as some “attention” to eyes. He had become frustrated and annoyed at the attention he had received.

This had been a particularly physical match, according to the Player, with numerous incidents of Foul Play which had gone unpunished.

The Player explained that he was 31 years of age and had been playing professional rugby since he was 19 or 20. He had 60 England full caps and 3 British Lions caps and was the present captain of England.

He advised that he took his participation in the game of rugby very seriously and had not until very recently had any disciplinary problems.

He accepted that being the victim of incidents of Foul Play was very much part and parcel of the life of a professional rugby player, particularly one who plays in the scrum, and he was unable to give any satisfactory explanation as to why, after a long unblemished playing record, he should have accumulated two significant disciplinary incidents within a short period.

Mr McGeechan explained the approach that Wasps took to the commission of incidents of Foul Play on the pitch. He explained that Players were coached not to engage in Foul Play partly because it gave away unnecessary penalties which could often be punished by 3 points being

scored or field position being surrendered and partly because with modern video and citing commissioners, incidents of Foul Play which might otherwise have gone unpunished, could now be punished by citations after the match. He explained that players must be alert to their conduct at all times and should not be careless in their thoughts or actions. He explained that Wasps did not condone what the Player had done in this case and that the club had taken its own disciplinary action by suspending the Player. He explained that conduct such as this was very unusual in the case of this Player and that they were working with the Player to seek to ensure that this form of action was eradicated from the Player's on field performance. He explained that he was a very intense player but that the Player's conduct in this case was out of character. He stated that, in his opinion, the action was not premeditated.

Mr Smith sought to argue that whilst it was accepted that an incident of Foul Play had taken place, that the incident was not of such character or seriousness as would have warranted a red card. The Committee considered whether this was a case in which Disciplinary Rule 6.7.41 applied. The Committee determined that it did not believe that the act of Foul Play committed by the Player would not have warranted a red card and accordingly that Disciplinary Rule 6.7.41 was not engaged. In this regard the Committee took due note that the Foul Play was not reckless but was intentional. That it was open to the Player to have chosen to step over Msr Privat but that the Player deliberately decided to stand on Msr Privat in order to cause Msr Privat pain. The Committee also noted that the effect of the Foul Play was to require Msr Privat to be replaced and the injury caused was of sufficient seriousness to prevent Msr Privat playing the following weekend (15 December).

In determining the appropriate sanction the Committee are required to have regard to Disciplinary Rules 6.7.32, 6.7.34 and 6.7.35 and the current IRB table of sanctions which is reprinted as appendix 3 to the Disciplinary Rules.

With respect to Disciplinary Rule 6.7.32 the Committee determined that the offending was intentional, in the sense that the Player intended to stand on Msr Privat's leg. The offending was reckless in the sense that it exposed Msr Privat to injury. Under reference to 6.7.32(c) it was the sole of the Player's boot that came into contact as part of a trampling action. There was no element of self-defence. Whilst the Player complained of general Foul Play against him there was no material provocation from Msr Privat.

The effect on the victim was moderate. The Player was removed from the game. It is impossible to say what the effect of the Player's actions were on the outcome of the game but, in any event, ASM won the Match. In terms of effect on the game the Committee was only prepared to go as far as saying the effect was the substitution of Msr Privat.

Msr Privat was vulnerable, in the sense that he would not have been expecting to have been stood on, although the particular part of his body affected was not significantly vulnerable to injury. There was a significant level of participation in the offending by the Player but no premeditation. This was not a premeditated act but it was completed. There is no other feature in the conduct which was relevant.

Taking all of these factors into account the Committee determined that this was a low end offence. Given the extent of the injury and the gratuitousness of the act this might have been a mid-range offence but the Committee came to the conclusion that, because there was not a forceful blow and that the part of the body of Msr Privat on which the Player stood was not particularly vulnerable to injury that a low end categorisation was appropriate.

The low end figure per appendix 3 for trampling is two weeks and that was the Committee's starting point. The Committee then considered Disciplinary Rule 6.7.34, to identify if there were any aggravating features. The Committee did not consider that there were any aggravating features in this case. However, having regard to the suspension given to the Player during RWC 2007 the Player is given due notice that any further offending is liable to lead to the Player being regarded as having "offending status" for the purposes of Disciplinary Rule 6.7.34(b).

As far as Disciplinary Rule 6.7.35 is concerned, that is mitigating features, we acknowledge that there was an admission of guilt, communicated in advance of the hearing. The Player has one previous disciplinary offence, leading to suspension from RWC 2007, but is otherwise of good character. The Player gets no credit for age and experience in the sense that broadly speaking he should know better at his age and level of experience. His conduct prior to and at the hearing was exemplary and that counts in his favour. He showed and gets due credit for showing full remorse for his actions and apologising. There were no other off-field mitigating factors.

The Committee did not find Disciplinary Rule 6.7.36(b) applied (compelling mitigating factors) because of the RWC 2007 offending, accordingly there can be no reduction of the entry point of two weeks.

Wasps suspended the Player from playing during the weekend of 15 December 2007. Mr McGeechan assured us that the Player was fit and would have been selected to play in the starting 15 were it not for the internal suspension. Applying Disciplinary Rule 6.7.43 the Committee determined that the suspension should commence on 12 December 2007 and extend up to and including 25 December 2007.

COSTS

The Disciplinary Officer sought an order for costs against the Player in terms of Disciplinary Rule 6.7.45. The Committee determined to award costs against the Player in relation to the costs of holding the hearing, the travel and accommodation costs of the members of the Committee and the legal and travel/accommodation costs of the Disciplinary Officer.

In respect that there were four hearings on the same day, and in each case costs were awarded in favour of the Disciplinary Officer, this Player will be responsible for one quarter of the total costs of the day.

The parties were advised of their right to appeal at the hearing.

Date

Rod McKenzie
Chairman
Disciplinary Committee