

EUROPEAN RUGBY CUP

DISCIPLINARY HEARING

At: ERC, 3rd Floor, Huguenot House, Dublin

On: Thursday 20 December 2007

JUDGMENT.

Player: Marcus HORAN **Club:** Munster

Match: Munster v Llanelli Scarlets

Venue: Thomond Park **Date of match:** 16th December 2007

Committee: Jeff Blackett (Chairman) and Robert Horner (both England)

Representing ERC: Roger O'Connor, Disciplinary Officer ERC

Attending: The Player.
Donal Spring – solicitor
Declan Kidney – Head Coach, Munster

Introduction and Preliminary Matters

This citing was brought under Disciplinary Rule 6.5 and the Disciplinary Committee appointed in accordance with Disciplinary Rule 6.1.3. The Committee originally included Paul Mauriac of France, but, following his appointment, he indicated that he was unable to attend the hearing. The Disciplinary Officer exercised his discretion under Disciplinary Rule 6.1.6(c) to allow the two remaining members of the Disciplinary Committee to hear the matter on their own. The Player's representative did not object to this course and made no other objections to the composition of the Committee.

Charge and Plea

The Player was cited for kicking and opponent contrary to Law 10(4)(c).

The Citing Complaint

The Citing complaint involved an alleged incident which occurred in the 24th minute of the second half of the match. There was a scrum near the right hand touch line and the referee was standing on the opposite side of the scrum to where the Player was playing prop. The opposition prop playing against him was Deacon Manu. Both players were wearing number 17. The citing complaint stated: "Scrum disintegrates and Llanelli 17 comes through and goes to ground. Munster 17 also on ground on his rear end. Munster 17 then appears to swing his foot forward deliberately and

makes contact with the head of Llannelli 17.” None of the match officials witnessed this allegation. However, just before this alleged contact, as the scrum was beginning to break up, the Player was seen to strike his opposite number in the face with his fist. That was reported to the referee who temporarily suspended the Player.

The Disciplinary Officer also presented two written statements. The first from Deacon Manu (Llannelli Number 17) who stated that: “The scrum then went down and I was in a vulnerable position on the ground where I felt a strike to my face by a boot which dazed me. It took several minutes to recover from the dizziness with aid from our medical staff.” The second statement was from the Llannelli physiotherapist who attended Manu shortly after the alleged incident. He stated that: “On assessment Deacon was found prone after taking a blow to the head. He was obviously in pain and dazed. His concussion signs and symptoms were negative with no evidence of any spinal injury. An icepack was applied to his face until the pain eased and he was allowed to continue play.”

The video footage of the incident was not clear. It was filmed from the opposite side of the scrum to the alleged incident. It showed that as the scrum began to break up the Player’s arms moved in such a way that the Committee could conclude he was punching his opposite number. Manu fell to the ground at which point the Player has turned so that his back was towards the opposition. He was then pulled from behind by Simon Easterby (Llannelli) and fell to the ground himself onto his left side. As this was happening his right foot appeared to cock back and then move forward, possibly making contact with Manu’s head. At the same time Munster Number 4 was moving forward at the back of the melee and his feet were in the vicinity of Manu’s head and may also have inadvertently made contact. Shortly after the Player’s foot had moved forward Manu’s hands went up to his head in a way one would expect after someone had been struck.

The Defence Case

The Player said that he had no recollection of making contact with Manu’s head. At the time when contact may have been made he was trying to protect himself from the attentions of Simon Easterby. He accepted that as he went to ground his foot may have made contact with Manu’s head, but he said if such contact was made it was accidental.

Mr Spring accepted that a foot had contacted Manu’s head but submitted that the video evidence was not clear. He said that it could have been the Player’s foot or Munster Number 4’s foot, but in either case there was no evidence of intentional or reckless contact. He said that even if the committee concluded that it was the Player’s foot which made contact, that contact was accidental or inadvertent.

He further submitted that kicking an opponent in the head is a serious offence abhorred by players. The Player has never received a red card and, although a robust front row forward, would never intentionally commit this sort of offence.

Finding

The Committee accepted that a foot came into contact with Manu's head and concluded that it was more likely to have been the Player's foot than Munster Number 4's. However it noted that the Player was forcibly pulled back by an opposition player and as his body moved towards the floor his feet lost contact with the ground and moved in the way already described. There was no doubt in the minds of the Committee that any contact was inadvertent and arose because of the dynamics of the situation. **This was a genuine accident. In those circumstances, therefore, the Committee find that the citing complaint is not proved and dismiss it.**

Submissions as to Costs

Mr Spring submitted that the Committee should order that ERC pay the Player's reasonable legal and travel expenses. He stated that there was a paucity of evidence in this case – indeed it was difficult to see any evidence to support the charge. He said that the citing officer was acting as an agent of ERC which should therefore pay costs where a citing should never have been brought.

The Disciplinary Officer submitted that once a citing complaint had been made in good faith he was obliged to bring it before a disciplinary committee. The citing process was essential to the image of the ERC brand and the Game in general and, provided all involved had acted in good faith, it would be inappropriate to penalise ERC through the award of costs.

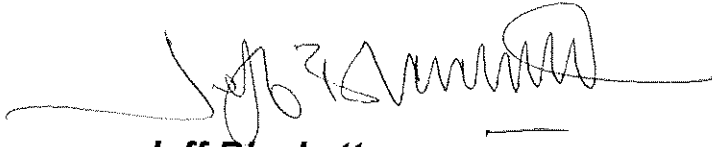
Decision as to Costs

Under Disciplinary Rule 6.5 the Disciplinary Officer has no discretion as to whether or not to bring a citing complaint before a disciplinary committee. He is obliged so to do. The Disciplinary Committee has power to award costs against any party to the proceedings (Disciplinary Rule 6.7.45). It also has power to award costs against "other parties" where it is considered that they have acted frivolously or in bad faith in the matter (Disciplinary Rule 6.7.46).


The Committee believed that in principle costs should not be awarded against ERC even where a citing complaint is dismissed unless it can be shown that they or the citing officer acted frivolously or in bad faith. It is important for the image of the competition and the Game in general that there should be no deterrent to bringing a citing in the future. That could lead to more acts of indiscipline on the pitch going unpunished. In this case the citing was properly brought because a foot made contact with a player's head, the blow was significant and on one interpretation of the available evidence (without having heard the defence case) the Player may have been responsible. In those circumstances there is absolutely no evidence that anyone involved in the prosecution of this case has acted frivolously or in bad faith. **The Committee therefore decided that there should be no order for costs which should lie where they fall.**

Right of Appeal

Both parties are reminded of their right to appeal.



**Jeff Blackett
Chairman**



**Robert Horner
Member**

Date: 20 December 2007