

HEINEKEN CUP 2008/2009

DECISION OF THE DISCIPLINARY COMMITTEE

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

Thursday 22 January 2009

In respect of:

Malcolm O'Kelly ("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 Disciplinary Committee ("the Committee")

Rod McKenzie (SRU - chairman)

Jen-Etinne Bernard (FRU)

Robert Williams (WRU)

Decisions of the Committee

- i) That The Player committed an act of Foul Play (law 10.4(b)) (stamping) for which he had been cited and the committee upheld the citing complaint against the Player.
- ii) The Committee suspended The Player for a period of two weeks from Thursday 22 January 2009 up to and including Wednesday 4 February 2009.
- iii) The Committee determined that The Player should bear the costs of the hearing and of the Disciplinary Officer (including legal costs). However, for the reason of their being three hearings on the same day and in all three cases costs being awarded against the player concerned, The Player in this case has to bear 1/3 of the costs of holding and convening the hearing, including the costs of translators, and the legal costs of the Disciplinary Officer.
- iv) That the costs payable by The Player to European Rugby Cup Limited ("ERC") are 2,623.27 Euros.

Introduction

The Committee was convened by Professor Lorne Crerar, chairman of ERC Discipline Panel, pursuant to the Disciplinary Rules of the Heineken Cup 2008/2009 ("DR") in respect of a citing complaint made by Mr Aurwell Morgan, who the ERC appointed to act as the Citing Commissioner for a match between London Wasps and Leinster in the 2008/2009 Heineken Cup at Twickenham Stadium on Saturday 17 January 2009 ("the Match"). The citing complaint alleged that The Player had stamped on the side of the head of the London Wasps player, Phil Vickery (Number 3). The Citing Commissioner cited The Player for infringement of law 10.4(b) (stamping).

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

The Player

Donal Spring (Solicitor for The Player)

Avalon Everett (Donel Spring & Company solicitors)

Michael Dawson (CEO - Leinster)

Roger O'Connor (ERC - Disciplinary Officer)

The Hearing

At the commencement of the hearing, the Chairman confirmed the identities of all present and established that The Player 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 the video coverage of the incident which had been provided to the Committee in advance of the hearing in connection with the citing complaint.

The Chairman confirmed that the proceedings would be conducted in accordance with the Heineken Cup 2008/2009 Disciplinary Rules.

The Chairman established that The Player was contesting that he had committed an act of Foul Play in connection with the incident referred to in the citing complaint.

Allegation of Foul Play

Having considered the video evidence, the written material and having heard evidence from The Player and representations by the Disciplinary Officer and from Mr Spring on behalf of The Player the Committee found the following facts admitted or established.

At about 36 minutes into the first half of the match Mr Vickery, the Wasps number 3, was on the ground at the rear of a ruck on the Leinster side. He was not interfering with the ball nor preventing release of the ball.

The ruck occurred about 7 metres into the Wasps half of the field and about 15 metres in from the touchline.

The touch judge was standing approximately 15 metres away from the incident and flagged for the attention of the referee. The referee stopped play consulted with the touch judge and administered a yellow card to The Player for his part in the incident.

As the ruck had developed Mr Vickery had found himself on the wrong side of the ruck and was lying on the ground with his arms around his head in an effort to prevent himself from sustaining injury from the boots of the Leinster players who were joining the ruck.

The Player was one of those Leinster players.

The Player did not properly bind onto the ruck but rather placed his left hand on the back of a Leinster player at the back of the ruck.

The Player was looking down and forward and not towards Mr Vickery who was by this point slightly behind The Player's feet. The Player is well in excess of 6 feet tall and there was limited space between Mr Vickery and the back of the ruck for The Player to bring down his left foot onto the ground.

The Player knew that there was a London Wasps player lying on the ground in a vulnerable position in the area in which he was intending to bring down his left foot. The Player brought down his left foot but did not deliberately aim his foot towards Mr Vickery. At the time The Player was attempting to gain a secure foothold but was careless as to the safety of the Wasp player who he knew was lying on the ground. The Player was more intent on securing a good purchase for his left foot than he was in attending to the safety of any players on the ground.

He brought down his left foot with significant force although not violently. As his left foot came down it struck a glancing blow to the top of the head of Mr Vickery.

The Player did not at that point turn to identify what or who his foot had come into contact with or to identify if any injury had been suffered by a player on the ground.

The motion of bringing down his left foot was consistent with it being a "stamp".

The touch judge who witnessed the incident identified the foot of The Player coming into contact with the head of Mr Vickery. The touch judge reported the incident to the referee as being unintentional and not deliberate and that was consistent with the touch judge's report by email of 19 January 2009. Because the touch judge had reported the contact with the head as not being intentional the referee decided to administer a yellow card only.

In his written statement Mr Vickery stated that he had been looking up and had seen a boot coming down onto the right hand side of his head which had caused him some pain in that area of his head. The game was stopped for a short period of time when he was treated. He had sustained no significant injury and was not required to leave the field of play.

Mr Spring referred the Committee to the new penguin English dictionary definition of "stamp". The definition includes "to bring down (one's foot) forcibly in angry insistence". The definition goes on to include "to thrust the foot forcibly or noisily downwards".

The Committee was satisfied that the actions of The Player constituted a stamp in the context of and for the purposes of the Laws of the Game and those actions were consistent with what those involved in rugby would regard as a stamp. Furthermore the actions of The Player were consistent with the dictionary definition of "stamp" provided by Mr Spring.

The Committee agreed with the conclusion reached by the touch judge at the match that the stamping in this case was not intentional. It was clear that The Player was not looking towards Mr Vickery at the time that he brought down his left foot. However, he knew or ought to have been aware of the Wasps player lying on the ground in a vulnerable position and ought to have taken care in the circumstances that he did not bring down his foot in such a way as to expose that player to danger.

The Player's actions in not taking care for the safety of the opposing player on the ground were reckless.

There was very limited room for him to bring down his foot and The Player was wholly focused on gaining playing advantage for his team as opposed to paying due regard for the safety of an opposing player in a vulnerable position. The Player's action in bringing down his foot in the way he did was intentional but he did not intend to strike the head of Mr Vickery.

In all the circumstances the Committee concluded that The Player had committed an act of Foul Play *viz* a stamp on the head of Mr Vickery, albeit that the actions of The Player were reckless and not intentional.

Accordingly, the Committee having determined that an act of Foul Play was committed by The Player the citing complaint was upheld.

Sanction

The Committee heard briefly from the Disciplinary Officer on the matter of sanction and heard detailed representations from Mr Spring on behalf of The Player.

The Committee was satisfied that this was an appropriate case in which a sanction should be imposed. Whilst the action had not been intentional it was a reckless act in circumstances where Mr Vickery was exposed to danger of injury. The left foot of The Player had been brought down with force and there was a real risk that a significant injury might have been sustained. Fortunately there was no significant injury but that did not detract from the recklessness of the actions of The Player. The Player is a highly experienced international player who knew or ought to have known that he was required to take care for the safety of opposing players lying on the ground in a vulnerable position in a ruck situation.

In determining the appropriate sanction the Committee was required to have regard to DR 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 DR 6.7.32 the Committee determined that the actions of The Player were reckless and that he had not intended to stamp on the head of Mr Vickery. It was the sole of The Player's boot which came into contact with the head of Mr Vickery. There was no element of self-defence and no provocation involved.

The effect on Mr Vickery was minor. He required brief medical attention but was not required to be replaced. The Player himself was yellow carded and was removed from the game for 10 minutes. The overall effect of the incident on the game was to disadvantage The Player's team.

Mr Vickery was in a vulnerable position at the time of the incident. There was a significant level of participation in the offending by The Player but there was no premeditation. The act was completed. There was no other feature of the conduct which was relevant.

Taking all these factors into account the Committee determined that this was a low end offence. The entry point for stamping on an opponent at the low end is two weeks.

There were no aggravating factors.

There was significant mitigation in this case in respect that this was The Player's first disciplinary proceeding in a long and illustrious international career. However, The Player denied having committed an act of Foul Play notwithstanding that the touch judge had found that Foul Play had taken place and The Player had been yellow carded for the offence. There was compliance with the standard directions however this was not a case in which all of mitigating features were present. The Committee determined that this was not a case in which mitigation at the level of 50% was appropriate. The Committee would have mitigated the sanction by 33% but since part weeks of suspension cannot be imposed and since there was not a basis for mitigation of sanction below the low end the period of suspension imposed by the Committee was 2 weeks.

The Player was suspended from the date of the hearing on 22 January 2009 for a period of 2 weeks up to and including Wednesday 4 February 2009.

The Player was advised of his right of appeal at the Hearing.

Costs

On the application of the Disciplinary Officer the costs of the hearing including the Committee's costs and translator costs were awarded against The Player. In respect that there were 3 cases heard on the same day in each of which costs were awarded against the player, The Player in this case is responsible for 1/3 of the hearing costs for the day. In addition The Player is responsible for the Disciplinary Officer's legal costs in the amount of 1,477.78 Euros. The total of 1/3 of the hearing costs plus the legal costs is 2,623.27 Euros and The Player is ordered to pay that sum to the ERC.

Rod McKenzie
Chairman

Date : 18/03/09.

Signed 