

EUROPEAN HEINEKEN CUP

Decision of Disciplinary Committee

Held at the offices of the European Rugby Cup (“ERC”)

3rd Floor Huguenot House, 35-38 St Stephens Green, Dublin 2, Ireland

On Friday, 19th December 2008

IN RESPECT OF:-

Harry Ellis (“the Player”);

AND

The Citing of the Player by Iain Goodall, Scottish Rugby Union, asserting contravention of Law 10.4(e) namely a dangerous tackle on an opponent after the elapse of 31 minutes and 35 seconds in the second half of the match between Leicester and Perpignan at Stade Aime Giral on 14th December 2008.

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

Professor Lorne D Crerar (SRU), Chairman.

George Spotswood (IRFU).

Pat Barriscale (IRFU).

DECISION OF THE COMMITTEE:-

1. The Committee determined to uphold the Citing Complaint as the Player had accepted that he had committed the act of illegal and/ or foul play and that it warranted a red card, namely a dangerous tackle further to the Citing Complaint.
2. The Committee in upholding the Citing Complaint, namely a dangerous tackle contrary to Law 10.4(e) categorised the act of foul play as a top end offence of the scale of seriousness, noted in particular the Player’s previous disciplinary record and imposed upon the Player a six week suspension from 14th December 2008 up to and including Sunday, 25th January 2009; and
3. The Committee determined that each party should bear their own costs.

INTRODUCTION

The Citing Complaint alleges that the Player had infringed Law 10.4(e) namely a dangerous tackle upon an opponent, Perpignan Number 10 (D Carter) (“the Opposition Player”).

Present at the Hearing on 19th December 2008 in addition to the Committee and the Player were:-

Roger O’Connor, Disciplinary Officer, ERC (the “Disciplinary Officer”)

Simon Cohen, Head of Rugby Operations, Leicester Tigers

Peter Wheeler, Chief Executive, Leicester Tigers

HEARING

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 the Citing Complaint. The Chairman in conjunction with the Disciplinary Officer established the documentary and other materials that were available to the Committee and the Player, namely:-

1. The Citing Commissioner’s Report bearing a fax date of 15th December 2008.
2. Charge letter and citing form.
3. Supplementary Citing Commissioners comments.
4. Hearing Notice and Directions
5. Letter from the Referee, Alan Lewis to the Disciplinary Officer dated 15th December 2008.
6. Email from Touch Judge, Alan Rogan dated 16th December 2008.
7. Four still photographs of the incident and DVD clips (2).

Responses to Pre-Hearing Directions

Further to the Standing Directions contained in section B of Appendix 6 of the Disciplinary Rules of ERC for Tournament 2008/09 the Player and his representatives confirmed at the hearing:-

- i The Player was the player named on the Citing Complaint.
- ii The Player would not argue any preliminary matters.
- iii The Player accepted the Citing Complaint as an accurate account of the incident although wished to explain its content.
- iv The Player accepted that the alleged act or acts of foul play warranted a red card
- v The Player would not be legally represented although legal representation had been sought and provided to the Player.

Submissions as to Sanction

Further to ERC Disciplinary Rule 6.7.23 the Player having accepted that he had committed the alleged act of foul play and that it warranted a red card, the Disciplinary committee moved to hear from the Player and the Disciplinary Officer as to their explanation of the act of foul play in order that the Committee could consider the appropriate entry point related to an assessment of the seriousness of the Player's conduct in committing the act of foul play. As an introduction, Mr Wheeler explained that he wished the matter dealt with in the "context of rugby" and had determined not to bring legal counsel with them but had taken advice as the matter. Mr Wheeler explained that they consider any citing as serious and the Leicester Tigers (the Club) takes action as required. In this case the Club took into account the Referee's comments after the game and the Club had imposed a one week suspension upon the Player. The Player was very experienced in European Rugby Cup matches and was also an internationalist for England of considerable renown.

The Player then sought to explain the alleged act of foul play. He explained that he had never found himself in a situation before with a player above his shoulders. He expressed remorse for the incident and did seek out the Opposition Player after the game but was unable to speak to him because of the other commitments of the Opposition Player. The Player drew attention to the pivoting nature of the tackle incident with the Opposition Player pivoting upwards on the axis of where he held the ball carrier. Consideration was given to examining three separate motions of the tackle, namely firstly to move the Opposition Player to shoulder height; secondly from

shoulder to head height; and thirdly, the dropping motion. In relation to the second motion, attention was drawn to the straightening of the legs of the Player and the subsequent “bench pressing” movement of his re-arranged hands on the lower torso of the Opposition Player. The Player’s explanation was that it was clumsy.

Mr Cohen then addressed the Committee and asked the Committee to consider his responses to Disciplinary Rule 6.7.32(a) as follows:-

- a) There was no intentional offending by the Player.
- b) Recklessness was not an issue. As soon as the Player recognised the dangerous position, he did try and remove himself from the situation that he had never been in before. Mr Cohen explained it would be easy in hindsight to say the Player could have acted differently but it is very hard to make that assumption as decisions are made so quickly in such a situation. Mr Cohen explained that in his view it was a fair tackle that had turned into a dangerous tackle and was not pre-meditated. The Player was merely trying to remove the Opposition Player from the tackle area.
- c) Gravity was not an issue as it was a clumsy tackle.
- d) There was no injury to the Opposition Player. No on-field attention was required by the Opposition Player.
- e) The Player’s actions had no effect on the game.
- f) The Opposition Player was in the air because of his own actions, namely holding onto the ball and was not vulnerable.
- g) There was no pre-meditation.
- h) The act of foul play was clumsy rather than completed. In relation to the allegation of spear tackling there was no driving to the ground by the Player with no injury to the Opposition Player. Mr Cohen contended that it naturally followed that the gravity of the seriousness of the matter was a low end offence.

Mr Cohen turning to paragraph 6.7.34 explained:-

- (1) The Player was fully remorseful for the incident and had tried to apologise to the Opposition Player after the game.
- (2) The Player had been involved in top level rugby for eight years and had only received one suspension, namely an eight week ban in season 2003/04.
- (3) There was no need for a deterrent to combat a pattern of offending.
- (4) There were no other factors.

Mr Cohen turning to paragraph 6.7.35 explained:-

- a) The Player had acknowledged his guilt and “that he had committed the act of foul play and that it merited a red card”.
- b) The Player had a good record and was well regarded and of very good character in the Club.
- c) Although the Player was considerably experienced he had never found himself in this situation before.
- d) The Player had conducted himself wholly properly both before and during the hearing. His behaviour had been exemplary.
- e) The Player was fully remorseful for his actions.
- f) There were no other mitigating factors.

Findings

1. The Committee determined to uphold the Citing Complaint and that the act of foul play namely a dangerous tackle merited a red card as evidenced by the Player’s acceptance that he had committed the alleged act of foul play.
2. In assessing the seriousness of the conduct which constituted the offending the Committee found with reference to ERC Regulation 6.7.32:-
 - (a) That the Player’s offending was intentional. Importantly for the Committee, when the Player had the Opposition Player in a vulnerable position at shoulder height the Player straightened his legs and arched his torso in a lifting motion followed by a rearrangement of his hands, all as a means to further exert pressure to push the Opposition Player higher into the air and in a more vulnerable position. His actions led to the Opposition Player being in a vertical position immediately prior to being dropped by the Player with no concern for the vulnerability of the Opposition Player.
 - (b) That recklessness was not an issue in this case.

- (c) The Player had choices during the tackle and chose to exercise dangerous options to a vulnerable Opposition Player. The Opposition Player was fortunate that when landing head first he did so on other players' bodies rather than the ground. Further, there was no provocation and the Player had not acted in retaliation and/or self defence.
- (d) While the Player's actions did not render injury to the Opposition Player it was fortuitous that it did not. The Opposition Player was dropped from considerable height and potentially could have been seriously injured.
- (e) Immediately following the act of foul play there was reaction from some of the Opposition Player's team members but it did not affect the game going forward.
- (f) The Opposition Player was very vulnerable and could have been seriously injured.
- (g) The Player exercised dangerous choices during the committing of the tackle.
- (h) The conduct of the Player was completed.
- (i) There were no other features that were relevant.

The Committee considered the seriousness of the Player's offending and considered whether the offence should be characterised as being at the low end, mid-range or top-end of the scale of seriousness in order to identify the appropriate entry point for consideration in terms of Appendix 3 to the ERC Disciplinary Regulations. The Committee determined to characterise the offending of the Player as at the top end of the scale of seriousness. The top-end sanction in accordance with Appendix 3 is 10+ weeks. In consideration as to whether or not the suspension should be greater than 10 weeks, the Committee considered there to be two important factors justifying no increase to the entry point:-

1. The Opposition Player was not injured; and
2. The Opposition Player by holding onto the ball carrier during the majority of the duration of the act of foul play enabled the pivoting motion to occur with the consequence of the Opposition Player being placed in a very vulnerable position.

The Committee then moved on to consider whether there were any aggravating factors further to ERC Disciplinary Regulation 6.7.34. The Committee noted the player had been suspended for eight weeks in season 2003/04 having been cited for "striking". The Committee determined that the previous disciplinary record was an aggravating factor.

The Committee then proceeded to consider whether there were any mitigating factors further to ERC Disciplinary Regulation 6.7.35 and noted the compelling mitigating factors with the exception of the previous disciplinary record as referred to above.

The Committee in considering the aggravating factors and mitigating factors acknowledged the previous disciplinary record of the player and the significant mitigating factors and determined that the top end entry point of 10 weeks be reduced by four weeks. Accordingly the suspension would be six weeks. The Player was suspended for a six week period from Sunday, 14th December 2008 up to and including Sunday, 25th January 2009. Additionally, the Committee determined that each party would bear their own costs.



Professor Lorne D Crerar

22 December 2008