

DECISION OF THE DISCIPLINE COMMITTEE

HEINEKEN CUP

HELD AT DUBLIN ON THURSDAY 30 JANUARY 2008

IN RESPECT OF DECLAN DANAHER ("the player") and A CITING COMMISSIONER'S REPORT FROM RUSSELL HOWELL IN RESPECT OF CONTRAVENTION OF LAW 10.4(b) – STAMPING/TRAMPING ON AN OPPONENT DURING THE BENETTON TRAVISIO MATCH WITH LONDON IRISH HELD AT TRAVISIO ON 19 JANUARY 2008

Members of the Discipline Committee

Committee Paul Mauriac (Chairman, FRU)
 George Spottswood (IRFU)
 Peter Brown (SRU)

Decision of Committee

1. The Committee accepted the player's plea of guilty to the Citing.
2. The player is suspended from taking part in the game of rugby up to and including 21 February 2008. This represents a three week suspension commencing on 30 January 2008.

The Committee made an award of costs against the player. Such reasonable sum to be agreed between the parties, failing agreement further representation to be made to the Committee for their determination.

Introduction

This Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel pursuant to the Discipline Regulations of the Heineken Cup in respect of a Citing Complaint made by Russell Howell, the Citing Commissioner.

The Citing Complaint concerned the conduct of the player during a Heineken Cup match played between Benetton Treviso and London Irish on 19 January 2008 at Stadio Comunale di Monigo Treviso.

The Citing Complaint alleged that the player trampled on a Treviso player contrary to Law 10.4(b).

Present at the Hearing on Thursday 30 January 2008 in addition to the Members of the Committee were:

- Roger O'Connor (Disciplinary Officer, ERC)
- Max Duthie (Counsel to the Disciplinary Officer)
- Declan Danaher of London Irish – The Player
- James Segan (Barrister for the Player)
- Duncan Sandlant (Solicitor for the Player)
- Kieran McCarthy (London Irish Rugby Manager)

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 the Citing Complaint. The Chairman outlined the procedure to be adopted by the Committee for the Hearing and that the provisions of the Disciplinary Rules of the Heineken Cup. The Player and all present agreed to proceed on such basis.

The Chairman established what evidence had been placed before the Committee prior to the Hearing and enquired as to whether all present had received same in good time. The Chairman then requested the Disciplinary Officer to confirm what additional evidence was to be presented by way of video evidence.

Prior to the commencement of the formal Hearing, the Chairman invited the Player to confirm whether or not they had any preliminary issues that they wished to raise and none such were raised.

The Chairman asked the Player how he wished to plead in relation to the Citing Complaint and the allegation that he had committed an act of illegal and/or foul play.

The Player admitted that he had committed an act of illegal and/or foul play.

The Chairman indicated that in view of the Player's plea, the Committee would move on to consider the sanction and invited Mr Duthie to outline the facts of the citing and present the DVD evidence to enable the Committee to consider same.

Mr Duthie opened the Citing Commissioner's Report and led the Committee through the DVD evidence which showed the development of a ruck in open play with the Treviso number 12 lying on his side on the London Irish side of the ruck. The Player is seen making two right footed stamps aimed at the number 12's body but making contact with him and the arm and head of the Treviso number 4 Rob Labuschagne.

The Committee were presented with an e-mail from Vittorio Munari, the Treviso Rugby Manager, stating his number 4 had a bruise on the front of his head, but no medical attention had been required.

The Player responded by accepting his boot made contact with the body of the Treviso number 12. He stated the Treviso number 12 made no effort to roll away from the tackle and the Player stated his use of the boot was only as part of a genuine attempt to produce quick ball for his team. He accepted he had been reckless and clumsy rather than acting deliberately. He also accepted he committed an act of foul play that warranted a red card. He denied he had made contact with the head of the Treviso number 4.

The Committee viewed several times the DVD evidence then invited the Player's barrister to address them on sanctions.

Mr Segan asked the Committee to take into account the player's immediate acceptance of guilt and to accept the DVD evidence clearly demonstrated the Treviso number 12 making no effort to roll away; the speed of the game and the player's split second decision to ruck the opponent away (albeit over zealously); no contact with the head of the number 4; no intention to injure and not the most serious example of stamping/rucking; no injury requiring treatment and the foul play was not pre-meditated nor affected the outcome of the game.

In addition, the referee had a clear view of the play and took no action. Accordingly, he invited the Committee to class the incident as a Lower Entry Point Case.

In determining sanction, Mr Segan stated the significant factors for his client were:

- He immediately admitted culpability
- In a long playing career, the player had a completely clear discipline record.
- He had conducted himself well at the Hearing.
- He much regretted the incident.

In response dealing with the factors set out in Clause 7.6.24 of the Disciplinary Rules, Mr Duthie went on to say that the act was an intentional act and was not in self defence. In respect of gravity it was the use of the boot, not in self defence, no obvious provocation (apart from the slowing of the ball release).

While ERC disagreed with the player's evidence that there was not contact with the number 4's head (bruise must have come from contact) there were definitely repeated stamps to his arm and to the body of the number 12. He accepted there was no significant injury. The incident had no effect on the result of the game but the opponent was vulnerable.

There was no question of premeditation but the act was completed.

The only aggravating factor was the player clearly had not demonstrated remorse or sought out the Triviso player to apologise, so remorse should not be included as a compelling factor in mitigation.

Peter Brown asked Mr Duthie to further comment on remorse and apology in relation to the timing of the announcement of the citing after he had returned to London, Mr Danaher being unaware he had anything to apologise for until viewing the DVD and the artificiality of the issue of any belated e-mail or letter of apology just before the Hearing.

Mr Duthie responded that he did share Mr Brown's distrust of latent letters of apology but in this case Mr Danaher simply had not demonstrated remorse.

In response to Mr Brown's specific direct enquiry, Mr Danaher stated he regretted the foul play and had resolved to be much more careful in future.

Mr Duthie on behalf of ERC sought costs and Mr O'Connor said that as three Hearings were listed, only one third of the costs would be sought in respect of this Hearing.

The Committee retired to deliberate in private as to sanction. The Committee considered the player had intentionally trampled on the back of number 12 and on the arm of number 4 but considered the allegation of a blow to the head not substantiated.

While the action had been completed, it was not premeditated and had been provoked to an extent by the opponent not rolling away. There was no injury, the opponent was vulnerable but there was no effect on the game.

Having dealt with the actual facts of the incident, the Committee took note of the provisions of Regulation 17 and deemed the offence to be at the mid entry point level carrying a suspension of five weeks.

The Committee also considered the player's exemplary record, his acknowledgement of his culpability, the exemplary manner at which he and his representative had conducted themselves at the Hearing, and the fact that this was a first offence in eight years of professional rugby.

In all circumstances, the Committee determined that an appropriate sanction was the imposition of a period of suspension of three weeks commencing on 30 January 2008 and ending on 21 February 2008 and also ordered that the player pay a reasonable sum, yet to be agreed, towards the costs of the ERC in convening the Hearing.

The Parties were reminded that Regulation 8 provided for the right of Appeal and how such Appeal could be progressed against this Committee's decision.

Dated the seventh day of February 2008

Paul Mauriac
Chairman
Discipline Committee