

DECISION OF THE INDEPENDENT JUDICIAL OFFICER ERC Heineken Cup 2011/12

Held by telephone conference at Huguenot House, 35-38, St Stephen's Green, Dublin 2

23rd November 2011 at 10:00 am

In respect of:

Steven Shingler ("the Player")

And

The Ordering-Off of the Player by the referee, Jerome Garces, for an offence contrary to Law 10.4.(j) of the Laws of the Game in the match between Cardiff Blues and London Irish played at the Cardiff City Stadium on the 18th November 2011.

Judicial Officer appointed to hear the case:

Roger Morris (Wales) ("the Judicial Officer")

Decision of the Judicial Officer:

- i. As the Player had accepted that the referee was correct to order him off, the Judicial Officer had to determine what suspension or other sanction should be imposed upon the Player, if any;
- ii. The Judicial Officer considered that there was no reason not to impose a suspension on the Player and as such the Player was suspended from taking part in the game of rugby up to and including the 18th day of December 2011. This represents a four-week suspension, commencing on the 18th November 2011.
- iii. The Judicial Officer ordered the Player to reimburse to ERC half of the travel and accommodation costs of the Judicial Officer incurred in connection with the hearing.

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of ERC's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup, 2011/2012.

The Judicial Officer was appointed to consider the ordering-off of the Player in the match between Cardiff Blues and London Irish in the second round of the 2011/2012 Heineken Cup played on the 18th November 2011 at the City of Cardiff Stadium.

Jerome Garces was appointed as referee for this match and had ordered the Player off for an offence contrary to Law 10.4.(j) of the Laws of the Game, namely that the Player had lifted an opponent off the ground and tipped him over such that the head and shoulders of the opponent were the parts of his body that first came into contact with the ground. This action constituted a dangerous tackle contrary to the stated law.

The Parties at the Hearing

Present in Dublin at the hearing in addition to the Judicial Officer were the following persons:

- Mr Roger O'Connor ("the Disciplinary Officer") Disciplinary Officer, ERC
- Mr Liam McTiernan, Regulatory Officer, ERC

Present in London were the following persons:

- The Player
- Toby Booth, Head Coach, London Irish
- Kieran McCarthy, Rugby Manager, London Irish

Preliminary Matters & Procedures

At the commencement of the hearing, the Judicial Officer noted the identities of all present and the offence for which the Player was ordered off namely being an offence of committing a dangerous tackle contrary to Law 10.4.(j).

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement of the Heineken Cup, 2011/2012 ("the Disciplinary Rules" and "DR" in the singular) would apply. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceed on that basis.

The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented before him. This evidence was as follows:-

- "Referee's report on Red Card" dated the 18th November 2011.
- Letter dated 21st November 2011 from Mr O'Connor to Professor Crerar.
- Letter dated 21st November 2011 from Professor Crerar convening the Hearing.
- Statement of the Player giving replies to the standard directions contained within the Disciplinary Rules.
- Statement of Dafydd Hewitt ("CB12") – undated.
- Judgments following Disciplinary Hearings in relation to the players Robshaw, Houghton, and Sevalil'i and produced by the Player.
- ERC's responses to the Player's replies to the standard directions.
- IRB memorandum dated 8th June 2009 referred to in ERC's responses.
- Schedule entitled "Tip Tackle Case Law" referred to in ERC's responses.

In addition to the above-mentioned written materials, the following video evidence was to be presented:

- Video footage from the original broadcast coverage of the game.
- The same video footage annotated by the London Irish rugby analyst.

Before proceeding further, the Judicial Officer said that, during the evening before the Hearing, he had received an e mail from London Irish seeking to introduce evidence which comprised video coverage of an incident involving a player, Stephen Jones, in a game between the Scarlets and the Ospreys. The Judicial Officer had also received an email from Mr O'Connor objecting to the introduction of that evidence. The Judicial Officer asked the parties if they had received his e mail in response in which he had ruled that he would not consider video footage of any incident occurring in a different game from that the subject of the Hearing. The parties confirmed that they had received the e mail and accepted that the Hearing would proceed on that basis.

There were no other preliminary issues that any party wished to raise.

The Judicial Officer referred to the referee's report and noted that in his statement the Player had said:

"I accept that the official report is a true account of the incident that resulted in the Red Card,, that I committed an act of foul play albeit not intentional and the act warranted a Red Card, based on the reason for the referee's decision given at the time".

The Judicial Officer asked the Player if it remained his position that he accepted he ought to have been ordered off. The Player confirmed that to be the case.

In those circumstances, the Judicial Officer said, the purpose of the hearing was to decide what further sanction, if any, should be imposed and that the evidence would be viewed and considered with that purpose in mind.

Evidence Supporting Ordering Off

Pursuant to DR 6.2.9, the Judicial Officer directed that the video footage of the incident should be shown. The parties watched the video footage with the sound off.

The video showed Cardiff Blues in possession of the ball. The ball was passed from right to left to CB12 who caught it in the middle of the field 5 metres inside the London Irish half. The pass to CB12 was high and, running at speed and jumping a little way from the ground, he caught it at chest level. He was confronted by the Player who, from a distance of two or three metres, was clearly intent on tackling him. When CB12 caught the ball, his left leg was in the air with his bent knee at hip level. His right leg was on the ground with heel lifted. The Player made contact in an attempt to tackle CB12, with his shoulder aimed at CB12's midriff, his left arm around CB12's right hip and his right arm around the upper part of the thigh of CB12's left leg. As the tackle was made CB12 was lifted from the ground. He twisted to his left and tipped upside-down so that his outstretched left-hand was the first part of his body to make contact with the ground followed by his right shoulder and head (his right arm still holding the ball) and with his feet pointing towards the sky. CB12 rolled onto his back before immediately regaining his feet. The Player, as CB12 was falling to the ground, fell away from CB12 and landed on the ground on his back.

The Disciplinary Officer asked the Judicial Officer to note the following:

- CB12's left leg was off the ground;
- CB12's left leg, whilst off the ground, was held and lifted by the Player;
- CB12 was tipped over so that his legs were vertically pointing towards the sky;
- CB12's left-hand reached out to break his fall;
- CB12's head and shoulders were the first parts of his body, after his hand, to make contact with the ground;

The Disciplinary Officer was not able to express an opinion, in terms of DR 6.7.32, as to whether the foul play was intentional but opined that it was in any event a reckless and high-risk tackle.

Also in terms of DR 6.7.32, the Disciplinary Officer made the following points:

- In relation to the gravity of his action, the Player had grasped CB12 around the left leg and lifted him such that there was a clear and high risk of the tackle becoming a tip tackle;
- There was no provocation or any element of self-defence;
- He accepted there was no effect at all on the victim who got up from the ground straightaway and carried on playing;
- If the Player's action had an effect on the game it was that London Irish had to play with 14 men for the rest of it;
- CB12 was in a position of vulnerability as one would always be when tipped upside down;
- The level of the Player's participation was full although he accepted there was no premeditation;

- The Player's conduct was completed.

The Judicial Officer then asked the Player to explain his actions by reference to the video. The Player made the following points:

- The ball was being moved from the Cardiff Blues right to left from a line out;
- There was a looped pass to CB12 which caused CB12 to have to jump from the ground to catch the ball;
- This meant that CB12 was not in a stable position on the ground when the Player made contact with him;
- CB12, effectively, jumped into the tackle with his left leg in the air and with little or no forward momentum;
- From CB12's position entering the tackle, there was nowhere for him to go but upwards;
- CB12 had lost the contact in the collision and therefore wanted to get to ground quickly;
- CB12 twisted in the tackle and as a consequence his centre of gravity inevitably made him tip;
- Because CB12 twisted in the tackle, the Player was not in a position to put him down gently;
- CB12 made contact with the ground in a way that was in fact no threat to his head or neck;
- The Player's momentum was to the side and he himself therefore was not in a stable position to deal with the consequences of the tackle;
- The Player had lost control because CB12 had twisted in the tackle;

The Player further explained that CB12 (whom he knew quite well) came to speak to him afterwards. The Player had been apologetic for what had happened but CB12 had been very understanding and considered the Player had been unlucky that the consequences of a dominant tackle had led to a red card.

Evidence of Mr Booth

Mr Booth made the following points in relation to the incident:

- He described the two basic types of tackles as a "leg tackle" and a "wrap tackle";
- The Player had carried out a legitimate attempt at a classic leg tackle with two arms wrapped around the opposing player;
- Because the Player was in the position he was in (with one leg in front of the other) and because the ball carrier effectively jumped into the tackle, the centre of gravity of CB12 shifted;
- As the Player drove through the tackle, CB12 had inevitably gone upwards and backwards;
- CB12 had become difficult to handle and for the Player to maintain his contact with him;
- That CB12 tipped upside-down was an unfortunate consequence of a legitimate tackle;
- The Player fell to the ground away from CB12 at which point he was no longer in control of the collision;
- CB12 was not driven into the ground but was taken to the ground by momentum and gravity.

Mr McCarthy asked to add a further comment to Mr Booth's explanation. He said that a crucial aspect of the matter was the fact that CB12's body twisted in the tackle. The twisting contributed to gravity taking over and, effectively, taking the situation out of the Player's hands.

Mr McCarthy added that in terms of his decision to be made under DR 6.7.33, the Judicial Officer should find that the offence was at the lower end of the scale of seriousness.

The other evidence before the Hearing was the Referee's report and the written statement of CB12.

Sanction

The Judicial Officer invited the Disciplinary Officer to articulate any points he wished to make in relation to aggravating and mitigating factors. Referring to DR 6.7.34, the Disciplinary Officer confirmed that the Player has a previously completely clean record.

The only other matter which he wished to raise in relation to DR 6.7.34 was his view that there was the need for a deterrent to combat what he said was a pattern of offending. He made his assertion based on the fact that this was already the third case of this type to be dealt with arising out of the first two rounds of this season's European Cups. He also pointed to the schedule of cases attached to his response to the Standing Directions and asked the Judicial Officer to consider the frequency with which similar cases appeared to come before disciplinary hearings notwithstanding the IRB Memorandum produced to the Hearing dated 8th June 2009 .

In relation to mitigating factors, the Disciplinary Officer accepted that the Player had pleaded guilty at the first opportunity and that he had a clean record.

Finally, the Disciplinary Officer pointed to the provisions of DR 6.7.36 and asked the Judicial Officer to bear those provisions in mind should he determine the case to be one where the lower entry point was to be imposed.

With the Judicial Officer's permission, Mr McCarthy then addressed the Hearing on behalf of the Player in relation to the circumstances which might either be aggravating or mitigating of the offence. Mr McCarthy did so by reference to DR 6.7.34 and DR 6.7.35.

In relation to aggravating matters, he made the following points:

- The Player was truly remorseful and full of contrition. He is a very young player and the whole experience has been a "bad one" for him;
- He had a completely clean record and was a young player finding his way in the professional game who was likely to learn from this very "poor experience";
- In relation to the need for a deterrent, Mr McCarthy urged that the Player should not be treated differently from perhaps more experienced players who had not had such a need taken into account in their disciplinary hearings;
- It would be unfair for a young, 20-year-old player "to take one for the team";
- All of this was particularly so in a case where there was, in essence, contributory negligence from the other player i.e. by twisting in the tackle;

In terms of DR 6.7.35, Mr McCarthy made the following points:

- The Player had pleaded guilty at the first possible opportunity and acknowledged his guilt;
- The Player had an excellent record;
- The Player was a young player but nevertheless already something of a role model within his team;
- The Player is a good professional player with high standards;
- There could be no criticism of the Player's conduct at the Hearing;
- The Player was sorry for what had happened and remorseful. He had apologised to the other player who in turn had in fact apologised to the Player for having been involved in something that had come to a red card.

Finally, the Judicial Officer invited the Player himself to have the last word.

The Player said that he had never been in this sort of position before and was devastated both by the circumstances he found himself in and the fact that he was going to miss some weeks of rugby. He realised that the consequences of his actions have been that this team was required to play with 14 men and that might have had a huge bearing on their progress in the Heineken Cup. He had apologised to his team and to his coaches, but more particularly, to Dafydd Hewitt for placing him in a position of danger.

Decision as to Disposal

The Judicial Officer deliberated in private in respect of what, if any, sanction would be appropriate in the circumstances.

The Judicial Officer reviewed the Referee's report, the statement of CB12 and the five different video clips of the incident (including the annotated clips) and made the following determinations as to what had occurred:

- CB12, running at pace, caught a high pass with both hands, clasp it to his upper chest. In order to catch the high pass, but without breaking his running stride, CB12 had to jump in the air so that, momentarily, both his feet were off the ground. When CB12 caught the ball, the Player was no more than 2 or 3 meters from CB12 and already intent on tackling him.
- As CB12's left foot landed on the ground but with his right knee still high in a running motion, the Player executed his tackle. He did so by aiming his right shoulder into the midriff of CB12 and grasping him with both arms – his right hand holding CB12 behind CB12's left thigh just below his buttock and his left hand around and below CB12's raised right thigh.
- CB12 managed to get both his feet to the ground. At that moment, his forward momentum arrested and from a solid base of having both his feet on the ground, the Player, still firmly holding CB12 with his right arm and hand, lifted CB12's right leg with his left hand. At the same time CB12, as he began to be lifted, attempted to twist to his left to turn the ball towards his own team.
- The consequence of the various movements was that the Player's right arm became the fulcrum over which CB12's body would turn upside-down if the lift and drive of the Player in the tackle continued, and that is what happened. The Player continued to lift and drive, lost control of the tackle and CB12 turned upside-down until his head was pointing to the ground and his feet towards the sky.
- Still holding the ball in his right hand and with his feet in the air, CB12 reached out to the ground with his left hand so to cushion his fall. The hand and arm collapsed under the weight of his falling body so that his head and right shoulder were the next parts of his body to make contact with the ground.
- At that moment, the Player was still holding CB12 but was not in a position to prevent CB12 from falling. However, neither was he exacerbating the effect of the tackle by continuing to drive CB12 towards the ground as stated by the Referee.
- As CB12 hit the ground, the momentum of his body caused him to perform the final part of an exaggerated and clumsy forward roll so that he ended up on his back from which position he was able immediately to regain his feet.

In turning to the question of sanction, the Judicial Officer considered the terms of the Disciplinary Rules including DR 6.7.29 through to DR 6.7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

The Judicial Officer noted that the offence of committing a dangerous tackle contrary to Law 10(4)(j) was listed within the IRB Recommended Sanctions for offences within the playing enclosure (found at Appendix 3 of the Disciplinary Rules) as follows:

- | | |
|--------------------|------------|
| • Low-end | 3 weeks. |
| • Mid-range | 6 weeks. |
| • Top-end | 10+ weeks. |
| • Maximum sanction | 52 weeks. |

To decide upon the appropriate entry point, the Judicial Officer assessed the seriousness of the Player's conduct by reference to the matters set out in DR 6.7.32, and determined as follows:-

- The offending was not committed intentionally in the sense that the Player's original intent was to perform a legitimate tackle.
- The evidence before the Judicial Officer led him to conclude that the dynamics of this particular tackle, combined with the momentum of the players involved, made it inevitable that the consequence would be a tip tackle and therefore a foul. Commendably, neither the Player nor his coach or manager tried to categorise the matter as an accident. They appeared to accept that what started as a legitimate "leg tackle" might, because of the lift and drive involved, easily turn a legitimate tackle into a tip tackle. The Player knowing that such a potentially catastrophic consequence might result from his otherwise legitimate actions was, in the considered view of the Judicial Officer, reckless.
- On the Player's own testimony, he was firmly holding CB12 with his right arm, drove with his shoulder, and lifted CB12's right leg with his left arm to the point where he lost control of the tackle and CB12 tipped over.
- There was no element of provocation, retaliation or self-defence.
- CB12 was not injured and played the remainder of the match without any problem.
- The only effect on the match was that the Player's team were required to finish the match with only 14 men.
- CB12 was in as vulnerable position as it is possible to be in when playing rugby. To be upside down and out of control of his body exposes a player to every conceivable injury to his upper limbs and shoulders and even catastrophic injury from landing on the ground on his head or neck. It is clearly worse if a player is driven into the ground (which was not the case here) but falling to the ground merely under the force of gravity can, of itself, result in devastating injury.
- Whilst there was no premeditation in the sense that, as the tackle commenced, the Player intended to make a tip tackle, the Player's participation in the tackle was full and completed.

There were no other features of the tackle that the Judicial Officer considered needed to be taken into account.

In light of the above assessments, the Judicial Officer determined that the appropriate entry point for this matter was 6 weeks suspension being the mid-range of offending.

The Judicial Officer, as he is required to do, then considered the "off-field" issues and in doing so considered whether there were any "aggravating" or "mitigating" factors by reference, respectively, to the provisions of DR 6.7.34 and DR 6.7.35.

In relation to potentially aggravating factors required to be considered, the Judicial Officer found as follows:

- The Judicial Officer accepted that the player was remorseful and contrite about his involvement in this matter.
- The Player is a young player with a previously clean disciplinary record of whom his manager had spoken in glowing terms.

Therefore, neither of the above factors aggravated the offence.

There were no other potentially aggravating factors to consider except that set out in DR 6.7.34 at (c) which states:

"Aggravating factors include the following:

.....(c) The need for a deterrent to combat a pattern of offending"

The Judicial Officer had been made aware by the Disciplinary Officer, both at the hearing and in his responses to the Standard Directions, that there appears to be a debate within the game about the appropriateness of the application of this provision in cases of this type.

However, the Judicial Officer considered the matter to be straightforward.

The wording of 6.7.34 (which reproduces exactly the wording of IRB Regulation 17.14.3) is plain:

“Aggravating factors include... the need for a deterrent to combat a pattern of offending”

There are two questions.

First, is there a pattern of offending?

The offending in this particular case involved the execution of what started as a legitimate “leg tackle” in which the tackler aims to take hold of his opponent around the thighs, to lift him from the ground and drive him backwards. The inevitable consequence of that action, as the Player and his coach both appeared to recognise, is that sometimes the tackle will go wrong and what started as a legitimate exercise ends up as a foul. The problem, as medical opinion within the game urges the game to acknowledge, is that the foul play so perpetrated leads to an unacceptable risk of catastrophic injury.

That offences of this type should be taken seriously is illustrated and highlighted by the memorandum referred to by the Disciplinary Officer and issued by IRB, dated 8th June 2009. Whether that memorandum, of itself, should lead disciplinary tribunals to find there is a “pattern of offending” may be a matter for semantic debate but the question the Judicial Officer posed to himself was, why on earth would the IRB, the custodians of the worldwide game, have issued such a memorandum unless it had concerns not only about the consequences of such offending but also the prevalence of it?

In any event, and whether or not the IRB Memorandum alone should lead to the conclusion that there is a pattern of offending, in the Judicial Officer's view, that such a pattern exists is more than adequately illustrated by the frequency with which such cases have come before disciplinary tribunals, not only since the memorandum was issued (as demonstrated by the three cases already heard in this ERC season and the schedule produced by the Disciplinary Officer) but also before.

The Judicial Officer himself had heard a case in the season before the Memorandum was written which concerned a tackle similar to that in this case (*ERC v Ross Rennie*). That player and his coach described a method of leg tackle requiring the tackler to grasp his opponent around the thighs, lift him and drive him backwards. They both acknowledged that this method of tackling might result in a tip tackle and therefore a foul. Since then, it is clear that similar fouls have been committed and with frequency.

The Judicial Officer concluded that there is a clear pattern of offending in terms of DR 6.7.34.

Secondly, is there the need for a deterrent?

The threat of catastrophic injury from a particular mode of behaviour requires the game as a whole constantly to consider whether there is a need for a deterrent to reduce that threat. In the Judicial Officer's view, the possibility of serious injury makes out that need in this case.

It may be that, in the professional game, players and coaches naively consider the risks inherent in tackles such as this to be an acceptable part of their profession – whether as tackler or tackled. However, as the Judicial Officer himself has observed in lower and junior levels of the game, what is done and coached at the professional level soon becomes the norm and the pattern of play at lower levels. Coaches at all levels are teaching players to grasp, lift and drive in the tackle in the knowledge that the tackle can go badly wrong but without teaching their charges what to do (either as tackler or tackled) when things do go wrong.

It appears to the Judicial Officer that players and coaches find the entry level periods of suspension to be of such length as to make the risk of suspension an acceptable risk, particularly since they expect this type of tackle (i.e. one that starts with every proper intention of it being legitimate but occasionally ends up as a foul) to be considered at the low or, at worse, mid-range of offending.

Although this begs the question as to whether the entry point itself should be used as the weapon of deterrence, the Judicial Officer rejected that notion for the simple and straightforward reason that he

considered his role was to deal with matters in accordance with the relevant Regulations and the Regulations clearly place the "need for a deterrent" in DR 6.7.34.

The purpose of a deterrent must be to make players and coaches think again about the manner in which they approach tackles, particularly, although it should not need emphasis, where players are exposed to the threat of such serious injury.

The Judicial Officer concluded there was clearly a need for a deterrent to emphasise the seriousness of these matters by way of imposing an additional sanction.

Accordingly, an additional period of two weeks' suspension would be imposed.

In dealing with mitigating factors as required under DR 6.7.35, the Judicial Officer made the following determinations:

- The Player had acknowledged his guilt and culpability at the earliest possible moment.
- The Player's record is exemplary.
- The Player's manager spoke in glowing terms of his character.
- The Player is young and inexperienced, but had expressed a proper desire to learn from what had happened.
- The Player's conduct at the hearing was exemplary.
- The Player was clearly sorry for his actions and relieved that they had caused no injury to the other player.

In light of the above factors, the Judicial Officer reduced the overall period of suspension by 50% i.e. by four weeks.

In all the circumstances, the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of the equivalent of four weeks commencing on 18th November 2011 and ending at midnight on 18th December 2011. The Player would be free to play again on 19th December 2011.

In addition, the Judicial Officer ordered that the Player should pay to ERC such sum as represented half of the Judicial Officer's travel and accommodation costs.

The Player and the Disciplinary Officer were reminded that DR 7.1.1 provides for a right of appeal against this decision.



Roger Morris

29th November 2011