

# **Decision of the Judicial Officer**

## **European Rugby Cup**

In respect of a hearing held at the ERC Headquarters, St. Stephen's Green, Dublin on Thursday 22<sup>nd</sup> December 2011

In respect of Will Skinner "the Player" and in respect of an ordering off arising out of a match which took place on the 18<sup>th</sup> December 2011 between Toulouse and Harlequins during Round 4 of the Heineken Cup 2011/2012.

**Judicial Officer H Pat Barriscale (Ireland)**

### **Decision of the Judicial Officer:**

- (i) That the Player is suspended from rugby for a period of two weeks from 18<sup>th</sup> December 2011 to end at midnight on Sunday 1<sup>st</sup> January 2012;
- (ii) That the Player pay the reasonable costs incurred by the ERC in relation to this hearing.

## **Introduction**

The Judicial Officer was appointed by Professor Lorne D. Crerar, the Chairman of the ERC Discipline Panel pursuant to the Discipline Regulations of the ERC in respect of the ordering off of Will Skinner of Harlequins (the Player) on the 18<sup>th</sup> December 2012.

Present at the hearing on the 22<sup>nd</sup> December 2011 in addition to the Judicial Officer were:-

Roger O'Connor, Disciplinary Officer, ERC;

Max Duthie, Solicitor for the ERC;

Liam McTiernan, ERC;

Will Skinner, the Player;

Connor O'Shea, Director of Rugby, Harlequins;

Geraint Ashton Jones, Technical Advisor, Harlequins Football Club.

## **Hearing**

At the commencement of the hearing, the Judicial Officer confirmed the identities of all present and established that the Player was represented and in attendance. The Judicial Officer outlined the procedures to be adopted for the hearing and that the provisions of the ERC Disciplinary Regulations would apply. All present agreed to proceeding on that basis.

The Judicial Officer established that there were no preliminary issues to be argued by the parties and asked the Player how he proposed to deal with the ordering off offence. The Player said that he was admitting that he was guilty of foul play but that such foul play did not warrant a red card and an ordering off in the circumstances. Arising from this all agreed that pursuant to Rule 6.2.10 a player has the burden of proving, on the balance of probabilities, that the Referee's decision to show him a red card was wrong. It was agreed that the hearing would proceed on that basis.

The first witness called was Mr Alain Roland, the Referee from the game in question. He briefly went through the Report which he had completed after the match and which was before the hearing. He was questioned at some length by Mr Ashton Jones and suggestions were made to him that firstly, because the temporary suspension of Nick Easter had expired that he was obliged to let him back on the pitch immediately and secondly that even if the Toulouse player had caught the ball which the Player had interfered with that he, the Referee, was not allowed to let him take a quick throw in the circumstances. Mr Roland responded in very positive terms to the effect that he was not obliged by any law to immediately allow the Player back on to the pitch was the 10 minute temporary suspension had expired. He further went on to say that in respect of a quick throw equally there was not specific law dealing with that subject and that both of these issues were entirely within his discretion as the match referee if and when this should have happen. Mr Ashton Jones persisted with the suggestion but Mr Roland would not accept that he was correct. Mr Roland said that he was clearly satisfied that

the Toulouse player would have caught the ball which had gone into touch had it not been interfered with by the Player and that he could have taken a quick throw in to re-start the game. He was clear that he would not have stopped the play to bring back the Player necessarily at that time.

Mr Roland was then questioned by Mr Duthie and stated that he had spoken to the Harlequin's Team Manager in relation to a similar incident in the first half. At the time this incident occurred, he was not aware that the 10 minute period of temporary suspension for Nick Easter had elapsed and said that this was a matter for the Fourth or Fifth Official. He confirmed that in his view the Player had interfered with the ball to deprive the Toulouse player of a quick throw in opportunity and that he had no reservations whatsoever about the red card which he had issued.

The Player agreed to give evidence then and said that he was happy to answer any questions which Mr Duthie had for him. He confirmed that he was not aware of the incident in the first half involving the Team Manager, Mr Bowerbank. He said that at no stage was he aware of the warning which was given by the Referee to the Team Manager and there was certainly no discussion during half time in relation to the same.

He confirmed that he had come off the pitch injured at 45 minutes and he was unable to sit down because he had a back injury he stood for the remainder of the match in the technical zone. He accepted that he had no entitlement to be in such a zone. He said at no stage was he requested to leave the same by either the Fourth or Fifth Official. He continued by saying at the time of this incident the ball came directly to him and he did not move in any way to catch the same. He said that if he did not put up his hands it would have hit him on the face or chest and that he was not aware of the Toulouse player until the very last moment. He was very clear that he was not trying to stop the Toulouse player from taking a quick throw in. He said that he knew specifically that Nick Easter, his fellow player's temporary suspension time had expired as he noted the time he had come off and the 10 minutes had elapsed since then.

There were very brief submissions on behalf of both sides with Mr Duthie saying that the Referee was very clear about what happened and his interpretation and administration of the law. Mr Ashton Jones said that whereas Mr Roland honestly believed that he went to stop a quick throw in that the evidence from the Player was that this was not the case.

The Judicial Officer took time to consider his decision as to whether or not the ordering off was appropriate by the Referee in the circumstances.

The hearing reconvened and the Judicial Officer stated that he was not satisfied on the balance of probabilities that the Player had satisfied him that the red card issued by the Referee was wrong in the circumstances. The Judicial Officer was satisfied that the Referee was entitled to issue the red card in the circumstances and did so for good reason. He went on to say that the Player in question was in the technical zone at the time the incident occurred and that he should not have been there. He said that it was irrelevant that he was not put out of the zone by either the Fourth or Fifth Official and that it was a matter for him and/or his team to ensure that he was not in that zone. He said that he was

satisfied that the actions of the Player did in fact deprive Toulouse of the possibility of a quick throw in and that it was foul play.

As a result of these findings it was agreed that the matter must then proceed to sanction. Mr Duthie was asked to address the Judicial Officer in relation to the attitude of the ERC and the range of sanctions available. He pointed out that the charge was framed under Law 10.4.(m) and the levels of sanction were set out in the Appendix to the Disciplinary Rules with low end at 4 weeks, mid range 7 weeks and high end 11 weeks up to a possibility of 52 weeks. He said that he did not propose specifically addressing or making recommendation on behalf of the ERC in relation to the entry level. He did say that they were not aware of any aggravating factors and that the mitigating factors were clearly a matter for the Player.

He did point out that pursuant to Rule 8.8 of the Disciplinary Rules it was possible for the Judicial Officer to amend the charge if he saw fit to do so and he could then come in under the provisions of Rule 6.7.29 and the range of sanctions available to him. He emphasised however that he was not recommending this course of action be adopted but merely pointing out the option as available to the Judicial Officer.

On behalf of the Player, it was submitted that he had no previous convictions of any description and had never come to the attention of a Disciplinary Board previously. He was 9 years as a professional rugby player and was now 27 years of age. The suggestion was that a suspension from rugby was inappropriate in the circumstances and that the Judicial Officer should exercise the discretion which was available to him as pointed out by Mr Duthie. This concluded the submissions.

The Judicial Officer stated that he did not need further specific time to consider the sanction he proposed. He said that he was satisfied to use the sanctions available under Law 10.4.(m) as set out in the Appendix and that it was a low end entry point offence at four weeks. He said that the Player was entitled to the maximum deduction of 50% as there were no aggravating factors and reduced the suspension to two weeks. This was to take effect from the 18<sup>th</sup> December 2011 and expire at midnight on Sunday 1<sup>st</sup> January 2012.

Mr Duthie, on behalf of the ERC, requested that an Order would be made in respect of their costs of the hearing. Mr Ashton Jones stated that he did not believe that this was appropriate in the circumstances and that the suspension from rugby was more than an adequate penalty on the Player. The Judicial Officer however stated that the costs usually follow the event and as a conviction had occurred he was prepared to order that the ERC's reasonable costs be paid in the circumstances.

The Player was reminded of his right to appeal pursuant to the Disciplinary Rules.

This concluded the hearing.

Signed: \_\_\_\_\_

H. Pat Barriscale Dated: 23/12/2011