

EUROPEAN RUGBY CUP

DECISION OF DISCIPLINARY COMMITTEE

HELD AT THE OFFICES OF HARPER MACLEOD,
THE CA'D'ORO, 45 GORDON STREET, GLASGOW

Friday 23rd December 2005

IN RESPECT OF:-

Ian Evans Esq. ("the Player")

AND

The Player was cited by Bill Dunlop, Citing Commissioner, asserting a contravention of Law 10.4(c), viz striking an opponent with the sole of the Player's boot on the side of the knee of the opponent, in a match between Neath Swansea Ospreys and Leicester Tigers held at Liberty Stadium, Swansea on 18th December 2005.

MEMBERS OF THE DISCIPLINARY COMMITTEE:- ("the Committee")

Rod McKenzie, Chairman (SRU)

Dr Barry O'Driscoll (IRFU)

Professor Lorne Crerar (SRU) (Chairman: European Rugby Cup Disciplinary Panel)

DECISION OF THE COMMITTEE:

- (i) The Player accepted that he had committed an act of Illegal and/or Foul Play namely that he had struck backwards and downwards with the sole of his boot striking an opponent on the side of the opponent's knee and that the Citing Complaint be upheld as an infringement of Law 10.4(b) in respect that the Player had stamped on an opponent;
- (ii) That the Player is suspended from taking part in the game of rugby up to and including Sunday 19th February 2006. This represents an 8 weeks and 2 day period of suspension, commencing from the conclusion of the Committee meeting on 23rd December 2005; and

- (iii) That the Player is required to pay one half of the costs of the holding of the hearing of the Committee together with one half of the travel and accommodation costs of the members of the Committee.
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INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the European Rugby Cup Disciplinary Panel pursuant to the Disciplinary Rules of the Heineken Cup 2005/2006 in respect of a Citing Complaint made by Bill Dunlop, the Citing Commissioner. The Citing Complaint concerned the conduct of the Player during a match played between Neath Swansea Ospreys and Leicester Tigers in the Heineken Cup 2005/2006, on 18th December 2005 at Liberty Stadium, Swansea.

The Citing Complaint alleged that the Player had infringed Law 10.4(c), “a player must not kick an opponent.” at the 30th minute and 35th second into the game. It was further alleged that when the ball had been put into a scrum the scrum then pulled clockwise and the Leicester number 9 became caught among the opposition forwards. It was then alleged that the Ospreys number 5 (“the Player”) struck backward catching the Leicester number 9 with the sole of his boot on the side of the knee. The Citing Commissioner noted that the blow was high and not to ground ward and that the only Leicester player in the area was the number 9.

The incident was not detected by any of the Match Officials.

Present at the hearing on 23rd December 2005, in addition to the Player and the members of the Committee, were:-

John Morris – Solicitor (representing the Player)

Derwyn Jones – Rugby Manager, Neath Swansea Ospreys

Jonathan Taylor – Solicitor (representing the Disciplinary Officer)

Roger O'Connor – European Rugby Cup, Disciplinary Officer

Bruce Caldwell – Solicitor, Clerk to the Committee

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 a Citing Complaint. The Chairman outlined the procedure to be adopted by the Committee for the hearing and that the provisions of the Heineken Cup Disciplinary Rules 2005/2006 applied together with the relevant provisions of IRB Regulation 17.

There was no objection to the constitution of the Committee.

A question arose concerning a witness statement by a Mr Harry Ellis of Leicester Tigers and what appeared to be an off print from a press article commenting on certain matters leading up to the match. Mr Morris confirmed that he had not received this documentation more than 24 hours in advance of the hearing (in non compliance of ERCRule 6.4.5). The statement from Mr Ellis had been sought by the Disciplinary Officer but had been sent direct to the Clerk to the Committee. In respect that Mr Morris took objection to the statement and the press off print and in respect that it had not been received by him more than 24 hours in advance of the hearing the Committee ruled that the statement and off print should not be considered.

There was in addition an email and attached report from Paul Stanton, Chartered Physiotherapist, of Leicester Tigers dated 22nd December 2005 addressed to the Clerk to the Committee which, *inter alia*, describes the injuries sustained by Mr Ellis, the Leicester number 9, as a result of the incident in question. This information had been sought in advance of the hearing by the Chairman of the Committee. There was no objection to this email being admitted into evidence. So far as is relevant and with reference to Mr Ellis, the email states:-

“Harry Ellis has had an MRI to his left knee, following an injury he sustained playing rugby for Leicester Tigers vs Ospreys on Sunday 18/12/05. The MRI states that there is a split in his patellar cartilage and that the joint is effused: there is a loose fragment in the joint. Harry is having to undergo an arthroscopy to his left knee this evening to remove the loose body. If the surgery is straightforward (sic), Harry will be out of action for a minimum of approximately 4 weeks from the operation date. MRI report being faxed to you also.”

The MRI report from Dr D Finlay FRCR, Consultant Radiologist dated 21st December 2005 was provided along with the email. So far as relevant the report states:-

“There is a split in the cartilage behind the lateral patellar facet. I think there is probably a small loose fragment lying in the lateral gutter. The menisci and ligaments are in tact. There is an effusion in the joint.”

The email, so far as relevant, and attached report were admitted into evidence.

There was also produced, without objection on behalf of the Disciplinary Officer, by Mr Morris, and admitted into evidence, a report dated 22nd December 2005 from a Dr Gareth L Jones concerning the Player. So far as relevant the report states:-

“I can confirm that Ian has been treated and monitored weekly since July 2005 for recurrent bilateral achilles tendinopathy. He has responded to appropriate therapy but has reported episodes of acute pain during recent matches. Ian had his achilles trawled upon during a scrum in the first half of the Ospreys -v- Leicester match, played on 18th December 2005. I treated Ian’s achilles after the match, it was inflamed and very sore. He seems to be more symptomatic whilst playing on the new surface of the Liberty Stadium which may or may not be a contributory factor.”

There were no other preliminary issues.

The Incident

The Chairman narrated the terms of the Citing Complaint.

The Chairman asked Mr Morris whether the Player accepted that he had, during the incident, struck Mr Ellis in the way described by the Citing Commissioner and whether the Player accepted that he had committed an infringement of Law 10.4(c). Mr Morris advised that the Player accepted that he had acted as described by the Citing Commissioner and that he had committed such an infringement, all subject to the explanation that will be given in mitigation on the Player’s behalf.

In the circumstances, per ERC Rule 6.6.5, it was not necessary for the Disciplinary Officer to prove that the Player had committed the act of Illegal and/or Foul Play specified in the Citing Complaint.

In accordance with ERC Rule 6.6.21 the Committee invited Mr Morris to make submissions to the Committee as regards the sanction, if any, which should be imposed on the Player.

Without making specific reference to ERC Rule 6.6.29 Mr Morris attempted to persuade the Committee that no suspension should be imposed on the Player notwithstanding the admission by the Player that an act of Illegal and/or Foul Play had been committed.

The Committee were shown and examined in detail video footage taken from two different camera angles showing the incident. In addition the Player gave evidence to the Committee as to the Player's version of what had occurred.

When the score was 3 points all, just after 30 minutes into the first half, there was a scrum. The ball was put in and the scrum wheeled causing Mr Ellis to become caught up amongst the Ospreys loose forwards. The Player, an Ospreys lock was still bound in to what remained of the scrum which had partially broken up.

The Player then struck out with his right leg. His studs were aimed in the direction of Mr Ellis and in a slightly downward motion. The sole of the right boot of the Player struck the left leg of Mr Ellis slightly below the knee and slightly to the rear of his leg. The blow was sufficiently severe to knock Mr Ellis sideways whereupon he went to ground grasping his left knee.

He attempted to carry on playing for a short time thereafter but was then substituted as a consequence of the injuries suffered in the incident.

The Player claimed that immediately before he struck out with his leg he had felt a severe pain in his achilles. He did not initially state which achilles and on initial questioning claimed that he had kicked out with his left leg. On continuing to review the video clips the Player then changed his explanation so as to contend that he had struck out with his right leg and that the pain had been in his left achilles. His explanation for doing so was that he had struck out so as to relieve the pain in his achilles. It was, he claimed, a reckless act on his part and there was no intention on his part to strike anyone with his boot.

On being further questioned by the members of the Committee the Player was unable to explain how it was that a pain in his left achilles would be relieved by striking out with his right leg. It was not until he was asked whether it was his intention to strike away the person who he believed to be causing the pain that he was able, accepting the suggestion, to articulate that that was why he had struck out.

The Committee examined the video footage on a frame by frame basis. The members of the Committee could detect no movement of any leg or foot or other indication of any raking or stamping type action towards the left leg of the Player. The Committee were not satisfied as to the reliability and credibility of the Player. The Committee were not satisfied with the Player's explanation as to how it came to be that he struck out, as he did, with his right leg. In the view of the members of the Committee the natural reaction to a pain, such as that described by the Player in his left leg would have been to lift it and attempt to draw it away. Instead the Player, on his explanation proceeded to put more weight on his left leg by lifting and striking back with his right foot. The Committee concluded, on the balance of the evidence that the Player had deliberately

struck out with his right leg with the intention of striking the leg of a Leicester player. The Player may or may not have known that the leg that he was striking was that of Mr Ellis but he would have known it was the leg of a Leicester player because of the distinctive socks which were completely different from the socks being worn by his own players.

The Committee's conclusions as to the true sequence of events were supported by the report of Mr Jones, the Ospreys' Team Physician, which discloses no surface injury to the left leg of the Player such as would indicate raking or stamping injury to the achilles of the Player.

The Committee having concluded that the conduct of the Player was deliberate and that he had intended to strike an opponent with the sole of his boot then this was a case in which it would not be appropriate not to impose a sanction on the Player.

Mr Morris then made submissions in mitigation of sanction on behalf of the Player. The Committee drew the attention of Mr Morris to the terms of ERC Rules 6.6.24 to 6.6.27 (inclusive) and invited him to direct his submissions through those provisions.

No submission was made on behalf of the Player in terms of ERC Rule 6.6.28 but in any event this was not offending of the least serious kind and there were not present compelling mitigating features. Accordingly ERC Rule 6.6.28 would not have applied even if a submission had been made in terms of that rule.

Further there was no submission made to the Committee in terms of ERC Rule 6.6.30 and in those circumstances the Committee did not have to invite Mr Taylor to make a submission to the Committee as to the inter relationship between ERC Rules 6.6.29 and 6.6.30. However, notwithstanding that the submissions made to the Committee in terms of ERC Rule 6.6.30 the

Committee would have considered this was a case in which a sanction should be considered given the nature of the Illegal and/or Foul Play was admitted to have occurred.

The Committee noted that the Player was 21 years of age playing in his first season of professional rugby with Ospreys. He had previously been playing in semi-professional teams for Ospreys and had been playing at that level since the age of 16. He had never been sent off and had received only one yellow card for a technical offence on Tuesday 14th December 2004 when playing for Ospreys. The Committee attached no weight to this yellow card.

Under reference to ERC Rule 6.6.24 it was noted:

- (a) That the Player's offending was intentional;
- (b) That recklessness was not an issue in this case;
- (c) That the offence had been committed using the sole of the Player's boot and that no question of provocation arose;
- (d) That Mr Ellis had sustained a sufficiently significant injury to require him to be removed from the game although he had played for a brief period following the injury being sustained;
- (e) That other than the substitution of Mr Ellis there were no direct effects on the game;
- (f) That Mr Ellis was, at the time of the incident, completely vulnerable to the blow which was struck;
- (g) That the Player directly participated in the offending although the timescales were such that there was little in the way of premeditation;
- (h) That the conduct of the Player was completed; and
- (i) There was no other feature relevant to the offending.

In terms of ERC Rule 6.6.25 the Committee assessed the seriousness of the Player's conduct and whether the offence should be categorised as being at the lower 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 disciplinary rules.

In relation to the seriousness of the conduct the Committee noted this was a directed blow, intentionally struck and placed where injury might well result. The Player had either intended that injury be suffered or was wholly indifferent to whether injury would be suffered by Mr Ellis.

The Committee decided to characterise the offending as mid range.

During the adjournment when the Committee were considering whether to impose a sanction on the Player and if so the level of sanction to be imposed, a discussion took place between the members of the Committee as to the proper characterisation of the Illegal and/or Foul Play. A question arose as to whether the action of the Player should be regarded as a kick or as a stamp. If a stamp then there would have been an infringement of Law 10.4(b) and if a kick there would have been an infringement of Law 10.4(c). On considering the relevant dictionary definitions of a kick and a stamp it was noted that the particular characteristic of a stamp involved a downwards motion as opposed to a general striking out with the foot required in a kick.

The Committee invited back the Player and Mr Morris and the Disciplinary Officer and Mr Taylor to make submissions to them as to the proper characterisation of the infringement.

Mr Morris invited the Committee to treat the infringement as a stamp given that there was a downwards movement involved in the action of the Player. Mr Taylor invited the Committee to treat the action as a kick since it was more of a striking out than a stamp.

The Committee noted that with reference to the decision in the case of Richard Mustoe following a hearing on 10th November 2004, that it is not necessary for a kick to involve a forward movement of the foot. In that case a kick was found established when a directed blow had been struck by the heel of a player's boot.

The Committee considered that the essential characteristic of a stamp was that it involved a downward motion of the foot of the Player committing the infringement. It might be argued that a stamp is in effect a species of kick but the Laws of the Game specify two different infringements and the proper characterisation is appropriate. Accordingly, and notwithstanding the earlier concession by Mr Morris on behalf of the Player as regards an infringement of Law 10.4(c), the Committee considered that the offending in this case should properly be characterised as a stamp and that accordingly it was Law 10.4(b) which had been infringed.

The Committee considered whether it was necessary for the Committee to amend the offence for which the Player had been cited under reference to ERC Rule 8.7 but determined that was not necessary because the offence had not altered; only the specification of the particular law which had been infringed was altered. As such an amendment was not required. However, if the Committee is wrong in this view as to the meaning and effect of ERC Rule 8.7 then the Committee would have amended the Citing Complaint so as to specify an infringement of Law 10.4(b) in substitution for Law 10.4(c). The offending having been characterised as a stamp the mid range is 3 months which for present purposes is taken to be 12 weeks. The Committee then considered whether there were any aggravating features for the purposes of ERC Rule 6.6.24. At the hearing the Player expressed considerable contrition and remorse for his actions. He expressed concern regarding the condition of Mr Ellis and apologised to Mr Ellis. On being questioned by the members of the Committee the Player acknowledged that he had not

apologised directly to Mr Ellis. The Committee noted that it was far more effective for a Player who argued that he was contrite and concerned for the consequences of his actions if the Player had immediately or at least prior to the hearing, apologised directly to a player who had suffered an injury as a consequence of an act of Illegal and/or Foul Play. Mr Ellis undertook to make such an apology, in writing, to Mr Ellis following the hearing.

For the future guidance of those representing and advising players the Committee asks them to note that expressions of contrition and remorse will be regarded as more persuasive where they are supported by a prior apology, preferably as soon as possible after the match, to a player injured as a result of Illegal and/or Foul Play.

The Player was not a persistent offender and there was no identified pattern of offending and no other aggravating factors.

The Committee then proceeded to consider ERC Rule 6.6.27.

Mr Morris drew the attention of the Committee to the fact that the Player was inexperienced and had been involved at a senior professional level for a limited period. He asked the Committee to pay particular regard to the good record of the Player and his apparent good character. He also asked the Committee to take into account the contrition and remorse shown by the Player during the course of the hearing.

In addition the Committee noted that the Player had conducted himself in a responsible manner throughout the course of the hearing. He had not sought to deny that he had committed an act of Illegal and/or Foul Play although he had argued that his conduct had not been deliberate when such was not the finding of the Committee.

Having regard to the mitigating factors offered the Committee decided that there was significant mitigation in this case and that the appropriate period of suspension to impose was 8 weeks and 2 complete days, the period of suspension to commence with immediate effect.

In fixing the terminal date for the conclusion of the period of suspension the Committee had regard to the follow up note to the ERC and 6Nations Conference dated 24th October 2005 where Committees were invited to impose terminal dates for periods of suspension as being on a Sunday. The Player is therefore suspended from all rugby up to and including Sunday 19th February 2006.

On the application of Mr Taylor the Committee found the Player liable in one half of the costs of the holding of the hearing and the travel and accommodation costs of the members of the Committee.

The Player is reminded of his right of appeal in terms of ERC Rule 7.2.1(a), any Notice of Appeal requiring to be lodged with the Chairman of the ERC Disciplinary Panel not more than 72 hours after the receipt by the Player or his representative of a copy of this written decision.

Rod McKenzie
Chairman
Disciplinary Committee

Date