

EUROPEAN RUGBY CUP

DECISION OF DISCIPLINE COMMITTEE

In respect of a Hearing held at the Park Inn, Heathrow

18 December 2008

IN RESPECT OF:-

Jamie Cudmore (“the Player”) and his ordering off in the 18th minute of the first half of the match played between Munster and ASM Clermont-Auvergne on 13 December 2008.

MEMBERS OF THE DISCIPLINE COMMITTEE:- (“the Committee”)

Mr Christopher Quinlan (Chairman) (RFU)

Mr Peter Brown (SRU)

Mr John Glackin (IRFU)

DECISION OF THE COMMITTEE:

- (i) The Committee considered the Player’s Ordering Off in the match between Munster and ASM Clermont-Auvergne on 13 December 2008 by Chris White. The Player accepted he committed an act of foul play contrary to Law 10(4)(a) meritorious of a red card.
- (ii) The Committee suspended the Player from taking part in the game of rugby up to and including 17 January 2009. This represents a five week suspension commencing on 13 December 2008.
- (iii) The Committee determined that the Player should pay the costs of the hearing and of the Disciplinary Officer (including legal costs).

INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel pursuant to the discipline regulations of ERC in respect of the Ordering Off of the Player during the ERC Heineken Cup match played between Munster and ASM Clermont-Auvergne ('ASM') on 13 December 2008 in Limerick by referee Chris White. The Player was ordered off for striking contrary to law 10(4)(a).

Present at the hearing on 18 December 2008, in addition to the members of the Committee were:-

Roger O'Connor (Disciplinary Officer, ERC)

The Player

Charles Fribourg (lawyer, representing the Player)

Jean Marc Lhermet (Director of Rugby, ASM)

HEARING

Introduction and Preliminaries

At the commencement of the hearing the Chairman confirmed the identities of all persons present and established the nature of the offence for which the Player was ordered off. The Chairman outlined the procedure to be adopted by the Committee for the hearing and that the provisions of ERC Disciplinary Rules ('the Rules') would apply. The Player and all present agreed to proceeding on that basis.

In advance of the hearing, by email and in time (sent at 08.15 17 December) the Player purported to comply with the standing directions as set out in Appendix 6 to the Rules. In this email he addressed the matters in Section A (a) to (g).

The Chairman established what evidence had been placed before the Committee prior to the hearing and enquired as to whether all present had received the same in good time (which it had). The Player's representative informed the Committee that he proposed to rely on two pieces of evidence not hitherto disclosed, namely a section of broadcast footage, a letter dated 16 December which we were told the Player had sent to Munster and a further letter from Elvis Vermeulen (17 December) in french. Mr O'Connor had no objection to that evidence being admitted and in due course we received and considered it.

The Player and his representative confirmed they had no preliminary issues to raise, consistent with his response to the standing directions.

Ordering off

The Player was asked whether he admitted committing the act of foul play and whether or not he wished to contest his ordering off. Consistent with his response, the Player admitted committing the act of foul play and confirmed that he did not wish to contest the referee's decision or the reasons for it.

The referee's report

The Chairman invited Mr O'Connor to inform the Committee of the details of the ordering off. In advance each of us had read the Referee's report. The material part of the report reads

"Following a knock on after a lineout near the half way I blew the whistle to stop play. No4 yellow then punched No5 red in the head. No5 red then turned to the TJ, Mr Roy Maybank, and No4 yellow then punched No5 red again in the head. The two players then fell to the ground and exchanged blows. I blew the whistle several times. No4 yellow then regained his feet and was being held and was holding red No4. No4 yellow then punched No4 red in the head. He was sent off for his actions."

The Player's response to the standing directions informed us that he took issue with an aspect of that report. We invited his representative to identify with particularity the precise issue. He replied that it was with the sentence underlined in the extract above. The remainder of the report was accepted as accurate.

Mr O'Connor took the Committee through a number of DVD clips of the incident, from different angles and at full speed and in slow motion. Following a line out the referee blew his whistle for a knock on. At the moment the referee blew the whistle, the ball was in the position of an ASM player who was then tackled to the ground by Munster No 1. Immediately two ASM players became involved on the ground with the said Munster prop. Other players then became involved including the Munster No 5 (O'Connell) and the Player. As they 'emerged' from the melee, holding one another, the Player punched O'Connell. He turned to the touch judge and the Player threw another punch which we were not satisfied landed. O'Connell threw a punch and they went to ground. On the ground, O'Connell then held the Player round the neck and threw at least two further punches at the Player. All the while the referee was close by repeatedly blowing his whistle. He was ignored.

The Munster No4 pulled the Player to his feet from behind by the collar of his shirt. The two came to be face to face, each holding the shirt of the other. The Player was holding the front of O'Callaghan's shirt, in the region of his neck band. There was some pushing between them before the Player punched the lower part of O'Callaghan's face. It is right to observe that the Player's hand did not leave O'Callaghan's shirt but we were satisfied (on the balance of probabilities) that he 'jabbed' a punch into his face.

Once the players stopped, the referee consulted with the assistant referee closest to the incident. He then sent the Player from the field. O'Connell (who was bleeding from a cut to his mouth) received a yellow card and has not been cited.

The Player's case

The Player was invited to explain his actions and to present any evidence he wished the Committee to take into account. He told us that the incident started with the Red No5 putting his hand on the Player's face. The context is important: three years ago he suffered an unpleasant injury when one of his eyes was 'gouged'. He did not accuse the No5 of putting his hands in his eye or eyes, just that his hand was on his face close to his eyes. His fear that a gouging was happening again was what caused him to react in the way he did. He reacted by punching (once) the Munster No 5. He punched him to the face. He accepting throwing a second punch, which he thought did not land. The two then went to the ground and he denied throwing punches whilst in that position. It is plain from the footage we saw that the Munster No5 threw two punches. He denied punching the Munster No4. He told us he very much regretted his actions and after the game apologised to the Munster player involved. He feels a heavy responsibility for his side losing the match, a feeling reinforced by some of those who have contacted him since the match.

M. Lhermet showed us a passage of broadcast footage which highlighted the moment when it was alleged the Munster No5 moved his hand onto the Player's face. We could see the movement of the No5's hand upwards towards the player's face but on our analysis it did not show the moment of contact and there was no evidence that there was contact with the Player's eyes ("gouging").

The player's legal representative M. Fribourg translated the material part of the letter from Elvis Vermeulen. It referred to the incident between the Player and the Munster No4, O'Callaghan. In relation thereto he said, "the two players were holding each other, I did not see any blows exchanged between the two players".

In the letter dated 16 December addressed to Mr Garrett Fitzgerald (the Munster CEO) Mr Cudmore expressed his regret for his actions. He acknowledges therein that 'my involvement certainly tainted what was a very hard and competitive encounter...I am conscious this incident soured a terrific encounter'.

Submissions

Following the evidence, we heard submissions. M. Fribourg (for whose focussed and helpful submissions we are grateful) addressed us on the seriousness of the foul play. He accepted it was intentional, but invited us to the view that in the circumstances it warranted a lower end entry point. It was, he submitted, a retaliatory reaction for 'what he suffered' which had no effect on the player or the game. He suggested there were no aggravating factors. As to the Player's disciplinary record we were told he received a red card for dissent in 2005/06 and on 7 January 2008 was suspended for a period of four weeks for striking a London Wasps player during a Heineken Cup game played on 15 December 2007. We were provided with a copy of the Disciplinary Committee's decision in that case and note it involved the throwing of 'six or more blows' 'at least' two of which landed. These retaliatory punches followed a strike to his head.

Sanction

The Committee retired to deliberate in private in respect of what, if any, sanction would be appropriate in the circumstances. In this regard we took into account the evidence and submissions and considered the terms of Rules 6.7.31 – 6.7.42 and Appendix 3 thereto.

The Rules provide for three entry points based on the seriousness of the player's offending. In assessing the seriousness of the foul play we considered the provisions of Rule 6.7.32 and concluded that

- (a) The offending was intentional.
- (b) As to the gravity of the offending,
 - a. It was repeated. We were perfectly satisfied that he threw one punch to O'Connell's head after the referee's whistle which landed. When the victim player was looking at the assistant referee, he threw another which may not have connected with the head. When he got up from the floor and

was 'engaged' with O'Callaghan we are satisfied the referee was correct: he punched him in the face; and

- b. We are satisfied there was some contact by the Munster's No5 with his face. That could hardly be said to be provocative and the reaction was wholly disproportionate.
- (c) His foul play caused some modest injury, namely a bleeding mouth.
- (d) The incident had an effect in the game in that it exacerbated an inflamed situation and led to an unseemly mêlée involving a number of players.
- (e) So far as the second blow is concerned the Munster No 5 was looking away from the Player but we are not content that blow landed; otherwise neither victim was vulnerable.
- (f) The offending was spontaneous.
- (g) It was a completed act of foul play.
- (h) There was no other relevant feature of the Player's conduct (for these purposes).

In light of those factors, in our judgment the foul play merited a mid-range entry point. The mid-range sanction in accordance with said Appendix 3 is five weeks.

The Committee then proceeded to consider whether there were any aggravating factors within the meaning of Rule 6.7.34. The Committee considered that the Player's disciplinary record, namely the striking (punching) incident involving a four week suspension in a Heineken Cup match against London Wasps in December 2007 (hearing in January 2008) bore weight as an aggravating factor (6.7.34(b)), justifying an increase of the suspension by a period of one week especially when taken in conjunction with 6.7.34(c) "the need for a deterrent to combat a pattern of [strikingly similar] offending" by the Player.

The Committee then proceeded to consider whether there were any mitigating factors within the meaning of Rule 6.7.35. In that regard we considered the following mitigated the offence

- (a) His early (within time) acknowledgement of culpability.
- (b) His behaviour before us which was wholly proper.
- (c) His remorse, which we accepted as genuine.

We considered his age and experience to be a neutral factor. There were no other off-field mitigating factors. In the Committee's judgment he was entitled to credit (i.e. reduction in the length of the suspension) to reflect those mitigating factors, especially the guilty plea. We assessed that to be a period of one week.

Therefore the Committee determined that an appropriate sanction was the imposition of a period of suspension of five weeks commencing on the day he was ordered off (consistent with Rule 6.2.5), namely 13 December 2008 up to and including 17 January 2009. In determining the length of the suspension we note that ASM's fifth round Heineken Cup fixture is to be played on Friday 16 January 2008. He will not be eligible to play in that fixture.

In the Committee's view this was an unpleasant and unseemly incident which tarnished a splendid and high profile game of rugby union. As the Player readily accepted, incidents of this kind besmirch the reputation and image of the game and are wholly unacceptable. We emphasise that he alone was not responsible for what happened. There were a number of players from both sides involved and they would do well to reflect on the contribution they made to this disgraceful incident.

During the course of his submissions M. Fribourg invited us to consider as being relevant to the length of suspension, what he said was the disparity between the position of the Player and Mr O'Connell, whom he submitted should have received a red card or have been cited. It is not for us to comment on that one way or the other and we expressly do not. We are bound to deal only with the case or cases put before us. Nothing in this decision should be taken to be a comment upon the referee's decision on the pitch or the citing commissioner's decision thereafter. Still less is it for us to substitute our own view for that of the citing commissioner and thereafter in some way seek to redress what we

were invited to conclude was an injustice. The Disciplinary Committee's task is to impose the appropriate sanction on a Player for the foul play he committed. That is what we have done.

Costs

Upon application by Mr O'Connor (not contested by the Player) the Committee ordered the Player to pay the cost of holding the hearing, including the travel and accommodation costs of the members of the Disciplinary Committee and the legal and travel/accommodation costs of the Disciplinary Officer pursuant to Rule 6.7.45.

Right of Appeal

The Parties are reminded that Rule 7 provides for a right of appeal against this decision.

Although the Chairman typed this document, each member of the Committee contributed to it and it is the decision of us all.



22 December 2008

Christopher Quinlan
Chairman
Disciplinary Committee