

EUROPEAN RUGBY CUP

Decision of Appeal Committee

**Held at the Offices of ERC, Huguenot House St Stephens Green Dublin
1st June 2007**

In respect of :

Trevor Brennan, Toulouse (“The Appellant”)

Members of the Appeal Committee: - (“The Appeal Committee”)

**Mr Justice Wyn Williams (Chairman) (WRU)
Robert Horner (RFU)
Sheriff William Dunlop (SFU)**

The decision under appeal:

On the 16th March 2007 a Disciplinary Committee convened under the Rules of ERC found that the Appellant had committed acts of misconduct during the course of a game played between Toulouse and Ulster on the 21st January 2001. In summary, it found that the Appellant left the area immediately adjoining the pitch during the course of warming up prior to taking the field as a substitute, entered the area in which there were spectators and repeatedly punched one of the spectators in that area namely Patrick Bamford.

The Disciplinary Committee resolved that the appellant should be:-

- (a) suspended from playing Rugby Union Football for life;**
- (b) expelled from the ERC Tournament and banned from participating in any capacity in future competitions organised by ERC for life;**
- (c) fined 25,000 Euros;**
- (d) ordered to pay 5,000 Euros to Mr Patrick Bamford as compensation for personal injury and distress.**

Decision of the Appeal Committee

The Appeal Committee allows the Appellant’s appeal in so far as it relates to the suspensions imposed upon him. The following suspensions are substituted for the suspensions imposed by the Disciplinary Committee.

The Appellant shall be : -

- (a) suspended from playing Rugby Union Football for five years commencing 1st June 2007.**

- (b) Expelled from the ERC Tournament and banned from participating in any capacity in future competitions organised by ERC for a period of five years commencing 1st June 2007.

The Appellant's appeal against his fine and the order for compensation is dismissed.

Introduction

1. We were convened by Professor Lorne Crerar, the Chairman of the ERC Discipline Panel, pursuant to the Disciplinary Rules of the ERC, to hear an appeal against the decision of a Disciplinary Committee also convened under the same rules. The Disciplinary Committee had found the Appellant guilty of misconduct and had imposed the sanctions which we have set out above. At the hearing before us, the Appellant was represented by Mr J O'Callaghan of Counsel who was instructed by Daniel Spring and Co. The ERC Disciplinary Officer, Mr Roger O'Connor also appeared at the hearing. He was represented by Mr Paul Burn SC instructed by Messrs Bird and Bird.

Preliminary Issue

2. Neither the Appellant nor his legal representatives attended the hearing before the Disciplinary Committee. Accordingly no evidence was adduced by or on behalf of the Appellant before them. However, before us, Mr O'Callaghan applied to adduce evidence from four witnesses. Those were the Appellant himself, Mr Glennan, Mr Looby and from an expert in Irish Employment Law. Mr Burns SC opposed the calling of these witnesses on the basis that it would have been perfectly possible to call the witnesses before the Disciplinary Committee.
3. We allowed the Appellant to adduce evidence from Messrs Glennan and Looby and we also allowed the Appellant to give evidence himself. We did not permit the Appellant to call opinion evidence about Irish Employment Law.
4. We readily accepted that it would have been open to the Appellant to adduce all the evidence in question before the Disciplinary Committee. We were unconvinced by the proposition that this evidence could not be called since the Appellant was facing criminal charges in France and, therefore, he was anxious to maintain "his right to silence" pending the outcome of those charges. The reality is that the Appellant had a choice about whether and to what extent he should participate in the hearing before the Disciplinary Committee and he chose not to participate. The fact that he exercised his choice in that way did not mean that it was not open to him to adduce the evidence in question before the Disciplinary Committee.
5. Notwithstanding this finding the overall fairness of the proceedings before us was a paramount consideration. On any view the sanctions imposed upon the Appellant by the Disciplinary Committee were very severe. It

seemed to us that it would be unfair to prevent the Appellant from adducing evidence himself and also adducing evidence in the nature of “character evidence” in his attempt to persuade us that the sanctions imposed upon him were too severe.

6. We rejected the application that evidence as to Irish Employment Law should be admitted since we had before us two very experienced Counsel who were fully capable of explaining to us the impact, if any, of Irish Employment Law upon the issue of whether or not the sanctions imposed by the Disciplinary Committee were too severe.
7. In the event no oral submissions were made about Irish Employment Law and it is unnecessary for anything further to be said upon that topic.
8. We made it clear to the Appellant, however, that although we were prepared to hear his oral evidence we would not act upon it in so far as it might contradict the findings of facts made by the Disciplinary Committee in relation to the Appellant’s misconduct. The Appellant accepted that position and he did not seek to persuade us to any different course.

The crucial findings of the Disciplinary Committee

9. The findings are recorded in paragraph 18 of the Decision of the Disciplinary Committee. In summary, the Committee found that early in the second half of the game between Toulouse and Ulster played at Toulouse on the 21st January 2007 the Appellant was warming up in an area of the ground close to a section of the crowd which consisted of supporters of Ulster. The Appellant was warming up since he anticipated being a substitute during the course of the second half. During the course of this warm up the Appellant engaged in good natured verbal exchanges with sections of the crowd. At some point Ulster supporters, including Mr Bamford, made derogatory comments about the quality of the Appellant’s Bar. Thereafter, the Appellant singled out Mr Bamford and first shouted at him and then climbed over the perimeter wall separating the playing area from the spectators and walked up some steps towards Mr Bamford. When he reached him and without warning the Appellant pushed Mr Bamford down with his right hand and punched him 6 or 7 times with considerable force to the head with his left fist. A nearby spectator, Mrs Moore, was struck a glancing blow by the Appellant although this was not deliberate. In the immediate aftermath of this incident there was an angry reaction from sections of the crowd in that a number of spectators threw beer and plastic cups in the general direction of the Appellant. The Appellant was escorted away from the spectators’ area and the incident came to an end.
10. The Disciplinary Committee also heard evidence as to the extent of the injuries suffered by Mr Bamford as a consequence of the assault upon him. Mr Bamford himself told the Committee that he suffered significant soft tissue injury and bruising on the right side of his face,

the inside of his mouth was cut and there were some bleeding. He also suffered significant pain associated with his injuries and was unable to work for one week after the incident. X-ray examination had, apparently, revealed the possibility of a hairline fracture of the jaw and, at the time of the hearing for the Disciplinary Committee, Mr Bamford was suffering some pain when he yawned. He was also suffering mental distress to the extent that he had made an appointment with a psychologist. Mr Bamford had been examined by the Medical Officer of Ulster RFC in the immediate aftermath of the assault. The Medical Officer had found considerable soft tissue swelling and tenderness to the right cheek area, right angle of jaw and right temple area. He also found a fresh abrasion to the right chin measuring one inch in length and half an inch in width and observed that Mr Bamford was badly shaken and upset.

The Approach of the Disciplinary Committee to sanctions

11. The Disciplinary Committee was directed by the legal representative of ERC to ERC Disciplinary Rules 7.6.22 which list the sanctions available for misconduct. In paragraphs 20 to 22 of its Decision it explained its approach to the appropriate sanctions for the Appellant's offence. In summary the Disciplinary Committee concluded that the Appellant's offending was of the most serious kind. The Disciplinary Committee regarded the misconduct as deliberate, premeditated and unprovoked and it concluded that the victim was vulnerable before the attack and seriously injured by it. The Committee said in terms that it could not envisage more serious misconduct by a player towards spectators and it believed that the maximum permissible suspension was appropriate. It further concluded that a fine was necessary to mark the fact that the Appellant's conduct was entirely unprofessional and meaningful compensation was appropriate for the victim notwithstanding that he might seek redress elsewhere.
12. It is clear from the Disciplinary Committee's decision that had it been able to do so the Disciplinary Committee would have expelled the Appellant completely from all forms of participation in all forms of Rugby. To use the phrase of the Committee it believed that the Appellant "should be completely expelled from the family of Rugby.....".

Discussion

13. We are conscious that the Disciplinary Committee heard oral evidence from a number of spectators and, therefore, was extremely well placed to form a view about the seriousness of the Appellant's misconduct. We also remind ourselves that we are entitled to allow this appeal only

if we conclude that the Disciplinary Committee fell into error. Mr Burns SC strongly submitted before us that the Appellant had not demonstrated that the Disciplinary Committee's decision or reasoning was in any way erroneous.

14. As is obvious, the suspensions imposed upon the Appellant by the Disciplinary Committee were the maximum available to it. In addition to such suspensions the Disciplinary Committee imposed a significant fine and it made an order for compensation which, in our judgment, accurately reflected the sort of award which might have been made to Mr Bamford for pain suffering and loss of amenity had he brought civil proceedings. It seems to us that the issue for our determination is whether or not the combination of sanctions was a proportionate response to the Appellant's misconduct. In reaching a conclusion about that issue it is necessary as a starting point to consider just how serious was the misconduct in this case.
15. We accept that it is proper to categorise the misconduct as deliberate and unprovoked. It consisted of a sustained attack upon a person who was not expecting any such behaviour. The attack carried with it the risk of significant injury to Mr. Bamford. The Appellant's conduct might also have been the catalyst for serious disorder involving spectators with a consequent risk to the safety of spectators. The Appellant's misconduct was aggravated by the fact that he was a very experienced player with (as we accept from the evidence called on in his behalf) significant leadership qualities. We have no doubt that whatever the Appellant believes was said to him it could not possibly begin to excuse his reaction.
16. Notwithstanding the very serious nature of the misconduct, however, we do not accept that it should be viewed as an example of the most serious misconduct which a player could commit in relation to a spectator. In our judgment it is possible to envisage more serious incidents. It is certainly possible to envisage incidents in which the consequences are significantly more serious than were the consequences in this case. As unpleasant as were the injuries sustained by Mr. Bamford, they cannot be described as serious in the sense that word is normally understood. The spectators around Mr. Bamford showed remarkable restraint which is a tribute to the good sense of rugby supporters. As a consequence, however, the risk to the safety of persons generally did not materialise.
17. In our judgment suspensions for life should be reserved for incidents which are properly to be regarded as the worst examples of the misconduct alleged unless, of course, there are other factors at play such as repetitive serious offending. In this case, ERC do not suggest that the Appellant's disciplinary record is a relevant factor in determining the appropriate sanctions. Since we have concluded that the Appellant's misconduct was not the most serious in its context which we could envisage we have reached the conclusion that the

suspensions for life coupled with the financial orders was disproportionate. Accordingly, in our judgment, the Disciplinary Committee did fall into error.

18. We are of the view that the Appellant's misconduct merits very significant but determinate suspensions together with financial penalties. In fixing the appropriate length of the suspensions we obviously have regard to the very serious nature of the misconduct as described above. We also feel it important that there be a strong deterrent element in the sanctions we impose. Incidents such as these are extremely rare in professional rugby but, nonetheless, we regard it as essential that those who might be tempted to such indiscipline should be left in no doubt that misconduct of this kind will attract very severe sanctions.
19. It is also right, however, that we take into account the evidence of Mr. Glennan and Mr. Looby and the remorse shown by the Appellant, albeit somewhat belatedly. We repeat that this evidence was not heard by the Disciplinary Committee. As we describe below in summary the evidence reveals that the Appellant has made an enormous contribution to rugby. Had it not been for this evidence we would have been inclined to impose sanctions even more severe than the ones we impose.
20. Both Mr. Glennan and Mr. Looby have known the Appellant for many years. Mr. Glennan was one of the coaches of Leinster during the Appellant's young years as an adult player. He described how the Appellant has made a major contribution to rugby in Ireland beginning at youth level and carrying on at provincial and international levels. He also stressed how the Appellant has remained in close contact with his first club, Brownhill.
21. We are particularly impressed by the fact that the Appellant has retained his contacts with his local club and that this has helped to foster rugby in a part of Ireland where it is not the traditional sport. The word retained is intended to convey the fact that the Appellant has been actively involved with the club since his days in the youth team. He returned to play for the club when he was an adult (leaving a more fashionable club in the process). This point was reinforced by the evidence of Mr. Looby who is the incoming president of the club. He described the Appellant as having iconic status within the club on account of his deeds on the rugby field and by virtue of his continuing interest in the club.
22. We are also mindful of the fact that if determinate suspensions are imposed the Appellant should have some prospect of resurrecting a career in rugby when he is still young enough for that to be a meaningful possibility. Realistically, any suspension from playing which is commensurate with the misconduct is bound to end the Appellant's career as a professional player. So far as participating in

ERC tournaments in some capacity is concerned, however, we are conscious that a suspension even measured in years will not necessarily preclude the Appellant's participation in the future assuming he involves himself in rugby outside ERC tournaments in the meanwhile.

23. In all the circumstances, we consider that suspensions from playing rugby for 5 years and participating in ERC tournaments for the same period are appropriate suspensions. Although some attempt was made to persuade us that the financial penalties were too great no evidence of any kind was put before us as to the Appellant's means. We consider that we are entitled to infer that until this incident occurred the Appellant was very well paid by Toulouse. In addition he derives income from his Bar. We are wholly unpersuaded that the financial orders made against the Appellant are inappropriate.
24. There remains the issue of the costs of this appeal. The Appellant has succeeded to some extent. Our provisional view is that each party should bear their own costs of the appeal. We are prepared to be persuaded otherwise, however, and if any party wishes to apply for costs the following directions apply.
 - (1) Any party wishing to apply for costs should do so in writing by sending their submissions by email to the members of the Appeal Committee and the opposing party by 4pm 15 June 2007.
 - (2) Replies to the submissions shall be sent to the members of the Appeal Committee and the opposing party by 4pm 19 June 2007.
 - (3) Thereafter the Appeal Committee shall determine the application(s) on the basis of those written submissions.

Wyn Williams
Robert Horner
William Dunlop