

Decision of the Independent Judicial Officer EPCR

Held at Huguenot House, St. Stephens Green Dublin
on Thursday the 7th May 2015

In respect of

Ross Moriarity ("the Player")

And

A citing complaint in respect of an alleged act of foul play contrary to Law 10 4(a), namely "a Player must not strike an Opponent with the fist or arm including the elbow, shoulder, head or knee(s) in the Final of the European Challenge Cup 2015 between Gloucester Rugby and Edinburgh Rugby played at the Stoop on Friday on the 1st day of May 2015 ("the Match")

The Judicial Officer appointed to hear the citing complaint was Mark McParland IRFU ("the JO")

Decision

The Player having admitted the citing complaint in respect of a breach of Law 10. 4 (a), the JO upheld the citing complaint and suspended the Player from playing Rugby Union during the period from the 1st day of May 2015 to the 17th day of May 2015 (inclusive). This represents a two week suspension. No award of costs was made to any party.

Introduction

The JO was appointed by Professor Lorne Crerar Chairman of EPCR Disciplinary Panel pursuant to the Disciplinary Rules of the European Challenge Cup Disciplinary Rules 2014/2015 to consider a Citing Complaint ("the complaint") against the Player in the match.

YVES THIEFFINE FFR the independent Citing Commissioner appointed to the match cited the Player for striking an Opponent with the Player's knee contrary to Law 10.4(a). The Citing details were as follows:

Action starts with a scrummage in the middle of the ground, ball Gloucester. The scrum, not stable turns and the Edinburgh players fall on the pitch in the Opponent part # 6 Gloucester, R.Moriarty being on the side, comes back, then goes forward towards the Opponent lying on the ground and hits with his knee the back of #19 Edinburgh. TMO calls the Referee and eventually suggest YC" being not certain the

contact is on the back or on the flank" Yellow Card is given to R. Moriarty. #19 Edinburgh keeps playing

The hearing

In addition to the JO, the following were present at the hearing;

- The Player
- David Humphreys Director of Rugby Gloucester Rugby
- Liam McKiernan Regulations Executive EPCR

Preliminary Matters and Procedures

At the commencement of the hearing, the JO noted the identities of all present and narrated the Complaint reminding the Player that the Complaint was in respect of an allegation of the Player had committed an act of striking another Player with his knee.

The JO reminded all parties that the European Challenge Cup Disciplinary Rules found in the Participation Agreement Season 2014/2015 ("the DR") would apply and outlined the procedure to be followed and all present agreed to proceed on such basis.

The JO established what evidence had been placed before him prior to the hearing and received confirmation that all present had received same within the extended time periods decided by the JO prior to the hearing. The evidence for consideration was as follows:

- The Citing Complaints of YVES THIEFFINE dated the 2nd May 2015
- The letter from the EPCR Disciplinary Officer to Professor Crerar dated the 4th May 2015
- The Referees Report of Jerome Garces
- The Reports from the Assistant Referees Paschal Gauzere and Mathieu Raynal
- Statement of Frazer McKenzie #19 Edinburgh ("the Opponent")
- Medical Report of Stuart Patterson Clinical Manager and Lead Physiotherapist, Edinburgh Rugby on the Opponent
- Replies to Standing Directions from the Player dated 6th May 2015
- List of Gloucester Rugby Playing Commitments
- Disciplinary Officers replaying statement of Liam McTiernan Regulations Executive dated 6th May 2015
- Video footage of the incident

The JO noted the terms of the Players Response to the Standing Directions found at Appendix 6 of the DR wherein he acknowledged that he was the Player named in the complaint, he would not argue any preliminary matters and accepted the complaint as a true and accurate account of the incident in which he had

committed an act of foul play set out in the complaint which did warrant a red card.

The Player and his representative, Mr Humphrey's reiterated such response to the JO at the hearing and the JO advised all present that he would move on to consider sanction and deal with the on field issues pursuant to 7.8.32 first.

Evidence

The JO reviewed the video evidence of the incident and heard the Player, his representative and Mr McTiernan on the events shown on the video.

In reviewing the video evidence, it appeared the complaint accurately described the incident. The Player appears to the right of an unstable scrum with Edinburgh players fallen to the ground. The Player moves from the side of the scrum and prepares to join the action from the rear of the disintegrated scrum. He was approximately 2/3 meters to the rear of the Edinburgh players on the ground and crouched as if to join a ruck or maul. The Player moved upright and forward and with his right knee struck the Opponent on the back. There was no break in play. The Opponent did not appear to react and play continued until the intervention of the TMO some 30/45 seconds later. In the Citing Report, it was noted that none of the match Officials other than the TMO had seen the incident but that all agreed that a Red Card would have been appropriate if the Players knee had made contact with the Opponents back.

The JO pressed the Player to express his actions on a frame by frame basis as it appeared on repeated viewing that both of the Player's knees may have struck his Opponents back. Having heard the Player and reviewed all angles the JO accepted that only the right knee of the Player had made contact with the Opponent and that no contact had been made by the Players left knee he being seen standing on his left leg for balance in the immediate aftermath of the contact.

The Players Representative asked that the action be viewed at match pace and emphasised how quickly the incident had taken place. He pointed to the scum being unstable from the onset and queried why the ball should have been put in when it was so unstable. The scrum turned almost immediately to the right and players on the Edinburgh side manhandled the Player out of the scrum before falling over on the Gloucester side. The player's response was to get into position to counter ruck or slow the presentation of the ball if Edinburgh were to win possession. With the Edinburgh Players on the ground there was no immediate target for the Player to ruck against. In a deliberate but spontaneous act the Player dropped his right knee into the Opponent. Mr Humphrey's emphasised that the Player had moved forward over a short distance of approximately 1.5 meters and had completed the action with minimal momentum. He invited the JO to find that the Player had no initial intent but ended up in a position where he had no other place to go and then acted spontaneously in committing the acknowledged act of foul play but with relatively limited force. He pointed to the video which shows the Opponent being aware of who had struck him but did not react in any way nor did he appear to sustain any injury which is corroborated by both the Opponent and his medical attendant in their statements.

Mr Humphrey's requested the opportunity to open and distinguish the Pascal Pape and Julian Bardy Decisions from the facts of this incident.

In the Pascal Pape at both first instance and on appeal, it was found that the gravity of Mr Pape's actions were high in relation to the offending. His blow was delivered with all the force available to Mr Pape by a knee onto an exposed back where significant injury to the Irish Number 8 was an obvious risk. There was no provocation. The Opponent in that case suffered serious injury with three fractures being sustained to his back as a result of which he was required to leave the field of play, thereby having a significant effect on the match. The Disciplinary Committee also found the act to be pre meditated. Mr Humphrey's referred to the length of Mr Papes run at his Opponent and to his body angle.

In the Julian Bardy decision, Mr Humphrey's noted that the ball was nowhere near where the incident had occurred which involved an intentional striking of a knee to an Opponent's head and face with fracas ensuing which was shown multiple times on television. In that decision, the JO had noted the Adam Thompson Decision of 2012 in which an intentional stamping or trampling on an Opponent head should have a starting point of at least mid-range.

Mr. Humphrey's said that these cases, in which top end and mid-range entry points were considered appropriate, greatly differed from the facts of the incident for the reasons previously put forward.

Mr McTiernan asked that his direction statement be considered when entry point was being decided but did not add to same.

The JO asked both parties to address him on any aggravating and mitigating circumstances.

The Players record as advised by Gloucester Rugby and confirmed by EPRC was that he had received a Red Card for a tip tackle 2 years previously while playing for England Under 20's and a Yellow Card 2 weeks prior to this incident but not one of foul play.

The Player was 21 years of age and playing in his first European start. He had been a Gloucester Player for 2 seasons making no starts for the Senior Team in Season 2013/2014 but had advanced to 7 starts in the Aviva Premiership and 1 in the Challenge Cup in the current season. He had just signed a new 3 year Contract with Gloucester Rugby and the Club believed that he would be a central cog in their team going forward. The Player stated that he had apologised to his Opponent which is confirmed in his Opponents statement.

The Players conduct and that of his club in meeting the complaint was exemplary.

Mr McTiernan did not seek to add anything further.

Players Submissions As To Sanction

Mr Humphrey's on the Players behalf emphasised that neither the Player nor his club condoned the Player's action. The action, while deliberate, was carried out

with little force to the Opponents flank with no injury being caused. There were no aggravating circumstances and in mitigation he pointed to the Player's age and relative inexperience. He reminded the JO of the Player's apology to his Opponent and to the fact that the Player was acknowledging his wrongdoing and had done so both to his Opponent and at the hearing. Mr Humphrey's suggested the Player's action could best be described as petulant.

On the issue of the strike with the knee and the insidious nature of such an action, Mr Humphrey's noted that IRB Sanctions for foul play provided for a heavier level of sanction for strike with a knee than it did with a hand, arm, a fist or elbow.

Decision of JO

The JO retired to deliberate in private in respect of what, if any, sanction would be appropriate. In this regard the JO considered the DR 7.8.32 to 7.8.35.

The JO noted that the sanctions for striking an Opponent with a knee in contravention of Law 10.4 (a) were listed in the IRB Recommended Sanctions for offences within the Playing Enclosure found in Appendix 3 of the DR.

Striking another Player with a knee attracts the following entry points

1. Low End 3 weeks
2. Mid-Range 8 weeks
3. Top End 12 weeks (maximum 52 weeks)

The JO determined that the following were relevant to deciding on the appropriate entry point.

- The Player's action was deliberate and involved the use of the knee to strike an Opponent
- While the nature of the action was grave it was conducted with limited force and momentum
- While the Player suggested he was provoked by being man handled out of the disintegrating scrum, this was not considered to be of relevance
- The Opponent said the strike was forceful and caused pain. However there was no reaction at the time of the incident or thereafter and he continued to play the remainder of the game unhindered
- The match was not affected by the Player's action other than Gloucester Rugby were obliged to play without a Player for ten minutes
- The Opponent was in a vulnerable position when struck but did not suffer injury
- The Player's action was petulant and while deliberate was not pre-meditated.

In the above circumstances the JO found that the entry level should be at the low end. This attracts a starting point of 3 weeks.

The JO was satisfied that there were no relevant aggravating factors to take into account under DR 7.8. 34. In particular, the JO considered that he was bound by IRB Sanctions for Foul Play Entry point for this offence and it was not for him to subjectively decide the need for a deterrent to combat a pattern of offending in the game notwithstanding the growing number of incidents of like nature in the current season and the insidious nature of the offence.

In mitigating circumstances, the JO took cognisance of the following:

- The presence and timing of an acknowledgement by the Player as shown by his responses to standing directions
- His youth and inexperience in that the Player was 21 years of age playing only his 8th senior game and first European Start
- His exemplary conduct at the Hearing and in his replies to Standing Directions
- His expression of remorse for his conduct to his victim
- The Player did not have a clear disciplinary record

In considering the provision of DR 7.8. 36, the JO commenced at 0% and worked up and believed the Player should secure a reduction of 33% only by way of mitigation.

Decision

The JO announced his decision as follows:

1. The appropriate entry point was Low End carrying a Sanction of 3 weeks
2. The Player was entitled to mitigation of 33% only thereby reducing the Sanction to 2 weeks
3. The Player was suspended from Playing Rugby Union during the period from the 1st of May 2015 to the 17th of May 2015
4. No order was made as to costs

The Player was advised as to his right of Appeal under DR 8.1.

The JO stated in conclusion that this decision did not sit easily with him having regard to the nature and character of the offending but that he felt bound to strictly apply the Disciplinary Rules to the Complaint. The growing number of cases coming before Disciplinary Committees involving use of a knee to strike an Opponent who was almost always at his most vulnerable was a cause of concern which should be reviewed by World Rugby.

Mark McParland
Judicial Officer
May 2015