

**DECISION OF THE INDEPENDENT JUDICIAL OFFICER
ERC Heineken Cup, Season 2013/2014**

**Held by video conference (Skype) on Thursday 19th December 2013 at 10.00
(GMT)**

In respect of:

Julien Bonnaire (“the Player”)

and

A citing complaint by Mike Rafter (RFU) Citing Commissioner in respect of an alleged act of foul play contrary to Law 10.4(b) of the Laws of the Game namely ‘stamping or trampling’ in the Heineken Cup match between Llanelli Scarlets and ASM Clermont Auvergne played at Parc y Scarlets, Llanelli, Wales on 14th December 2013 (‘the Citing Complaint’).

Judicial Officer appointed to hear the case:

Christopher Quinlan QC (‘the Judicial Officer’)

Decision of the Judicial Officer:

- (i) The Judicial Officer found the Player committed the act of foul play contrary to Law 10.4(b) and accordingly upheld the citing complaint.
- (ii) The Judicial Officer found that the act of foul play did not warrant a red card and in application of DR 6.7.41 imposed no suspension. The Player is free to play.

Introduction

1. The Judicial Officer was appointed by Professor Lorne D. Crerar, Chairman of the ERC’s Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2013/2014. The Judicial Officer was appointed to consider the citing complaint against the player arising from the Heineken Cup Round 4 match between Llanelli Scarlets

(‘Scarlets’) and ASM Clermont Auvergne (‘Clermont’) played at Parc y Scarlets, Llanelli, Wales on 14th December 2013

2. Mike Rafter (RFU) was appointed as Citing Commissioner to the said match and cited the Player for an act of foul play contrary to Law 10.4(b), namely ‘stamping or trampling’.
3. In addition to the Judicial Officer, the following persons were present at the hearing:
 - Julien Bonnaire (‘the Player’)
 - Charles Fribourg (Clermont Lawyer)
 - Neil McIlroy (Clermont Team Manager)
 - Roger O’Connor, ERC Disciplinary Officer
 - Liam McTiernan, ERC Regulations Executive
4. Both parties were content for the hearing to proceed by way of video conference. The Player and his representative confirmed that they had received the relevant papers. They had received and viewed the footage of the incident, which gave rise to the citing complaint. I explained and they understood the procedure to be followed would be in line with that provided by the Disciplinary Regulations¹ (‘DR’) and took no issue in respect thereof.
5. The parties complied with the Standing Directions². The Player accepted committing an act of foul play contrary to Law 10.4(b) though not as alleged by the citing commissioner; he did not accept that the citing complaint recorded accurately what the footage showed; and asserted that his admitted act of foul play did not warrant a red card. He confirmed that at the start of the hearing.

Citing Complaint

6. The citing complaint was initiated by the citing commissioner’s report dated 15 December 2013. The incident out of which the citing complaint is said to have occurred in the 41st minute of the first half. The report reads:

“C6 (Julien Bonnaire) is on the fringe of a ruck. S8 is prone and vulnerable at the heart of the ruck. C6 looks down and then lifts his right leg and then, there are three deliberate stamps to the thigh and calf area of S8’s leg. The ball is not in the vicinity of these stamps.”

¹ Schedule 4, Participation Agreement

² Appendix 6, DR

7. The Disciplinary Officer helpfully took me through the recorded footage of the incident. His analysis accorded with my own and indeed that of the Player and his representatives (see paragraph 24 hereof). It did not accord with the description in the citing report. Neither Mr O'Connor nor the Player thought it necessary for the citing commissioner to attend to explain those differences.

8. The said citing report continues

"The incident was not seen by the referee or his Assistants but they were made aware of it in the Changing Area, after the game. I informed them that I would be considering a citing of this incident."

9. I was provided with (and considered) emails from the referee (Wayne Barnes) one assistant referee and the television match official ('TMO'). They record:

- a. Wayne Barnes: *"I caught an incident out of the corner of my eye, but did not see it in full. As no player appealed or required treatment, I decided it was not necessary to refer the matter to the TMO"*. Contrary to the citing form, he did see the incident, but what he actually saw he did not record. It happened in front of him, he appeared to be looking directly at it and M Fribourg invited me to the view that Mr Barnes is "one of the best referees in the world".
- b. AR Nigel Carrick: *"I did not see anything of the incident during game time."*
- c. TMO David Grashoff: *"I was not asked to review the incident and live I thought the player was trying to free up the ball at the ruck."*

10. Despite attempts, nothing was received from the second assistant referee, Matthew Carley.

11. I received and considered an emailed statement from Rob McCusker, the Scarlets No 8:

"At the end of the first half I was tangled up in a ruck near our try line when I felt someone stand on my left calf. The force was rather large, and as a result I was unsure as to whether I would make it back out for the second half. Fortunately I was able to carry on, and played the full 80 minutes. I received

treatment post match and will not be able to train until Thursday but I should be fit to play at the weekend."

12. I also read and considered a statement from Andrew Walker, Head of Sports Science, Scarlets:

"Rob reported the calf injury at half time in the dressing room where ice was applied to the left calf. This was inflamed [sic] and had visible stud marks to the area. Advise [sic] was given on compression sleeve socks at this stage to limit the swelling and he was monitored throughout the second half of the game.

Post game compression socks were applied and instructions on rest, elevation and ice were given for the next 48 hours.

After further assessment today he will not be training until Thursday at the earliest."

13. Following my pre-hearing direction on 18 December Mr Walker provided this update:

"Rob will return to non contact training tomorrow and will be full contact on Saturday. This is following his calf injury"

14. The footage recorded the incident from (essentially) one angle, namely an elevated view, just behind play and from the 'far' touchline. The footage was in different zoom modes and at full speed and slow motion. I viewed it all, with the commentary muted. My factual findings in respect thereof are set out hereinafter (see paragraph 24 hereof).

15. As is clear from the above the referee did not deal with the incident, for the reason he explains.

The Player's Case

16. In his response to the Standing Directions Mr McIlroy asserted that the Player considered the citing report inaccurate in the following particulars:
- a. *"We can only see one real contact between the player's foot and S8's leg (Julien Bonnaire Citing Incident Clip 1)*
 - b. *We feel that this incident was in proximity to the ball. (Julien Bonnaire Citing Incident Clip 1)*
 - c. *3.The Referee in his report does state that he saw the incident but decided that there was no action to take, and makes no mention of the*

incident having merited a red card. Referee Statement – Wayne Barnes”

17. During the hearing the Player confirmed that account to me. Both M. Fribourg and Mr McIlroy took me through the footage and made submissions on the evidence. If I may say so they were measured and realistic and therefore helpful submissions.

18. In a letter to Rob McCusker, dated 17 December the Player said:

“I would like to apologise if I caused you any injury or harm and sincerely hope that you are able to play this weekend. If I had realised when saying goodbye at the after match meal, that I had caused you any discomfort, I would have apologised immediately”

19. Mr McIlroy provided the following testimonial, which I considered:

‘Julien is a player that I have known for around eight years and someone for whom I have an enormous amount of respect. He is part of our leadership group in Clermont and has often captained the side.

He is an extremely quiet and humble individual, despite everything that he has achieved in the sport and has the reputation of being one of the best players in his position not only nationally but internationally. As his disciplinary record shows he is not a dirty or overly aggressive player but talented and hard worker. As a leader he shows by example and is highly respected by his team mates.’

20. The Player also relied upon (and I had regard to) a manuscript reference from British & Irish Lion (and occasional opponent) Jamie Heaslip which recorded his view that the Player was, *inter alia*, “hard and tough...but not dirty” and a player for whom he has the “upmost respect”.

Decision

Citing Complaint

21. DR provides

"The appointed Citing Commissioner will attend at the Match and shall be entitled to cite a Player for any act or acts of Foul Play that in the opinion of the Citing Commissioner warranted the Player being shown a red card, even where such act(s) may have been detected by the Match referee and/or assistant referee(s) and may have been the subject of action taken by one or more of them..."

22. The burden is upon the Disciplinary Officer to satisfy me, on the balance of probabilities that the Player committed the act of foul play alleged in the citing complaint (DR 6.7.11). As DR 6.7.11 makes clear the burden to discharge is that the act of foul play as committed not the gravity thereof:

"In a citing case, the burden shall be on the Disciplinary Officer to prove, on the balance of probabilities, that the Player cited committed the act(s) of Foul Play specified in the complaint. If he meets this burden, then the citing complaint shall be upheld, even if the Disciplinary Committee finds that the offence committed would not have warranted a red card. Instead, such a finding on the part of the Disciplinary Committee may be taken into account in considering the question of sanction, as set out in clause 6.7.41, below."

23. The Player admitted committing an act of foul play contrary to Law 10.4(b). He disputed the accuracy of the citing report and the way he was alleged to have committed the act of foul play.

24. I am satisfied the Player committed an act of foul play. On my analysis the footage reveals the following:

- a. The incident occurred at an attacking Clermont ruck in the Scarlets' 22. Scarlets' No 8 was lying at 45 degrees to the direction of play, his feet pointing away from the near touchline. He was on the Clermont side of the ruck.
- b. I disagree with the citing report: he was not prone. Initially he was (essentially) lying on his left side and then supporting himself on his knees, left elbow and right hand.
- c. The Player joined the ruck.

- d. The foul play:
- i. Player lifted his right leg and first brought it down. It appears (from the single angle I have) that his right foot made glancing contact with the left buttock of the Scarlets' No 8.
 - ii. The Player's foot landed on the ground and was immediately raised and brought down again. Once more (from movement of the Scarlets' No 8's shorts) it appears a second glancing contact may have occurred, in the area of his left buttock.
 - iii. The Player's right foot stopped in the air above the Scarlets' No 8's left calf. The Player raised his foot a third time, but not as high as below. He then brought his boot down, stamping down on the Scarlets' No 8's left calf. The victim player's leg was bent at the knee, which knee was on the ground. The Player's boot landed horizontally on the back of his leg, mid-way between the back of his knee and ankle.
 - iv. In my judgment "*three deliberate stamps to the thigh and calf area of S8's leg*" does not reflect accurately what the footage shows the Player did. He did not stamp three times to the thigh and calf area.
- e. "*The ball is not in the vicinity of these stamps.*"- The noun vicinity is relative. The ball was proximate to the victim player, being held by others, initially beneath him. The Scarlets' No 8 was between the Player and the ball.

25. My findings above are consistent with the statement of the Scarlets' No.8, Mr O'Connor's analysis of the footage and the Player's own account.

26. The action of stamping on the Scarlet's No. 8's leg was an act of foul play contrary to law 10.4(b). The Player so accepted. He was right to do so. As the SANZAR Appeal Committee in *Ali Williams* (30th April 2005) observed:

Deliberately using feet on another player with no intention of winning or keeping possession of the ball is not by definition rucking and will amount to stamping or trampling. A player may be penalised/cited/sent off depending on the circumstances.

27. Accordingly I uphold the citing complaint but I do so on the basis of my factual findings set out hereinbefore.

Sanction

28. I heard from M. Fribourg on sanction. He submitted that on this (correct) factual basis, the act of foul play did not merit a red card. He invited me to apply DR 6.7.41 and apply no sanction:

"In a citing case or a Misconduct case involving Foul Play, the Disciplinary Committee shall be entitled, where it believes that the act(s) of Foul Play committed by the Player would not have warranted a red card, to impose no suspension on the Player (in which case the Disciplinary Committee will ordinarily expressly state in its written judgment that it believed the act(s) of Foul Play did not warrant a red card). Further, for Misconduct cases involving Foul Play, particularly where the relevant activity also constitutes Misconduct other than solely because it is an act of Foul Play and/or where the offence that makes up the Foul Play is not referred to in Appendix Three to these Disciplinary Rules, the Disciplinary Committee need not necessarily comply with clause 6.7.31, above (and assess entry point, mitigating and aggravating factors) and may in stead determine the appropriate sanction at its discretion pursuant to clause 6.7.29, above."

29. The ERC was essentially neutral submitting that it was a matter for me.

30. This was a deliberate stamp. But context is important, as is the way in which we all agreed the Player committed the act of foul play. In short, it was a single act, not on a joint and the victim player played on for the remainder of the match. It was an act of foul play, undoubtedly meriting sanction. However, on balance I am not satisfied it merited a red card. On that basis I impose no suspension on the Player.

Costs

31. I make no order for costs.

Right of Appeal

32. The parties are reminded of their right of appeal as set out in DR 7.1.



Christopher Quinlan QC
Judicial Officer

Date: 23 December 2013