

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

**Held at Huguenot House, 35/38 St Stephen's Green, Dublin 2, on Thursday 17th October
2013 at 1.30pm**

In respect of:

Lifeimi Mafi ("the Player")

and

An ordering off in respect of an alleged act of illegal and/or foul play contrary to Law 10.4(j) of the Laws of the Game namely "Lifting a player from the ground and either dropping or driving that player into the ground whilst that player's feet are still off the ground such that the player's head and /or upper body come into contact with the ground is dangerous play" in the Heineken Cup match between Gloucester and USAP Perpignan played at Kingsholm, Gloucester on 12th October 2013.

Judicial Officer appointed to hear the case:

Rod McKenzie (Scotland) ("The Judicial Officer")

Decision of the Judicial Officer:

- (i) the Player had failed to show that the referee's decision to show him a red card was wrong; and
- (ii) the Player is suspended from taking part in the game of rugby up to and including Sunday 8th December 2013. This represents a six week suspension commencing Monday 14th October 2013.

Introduction

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 ordering off of the Player in the match between Gloucester and USAP Perpignan played at Kingsholm, Gloucester on 12th October 2013.

The Player was ordered off for a breach of Law 10.4(e) which was subsequently revised by the referee to Law 10.4(j) of the Laws of the Game.

The Parties at the Hearing

Present at the hearing in addition to the Judicial Officer were the following persons:

- Mr Roger O'Connor ("Disciplinary Officer"), Disciplinary Officer, ERC
- Mr Liam McTiernan, Regulatory Officer, ERC

- The Player
- Monsieur Pierre Becque, lawyer for the Player
- Miss Amy Cornelius, clerk to the ERC Disciplinary Panel
- Miss Holi Smith, Administrative Executive, ERC (observing)

Preliminary Matters and Procedures

At the commencement of the hearing, the Judicial Officer noted the identities of all present and narrated the contents of the referee's report reminding the Player that it had been determined by the referee that he [the Player] had acted in contravention of Law 10.4(j).

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2013/2014 ("the Disciplinary Rules" and "DR" in the singular) would apply.

The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.

The Judicial Officer established what evidence was placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented.

The documentary and video evidence for consideration comprised of the following:

- Letter from the Disciplinary Officer to Professor Lorne Crerar, Chairman of the Disciplinary Panel, dated 14 October 2013;
- Sending of Report from Leighton Hodges, Match Referee;
- Email from Leighton Hodges, dated 15 October 2013;
- Email from Ian Davies to Liam McTiernan, dated 15 October 2013;
- Email from Sean Brickell, dated 15 October 2013;
- Email from Tim Hayes, dated 15 October 2013;
- Email from Alex Brown, dated 16 October 2013;
- Email from Perry Freshwater, dated 15 October 2013;
- Email from Perry, Freshwater, dated 16 October 2013 at 15:56;
- Email from Perry Freshwater, dated 16 October 2013 at 16:58 attaching statement from the Player; and
- Email from Roger O'Connor, dated 16 October 2013
- Video footage from the match provided by the ERC

The Judicial Officer noted that there had been no formal response to the Standing Directions. However, the Player confirmed that he denied that he had committed an act of Foul Play during the incident in question and that he wished to seek to show that the referee's decision to show him a red card was wrong.

The Judicial Officer noted that in terms of DR 6.2.10 it was for the player to prove on the balance of probabilities that the referee's decision to show the payer a red card was wrong.

Evidence relating to the ordering off

Video Evidence

The match video was viewed. The following are the sequence of events determined by the Judicial Officer, after hearing representations from the Disciplinary Officer and Monsieur Becque, evidence from the Player and considering relevant documentary evidence, from all of the clips taken together:

- There were three different video angles which showed the incident. The first was taken from the main stand viewing the incident from approximately the half way line. The other two video angles were from each of the Gloucester corner flags.
- The view from the main stand showed Gloucester in possession attacking at the Perpignan 10 yard line.
- The ball is passed to the Gloucester 12 in a "switch move". The Gloucester 12 is travelling at moderate speed directly towards the Perpignan try line.
- The Gloucester 12 is tackled by the Player. At the point of impact the Player is stationary and in a crouched position. The Player's left hand goes round the chest of the Gloucester 12 and the Player's right hand reaches down and takes hold of the back of the Gloucester number 12's left leg at the back of his thigh.
- The Player then lifts the Gloucester Player's left leg off the ground resulting in the Gloucester 12 immediately becoming unbalanced.
- The Gloucester Player's forward momentum is redirected and dissipated by him being lifted up initially by the left leg and then with his right leg following and his falling to the right.
- As the Gloucester 12 reaches approximately the horizontal position the Perpignan 16 who is rising from the ground, reaches up with this left hand, initially touches the Gloucester 12 on the right thigh and his hand then comes into contact with the back of the Gloucester 12.
- During the incident the Player's right hand remains on the Gloucester 12's left leg.
- The Gloucester 12 tips over the horizontal and he falls forward with his right shoulder and the right side of his head coming into contact with the ground first.
- The video clips taken from the two Gloucester corner flags clearly show that it is the Player who initiates the upwards motion of the Gloucester 12 by the Player taking hold of the Gloucester 12's left leg, the Player brings the Gloucester 12 to the horizontal and the Gloucester 12 then tips over and falls forward to the ground coming into contact with the ground as set out above.
- The incident involves limited additional energy being imparted on the Gloucester 12 by the Player.
- The Gloucester 12's legs do not reach a high position, nor does the Gloucester 12's body.
- However, when the Gloucester 12 passes through the horizontal position, the Player makes no effort to catch or otherwise stabilise the Gloucester 12 although it is doubtful that much could have been done by the Player to prevent the Gloucester 12 from moving through the horizontal and falling to the ground given the speed of events and the momentum taken into the tackle by the Gloucester 12.
- However, the Player could have sought to stabilise the Gloucester 12 as he went through the horizontal and could have tried to bring the Gloucester 12 to ground in such a way that the Gloucester 12 did not first impact the ground with his head and shoulders.
- The principle mechanics at play in the incident are the forward momentum of the Gloucester 12 and the lifting of the Gloucester 12's leg which together with the Gloucester 12's own momentum causing the Gloucester 12 to pass through the horizontal and then fall head/shoulder first into the ground.
- The Perpignan 16 contributes very little to the incident and is only in contact with the Gloucester 12 after he has already been lifted by his left leg by the Player.

The Referee's Report

In his report the Referee gave the following description:

"Gloucester were in possession and attacking just inside the Perpignan half when AR1 Ian Davies advised me that he had a flag against Blue (Perpignan). As

Gloucester was in possession I allowed play to continue and Gloucester 14 scored a try. After awarding the try I took a foul play report from AR1 Ian Davies where he advised me that a blue player had appeared to dangerously tackle a Gloucester player by lifting his legs off the horizontal and suggesting that I review the incident as he did not get a number. I therefore referred the incident to the TMO and following a review of the incident on the big screen. On review of the big screen I saw Perpignan 12 lift a Gloucester player so that his legs went above the horizontal and he drove the player into the ground where the Gloucester player's head, neck and shoulders came into contact with the ground first. I was able to make a decision myself without needing a decision or recommendation from the TMO. I advised the TMO the decision I was making and showed the Perpignan 12 a red card. The try for Gloucester stood."

Initially the Referee's report indicated that the law contravened was 10.4(e) 'dangerous tackling', but that was amended by an email from the Referee of 15 October 2013 to "a dangerous tackle it is best described by law 10.4(j) lifting a player from the ground and dropping or driving that player into the ground."

Further Evidence

AR Ian Davies reports in his email of 15 October 2013 that he had seen a Gloucester player's legs go above the horizontal and he immediately informed the referee that he had a Foul Play against blue but he had to check with the TMO. It was not clear to AR Davies which Perpignan player had been involved.

AR Brickell reports in his email of 15 October 2013 that the first view he had of the incident was on the big screen as he had been on the far touchline and had not seen the incident.

TMO Hayes in his email of 15 October 2013 reports that he had seen:

"the incident during live play and was about to communicate this by the microphone when he heard AR Davies inform the referee that he, AR Davies, had seen the incident. When the play came to a natural end with the scoring of the try, the Referee asked the [TMO Hayes] to communicate with the TV Director to show the incident on the big screen. Both the Referee and [AR Davies] viewed the incident and reached their own decision. When the Referee asked me whether I agreed with the sanction, I confirmed that I did".

In an email from Alex Brown of 16 October 2013 the victim player is said to have stated:

"I remember that I carried into contact on a switch. Straight into Mafi. Felt I was getting held up and possible chance of someone else trying to hold me up so I tried to get to ground. As soon as I tried to get to ground, one of my legs was lifted and I fell on to the side of my head/neck. It didn't hurt in the slightest as I got up and carried on straight away. No training has been missed and no treatment needed."

The Player's Position

In an email of 15 October 2013, Perry Freshwater the Team Manager of Perpignan stated:

"Email received and forwarded on to the club lawyer and Lifeimi Mafi.

Lifeimi is dreadfully sorry about his actions and he immediately apologised to both the player and the citing commissioner after the game."

This email from Mr Freshwater was sent in response to the notification of hearing email dated 14th October 2013 from Professor Crerar, Chairman of the Discipline Panel.

In a later email of 16 October 2013, Mr Freshwater advised that the Player had met with the Club lawyer at lunchtime and would be giving his [the Player's] statement at that time. It is advised that the Player was not aware of what steps to make as he was waiting for advice from "our lawyer". The email states the Player's statement will follow.

By email dated 16 October 2013 the statement of the Player was set out:

"My plead is not guilty to the Dangerous tackle. The Referee stated that the Red card was for 1) Lifting the player above the horizontal and 2) Driving the player's head, neck region into the ground.

So I would like to break down the tackle into two parts like in the Referee's Statement.

Part 1: Lifting the player above horizontal.

The video shows myself not lifting the player but in a downward motion towards the ground. If we look at the ball carriers foot, it doesn't leave the ground until the assist tackler lifts it up

which brings us to the second part of the tackle.

Part 2: The contact with the neck and shoulders to the ground.

There are two factors we need to take into account, the actions of the assist tackler and the ball carrier.

In the final actions of the tackle we see the assist tackler take hold of the ball carriers leg creating the attacker to lose his balance and become aerial.

The ball carrier in his last actions, ducks and forces the direction on to his shoulders and back of neck region.

In these final split seconds of the tackle, the tackle is not in my control.

The referee stated that the 12 blue lifted the ball carrier above horizontal and drove his neck and shoulder region into the ground. I did not commit either of those actions."

The Player's oral evidence at the hearing did not materially differ to what had been set out in his statement except that the Player suggested that the primary cause of the Gloucester 12 being lifted were the actions of the Perpignan 16.

Under questioning by the Judicial Officer the Player acknowledged that he had been the first to initiate a lifting action in the incident when his right hand went round the left leg of the Gloucester 12 and lifted it from the ground. The Player explained that he was typically smaller than a number of his opposing players and that when tackling a larger player than he it was often his practice, as with this incident, to attempt to unbalance the player of greater size e.g. the Gloucester 12, by lifting his left leg during the tackle to make it more likely that the opponent would be brought quickly to ground and make it more likely that Perpignan would win possession of the ball in the subsequent breakdown.

The Disciplinary Officer

The Disciplinary Officer submitted that no convincing evidence had been brought forward that the referee's decision was wrong and that the balance of the evidence was rather that the referee had been correct to determine that the Player had committed an act of Foul Play which was properly characterised as being a breach of Law 10.4(j).

Submissions for the Player.

Monsieur Becque submitted that it was highly significant that the referee had initially sent the Player off for a breach of law 10.4(e) and had only subsequently modified that to a breach of Law 10.4(j). he asserted that all of the components necessary for a breach of Law 10.4(j) were not present in that both of the legs of the Gloucester 12 had not passed through the horizontal and that the Gloucester 12 had not been fully lifted from the ground by the Player and that the main causative element in what had happened to the Gloucester 12 were the actions of the Perpignan 16.

Decision as to Disposal

The Judicial Officer found that the major mechanic at play in this incident was the forward momentum of the Gloucester 12. When the Player lifted the left leg of the Gloucester 12, the Gloucester 12 inevitably became unbalanced and that caused him to fall forward and to his right, his balance having been interfered with by the lifting of his left leg. The Gloucester 12's forward momentum was converted into a fall to the right during which his legs passed through the horizontal (although not at precisely the same instant) and he fell to the ground forward with his head and right shoulder taking the first impact.

The primary cause of the lifting and the passing through the horizontal of the Gloucester 12's legs and the Gloucester 12 falling to the ground was the actions of the Player in lifting his right leg and then taking no steps to prevent the Gloucester Player falling to the ground head and shoulders first.

On detailed review, the Judicial Officer determined that the Player had not 'driven' the Gloucester 12 into the ground but rather had allowed the Gloucester 12 to drop forward to ground through a combination of his forward momentum and gravity. The chain of events was an inevitable consequence of the tackle carried out by the Player using the lifting of the Gloucester 12's left leg, the forward momentum of the Gloucester 12, the absence of any attempt by the Player to control the fall of the Gloucester 12 and the absence of any attempt by the Player to take care that the Gloucester 12 did not come into contact with the ground head/shoulders first.

Law 10.4(j), properly construed, does not require (i) 'bodily' lifting of a victim player from the ground or (ii) that the victim player's legs pass through the horizontal either at the same time or separately. Providing that there is an element of lifting of the victim player (player 1) by the player who is the subject of the disciplinary process (player 2) and that player 1 is dropped or driven to the ground by player 2 in circumstances where player 1's head and/or upper body come into contact with the ground before player 1's legs then the components for a contravention of Law 10.4(j) are present.

Having regard to the terms of Disciplinary Rule 6.2.2, the Player had not shown that the Referee's decision to show the Player a red card was wrong. In particular, the Player had not demonstrated that he had not committed an act of Foul Play. The Referee was correct to hold that an act of Foul Play had been committed by the Player and that the Player had infringed Law 10.4(j). The Player had lifted the Gloucester 12 from the ground and had dropped the Gloucester 12 into the ground while the Gloucester 12's feet were still off the ground such that the Gloucester 12's head and upper body came into contact with the ground.

Without offering any additional evidence or submissions, the Monsieur Becque suggested that a red card might not have been warranted. The Player had failed to establish that the act of Foul Play he had committed did not warrant a red card. Rather a red card was fully warranted given the circumstances and nature of the offending both as determined by the

referee on the day of the match and following detailed examination by the Judicial Officer at the hearing.

Sanction

The Judicial Officer next proceeded to consider the seriousness of the Player's conduct which constituted his offending by reference to the features set out in DR 6.7.32 in order to determine the appropriate entry point for the purposes of DR 6.7.33.

The Judicial Officer noted that the offence of 10.4(j) was listed within IRB recommended sanctions for offences within the playing enclosure (found at Appendix 3 of the Disciplinary Rules) as follows:

- Low end, 4 weeks.
- Mid range, 8 weeks.
- Top end, 12+ weeks.
- Maximum sanction 52 weeks.

The Judicial Officer considered that the offending was reckless DR 6.7.32(b) rather than intentional or deliberate, DR 6.7.32(a), in respect that whilst it had been the intention of the Player to unbalance the Gloucester 12, he had not intended to lift him completely off his feet and then cause his head and/or shoulders to drop or be driven into the ground.

Nevertheless there was a considerable element of danger in the offending given the force with which the head/shoulders of the Gloucester 12 came into contact with the ground. That force was primarily occasioned by the dissipation of the forward momentum of the Gloucester 12 which had been taken into the tackle and the effect of gravity when the Gloucester 12 fell into the ground. The lifting of the Gloucester 12's left leg had been the key component along with the forward momentum of the Gloucester 12 which had caused the subsequent events.

The Gloucester 12 had not been bodily lifted or lifted to a significant height but the Player knew or ought to have known that as soon as he placed the Gloucester 12 in the unbalanced position in which the lifting of his left leg placed him, the Player was under a duty to take care to endeavour to prevent the Gloucester 12 falling to the ground such that the Gloucester 12's head and/or upper body first came into contact with the ground.

The Player's actions were the principal cause of the offending. The nature of the actions is described in Law 10.4(j). There was no issue of provocation, retaliation or self defence involved. There were no effects on the victim in terms of injury or removal from the Match. The Match was unaffected by the incident except that the Player was sent off. The Gloucester 12 was vulnerable after his left leg had been lifted by the Player. The Player participated in the offending but there was no pre-meditation. The Player's conduct amounted to a completion of the offending rather than an attempt.

In all of the circumstances but having regard to in particular, that the lifting of the Gloucester 12 was not particularly high and that it was primarily the Gloucester 12's own momentum, transferred by the lifting by the Player, which caused the offending to occur, that the Player had failed to exercise due care when he had unbalanced the Gloucester 12, that the Player's offending was reckless, within the meaning of DR 6.7.32(b) as opposed to "intentional or deliberate" for the purposes of DR 6.7.32(a), that the incident had had no effect on the game, other than the Player being sent off, and that the Gloucester 12 was uninjured, the Judicial Officer determined that the offending should be categorised as low end.

In assessing aggravating factors as required by DR 6.7.34, the Judicial Officer noted that the

Player's disciplinary history comprised a one match suspension after him receiving three yellow cards in the Rabo Direct Competition in Season 2009/2010. The Player had a seven week suspension imposed in October 2010 for late/dangerous tackling and in 2013 the Player had a two week suspension imposed following a citing for a high tackle in the French League.

The Judicial Officer considered that the Player's status generally as an offender against the laws of the game since the age of 18 amounted to an aggravating factor for the purposes of DR 6.7.34.

Further, having regard to the established existing pattern of offending in terms of Law 10.4(j), the memorandum concerning "tackles involving a player being lifted off the ground and tipped horizontally etc." of June 2009 and the memorandum of 4 August 2011 from the IRB being noted, it was considered by the Judicial Officer that there was a need to combat a pattern of offending in the game having regard to DR 6.7.34(b).

The low end entry point for offending in terms of Law 10.4(j) is four weeks and to this the Judicial Officer determined that there should be added one week for the Player's status as an offender against the Laws of the Game and a further one week as a deterrent to combat a pattern of offending in the game, a total of six weeks.

With reference to DR 6.7.35, the Judicial Officer determined that there were no grounds for reducing the period of suspension. Whilst Mr Perry's initial email of 15th October 2013 had suggested that the Player was apologising for his involvement in the incident that was not carried through to the hearing. The Player contested culpability/wrongdoing and sought to argue that the Referee's decision to show him a red card had been wrong. The Player does not have a good disciplinary record. The Player is 31 and is not either young or inexperienced. The Player's conduct in seeking to argue that the Referee's decision had been wrong and further in his Club's Team Manager having initially indicated that the Player was sorry and apologised for the incident only for the Player then to put forward a case which essentially sought to hold another member of the playing staff of Perpignan responsible for the incident and which indicated no apology or remorse by the Player meant that there was no basis to mitigate the sanction that would otherwise be imposed.

Taking all the relevant factors into consideration, it was considered there were no off-field mitigating factors for reducing the period of suspension and accordingly the period of suspension is six weeks.

Having regard to the terms of DR 6.7.44, the Judicial Officer enquired as regards the fitness of the Player and was advised that the Player was fully fit and ready, willing and able to play. Through the Disciplinary Officer and the Player's Representative, it was identified that were it not for a period of suspension, the Player would have played in the Heineken Cup on the weekend of 18th October 2013 and in the French Top 14 Competition on the weekends of 25th October 2013 and 1st November 2013. Having regard to international fixtures, there are no matches in the weekends of 8th November 2013 and 15th November but the Player would ordinarily have played in the Top 14 Competition on the weekends of 22nd November 2013 and 29th November 2013 and again in the Heineken Cup on the weekend of 5th December 2013.

Accordingly, taking account of the provisions of DRs 6.7.43 and 6.7.44, the period of suspension continues up to and including Sunday 8th December 2013 during which time the Player is expected to miss, because of the suspension, six matches which are not inconsequential or friendly for the purposes of DR6.7.44(c).

The Player was found liable in costs to the extent of one third of the Judicial Officer's

accommodation and travelling costs, the Judicial Officer having three cases in total to deal with on 17th October 2013.

The Judicial Officer reminded the Player that the Disciplinary Rules afford him the right to appeal against his decision.

There being no further matters to consider, the proceedings were closed.



Rod McKenzie
22nd October 2013