

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

Held at Huguenot House, 35/38 St Stephen's Green, Dublin 2, on Thursday 17th October
2013 at 3.30pm

In respect of:

Ollie DeVoto ("the Player")

and

A citing complaint for an alleged breach of Law 10.4(a) of the Laws of the Game in an Amlin Challenge Cup match between Bordeaux-Begles and Bath played at Stade Chaban-Delmas on 12 October 2013.

Judicial Officer appointed to hear the case:

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

Decision of the Judicial Officer:

- (i) the Player having admitted that he committed the act of Foul Play for which he had been cited and that said act of Foul Play warranted a red card the citing was upheld; and
- (ii) the Player is suspended from taking part in the game of rugby up to and including Sunday 27 October 2013. This represents a two week suspension commencing on Monday 14 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 citing of the Player in the match between Bordeaux-Begles and Bath played at Stade Chaban-Delmas on 12 October 2013.

The Player was alleged to have committed and admitted committing an act of Foul Play in breach of Law 10.4(a) 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 ("the Disciplinary Officer"), Disciplinary Officer, ERC
- Mr Liam McTiernan, Regulatory Officer, ERC
- The Player (by telephone conference call)
- Richard Smith QC, lawyer for the Player (by telephone conference call)
- Gary Gold, Director of Rugby at Bath (by telephone conference call)

- Miss Amy Cornelius, clerk to the ERC Disciplinary Panel

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 citing complaint reminding the Player that he had been considered to be in contravention of Law 10.4(a).

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

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. This was confirmed by all present. The Judicial Officer then enquired as to whether any additional evidence was to be presented. There was no additional evidence.

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;
- Citing report from Eugene Ryan;
- Email from Neil Paterson to Liam McTiernan, dated 15 October 2013;
- Email from David Changleng to Neil Paterson, dated 15 October 2013;
- Email from Adrian Graves to Liam McTiernan, dated 15 October 2013;
- Email from Jim Yuille to Liam McTiernan, dated 15 October 2013;
- Email from Olivier Brouzet to Liam McTiernan, dated 15 October 2013;
- Email from Richard Smith to Roger O'Connor, dated 15 October 2013;
- Note to the Chairman on behalf of the Player prepared by Richard Smith QC, dated 16 October 2013;
- Letter from Gary Gold, dated 15 October 2013;
- Letter from Mike Ford, dated 15 October 2013;
- Letter from Nick Walshe dated 15 October 2013;
- Emails from Paul Cracknell and Andy Stott, undated;
- Email from Roger O'Connor to the Judicial Officer, dated 16 October 2013;
- Video footage from the match provided by the ERC.

The Judicial Officer noted the terms of the Player's responses to the Standing Directions and that the Player admitted having committed the act of Foul Play in the incident in question for which he had been cited i.e. that he had struck the Bordeaux 11 with his head and that said act of Foul Play would have warranted a red card. In the circumstances the citing was upheld.

In those circumstances, the Judicial Officer said the purpose of the hearing was to determine what sanction was to be imposed.

Evidence Supporting the Citing Complaint

Video Evidence

The video evidence before the Judicial Officer consisted of two principal clips and some related footage provided by the Disciplinary Officer. The following are the sequence of events determined by the Judicial Officer after hearing representations from the Disciplinary Officer and Mr Smith QC and evidence from the Player and consideration of relevant documentary evidence, from both clips taken together.

- The incident took place just inside the Bordeaux half of the pitch at the Bordeaux 10 metres line at and on the right hand touch line as viewed from the Bordeaux try line.
- The angle of the first clip is taken from the stand camera at the half way line looking across the pitch towards the Bordeaux right hand touch line. The shot is wide angle and shows the Bordeaux 11 catching a high ball kicked from within the Bath half of the pitch. Bordeaux 11 is tackled into touch by the Player. As the field of vision zooms in one can see the Player lying on top of the Bordeaux 11. The right hand touch line assistant referee is seen standing close beside the two players with his flag raised indicating that the ball has gone into touch.
- There is no reaction by any member of either team or by the relevant assistant referee indicating that any incident of any concern has occurred. Both the Player and the Bordeaux 11 get up from the tackle and walk away without comment to each other.
- The second relevant clip showing the incident is taken from a camera behind the left hand side Bath corner flag looking down the touchline towards the Bordeaux try line. It is a closer in view.
- The incident is being viewed from a considerable distance, in excess of 50 metres. This is the only camera angle from which the incident can be clearly seen. However, it suffers from the well understood limitations of a single camera angle taken from some distance away. The difficulties are discussed by the Judicial Officer in the case of *Attoub* 18 January 2010, with respect to photographs. The same limitation with regard to single angle video evidence is discussed in the appeal decision in *Mealamu* 22 November 2010. In essence visual images taken from a significant distance suffer from the limitation that it is difficult to ascertain the precise relative position of two players who are in close contact. The difficulty arises from lack of depth perception.
- Bearing the above limitation in mind, the second relevant clip shows the player tackling the Bordeaux 11 in field but close by the right hand touch line. It is apparent that the Player is endeavouring to force the Bordeaux 11, who has possession of the ball, into touch.
- Both the Player and the Bordeaux 11 go to ground while still within the field of play with the Bordeaux 11 still in possession of the ball and the Player having his arms wrapped around the waist area of the Bordeaux 11.
- The momentum of the two players together takes the Bordeaux 11 into touch with his head and shoulders over the touch line. The assistant referee is shown a metre or so away looking directly at the two players with the Bordeaux 11 in touch but attempting to set the ball back using his left hand with a view to it being "picked up" by following Bordeaux players. It is assumed the Bordeaux 11 does not realise at this point that he is in touch. At this point the assistant referee does not flag for the Bordeaux player being in touch.
- The Player draws his legs up and places his hands at either side of the body of the Bordeaux 11 and he drives himself forward using his legs. At all times the Player's line of sight is focused entirely on the Bordeaux 11. The Player drops his head so that he is looking at the chest area of the Bordeaux 11 and he drives forward with his legs pushed off the ground by this time. The Player's head is driven into contact with the right hand shoulder of the Bordeaux 11.
- By this point the Bordeaux 11's head is turned towards the Bordeaux try line and the Player's head is turned towards the Bath try line. It is only at this point that they must both be aware that they are in touch.
- It is possible, but it is not possible to definitely ascertain because of lack of depth perception, that the Player's head also came into contact with the side of the head of the Bordeaux 11. The Bordeaux 11's head goes backwards onto the grass but his head is only a matter of a very few centimetres from the grass at the point of impact of the head of the Player. It is not possible to ascertain whether the Bordeaux 11's

head being driven back onto the grass is because of the blow by the Player's head onto the Bordeaux 11's shoulder or a blow which included the Bordeaux 11's shoulder and the side of the Bordeaux 11's head. It is clear, however, that had the Bordeaux 11 not turned his head to look towards his own try line that there would have been a real risk of a significant contact between the head of the Player and the head of the Bordeaux 11.

- It is only at the point of impact of the head of the Player with the Bordeaux 11 that the assistant referee begins to lift up his flag to signal that the Bordeaux 11 has carried the ball into touch.
- It is clearly apparent from this view that the Player gets up from the ground followed by the Bordeaux 11 without any apparent ill feeling or further incident passing between them.
- Furthermore, there is no reaction from any of the surrounding Bath or Bordeaux players and the assistant referee is seen to be standing directly over the Player and the Bordeaux 11 and gives no signal or other indication of any incident of Foul Play having occurred.

The Referee's Report

In his email of 15 October 2013 the referee advised that he "was completely unaware of [an] act of foul play in real time".

Further Evidence

AR Changleng advised in an email of 15 October 2013 that he did not observe the incident. AR Changleng was the assistant referee on the other touchline from the touchline at which the incident occurred.

AR Graves in his email of 15 October 2013 advised:-

"Sorry, but I didn't see [an] act of foul play."

Assistant referee Graves went on to say in relation to the incident with which this decision is concerned:-

"...the Bordeaux winger made no comment of the incident to me at any time either and he was a native English speaker."

The TMO reported in his email of 15 October 2013:-

"I did not notice anything untoward when viewing this incident live. However, a very brief replay was shown and I then noticed the action of the Bath player where he appeared to be leading with his head towards the Bordeaux player after he had tackled him into touch. This was the only viewing I had of the incident and again, as far as I recall, play had already restarted by the time the replay had been shown. I did not think the Bath player had actually made contact with the Bordeaux player. After the game I advised the Citing Officer of the incident and suggested he might want to have a look at it."

Olivier Brouzet, the Director of Development at Bordeaux, in his email of 15 October 2013 advised:-

"...we are really aware of the incident, and think that the Bath player, Ollie DeVoto did it on purpose and deserved to be cited by the discipline commissioner, but the victim Blair Connor [Bordeaux 11] was able to play after the incident and did not

complaint about it and did not suffer of any injury related to it.”

It is noted that no person in or around the incident speaks of contact between the head of the Player and the head of the Bordeaux 11.

Citing Commissioner Citing Report

In this report of 14 October 2013 the Citing Commissioner stated:-

“After a box kick ahead by Bath number 9 Peter Stringer, the ball was fielded by Bordeaux number 11 Blair Connor who was then tackled into touch by Bath number 22 Ollie DeVoto. After the tackle was completed, with both players on the ground and DeVoto on top, DeVoto led with the head and struck Connor in the side of the face even after Connor had tried to move his head to the side.”

The Citing Commissioner went on to advise that AR2 (Graves) was one metre from the incident.

The Player’s Evidence

The Player advised that he was 20 years of age and in his first full season as a member of the Bath first team squad. He had been a Bath Academy player.

This was his first match in European Cup rugby and he was very excited by being involved in the match.

He had come on as a substitute and had only been on the field of play for 10 to 15 minutes at the time of the incident.

He had come on at centre, although his usual position was as a winger. The incident comprised the first tackle in which he had been involved in the game. He had been taught that he should endeavour to physically impose himself on the game and in particular on his immediate opposing player.

He had sought to follow the advice he had been given in the way in which he had tackled the Bordeaux 11 by driving him into touch. He advised that he was conscious of the Bordeaux 11 trying to set the ball back on the Bordeaux side and he had not realised at this point that the Bordeaux 11 had been carried just into touch. His actions in pulling up his legs into a kneeling position and then driving forward had been to “shunt” the Bordeaux 11 into touch. He had tried to act in the same way as if both players had still been in an upright position. He was focusing on the right shoulder of the Bordeaux 11. He had driven forward and his head had made contact with the right shoulder of the Bordeaux 11, which was the direction in which he had driven forward. The Player stated that he had not intended to target the head of the Bordeaux 11 and had he intended to do so he could easily have made contact with the head of the Bordeaux 11 using his head. His target was always to the body, in this case the shoulder, and his thought process was always to “shunt” the Bordeaux 11 into touch so as to prevent the Bordeaux 11 from setting the ball back and it staying in Bordeaux possession.

Evidence of Gary Gold

Mr Gold was the head coach of Bath Rugby. He had been a professional coach since 1999. He had previously been a coach with London Irish, Western Province in South Africa, an assistant coach with the Springboks and with Newcastle. He had become head coach of Bath in 2012. He had been a professional coach for some 13 years and prior to that had

played first division rugby in the Cape area and Western Provinces in South Africa.

He spoke very highly of the Player, describing the Player as a leading young rugby player with enormous talent and a very bright future. He explained that the Player had come up through the academy system and was now ready for first class rugby at the highest club levels. Bath and the west of England generally was a rich rugby area and this particular player was "fantastic". Not only that, the Player was also a standout individual who had the potential to become a genuinely top class player. He was by no means a "dirty" player and had a completely clean disciplinary record.

Mr Gold stated that all the players in his charge were trained to tackle aggressively and if possible to dominate their opposing player. However, they were told not to do so in a way that led to the commission of an act of Foul Play.

Under questioning from the Judicial Officer Mr Gold acknowledged that even in the upright position he had never heard of players being coached to tackle in a way that led with their head. He acknowledged that this was a very ill advised way of tackling an opponent. He acknowledged that the Player should not have sought to lead with his head in the way in which he had but he believed that the Player had been targeting the shoulder of the Bordeaux 11.

Submissions

The Disciplinary Officer

The Disciplinary Officer, Mr O'Connor, contended that the Player had acted intentionally in leading with his head and that he had connected with the head of the Bordeaux 11. He drew the attention of the Judicial Officer to previous cases, decision of the Independent Judicial Officer in respect of Valery Tsnobiladze, 28 September 2011 and decision of the Independent Judicial Officer in respect of Juan Guillemin, 22 January 2013, which had involved striking with the head and he asserted that rugby treated incidents of striking with the head as a serious matter. In identifying the appropriate entry point the Judicial Officer should pay particular regard that the leading with the head was intentional and that in the Disciplinary Officer's view contact had been made with the head of the Bordeaux 11.

Mr Smith QC

Mr Smith pointed to the video evidence and submitted that it was clear that the contact had been between the head of the Player and the shoulder of the Bordeaux 11. Any contact with the head of the Bordeaux 11 that may have occurred had been incidental.

Mr Smith made submissions on the application of DR 6.7.32 and in all the circumstances and submitted that taken together the factors indicated that this was a low end case.

He pointed to the excellent disciplinary record of the Player, the Player's youthful excess and acknowledged that the Player should not have attempted to lead with his head in this situation.

Mr Smith contended that the Player had understandably thought that the Bordeaux 11 was not in touch when the Bordeaux 11 began to set the ball back and that it was natural in the split second within which the incident had taken place for the Player to seek to ensure that the Bordeaux 11 was in touch.

Mr Smith asserted that it was completely out of character for this player to have deliberately targeted the head of the Bordeaux 11.

Decision as to Entry Point

The Judicial Officer noted that the offence of striking an opponent with a player's head within IRB recommended sanctions or offences within the playing enclosure (found at appendix 3 of the Disciplinary Rules) as follows:-

- Low end, 4 weeks.
- Mid range, 10 weeks.
- Top end, 16+ weeks.
- Maximum sanction 104 weeks.

The Judicial Officer was satisfied that for the purposes of DR 6.7.32(a) the Player's actions were intentional and not reckless, for the purposes of DR 6.7.32(b), in that the Player acknowledged and the video evidence confirmed that the Player had sought to lead with his head in striking the Bordeaux 11. On balance the Judicial Officer considered that the Player was targeting the right shoulder of the Bordeaux 11 with his head rather than the Bordeaux 11's head. The primary factors which led the Judicial Officer to this conclusion were:-

- That had the Player intended to target the head of the Bordeaux 11 he could easily have done so given the starting proximity of their relevant heads and even if the Bordeaux player had turned away contact with the head of the Bordeaux player could have been ensured.
- The Player's version of events was considered credible.
- From the video evidence, with its inherent depth perception limitations, it appears that at least the primary contact was with the right shoulder of the Bordeaux 11, although it is acknowledged that it is possible that the head of the Player may also have connected with the right side of the head of the Bordeaux 11.
- The assistant referee was only one metre or so away and was looking directly at the incident at all times. He advises he detected no act of Foul Play and if it had been apparent that this was a strike to the head of the Bordeaux 11 it seems likely that it would have been detected by the assistant referee.
- There is no reaction by the Bordeaux 11 to the incident, nor is there any reaction by any of the nearby players. Incidents of deliberate strikes using and to the head commonly attract significant adverse responses from the struck player and from his team mates. It was striking that this incident had caused no reaction whatsoever either from the Player, the Bordeaux 11, any of the players on the pitch or the assistant referee who was standing immediately over and looking down at the incident.

Considering the other factors in DR 6.7.32:

- The Player was fully involved in his actions resulting in the offending. The part of his body used was his head. There was no provocation or retaliation involved and no issue of self defence arose. The offending was not premeditated.
- There were no injuries to the Bordeaux 11, who carried on without any form of medical attention.
- There was no effect on the match from the incident.
- The Bordeaux 11 was vulnerable at the time of the commission of the act of Foul Play.

In all of the circumstances the Judicial Officer determined that this matter should be dealt with as a low end entry point case.

Per appendix 3, the entry point is therefore four weeks.

There were no aggravating factors for the purposes of DR 6.7.34.

In relation to off field mitigating factors under DR 6.7.35, the Player had an exemplary disciplinary record and was both young and inexperienced. The Player had conducted himself excellently during the course of the hearing and had demonstrated remorse for his actions. There had been a full and timely acknowledgement of culpability/wrongdoing by the Player, who accepted that he had committed an act of Foul Play which would have warranted a red card.

It was therefore appropriate to afford the Player the maximum mitigation of 50%, reducing his period of suspension to two weeks.

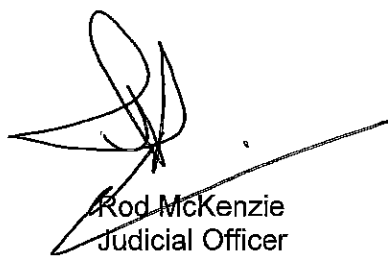
Initially Mr Smith indicated that he wished to make a submission on behalf of the Player that a period of suspension of two weeks would be wholly disproportionate to the level and type of offending in this case under reference to DR 6.7.37. The Judicial Officer indicated that in circumstances where he had found the offending to be intentional that he expected that it would be difficult for Mr Smith to satisfy the Judicial Officer that a period of two weeks' suspension would be wholly disproportionate to the level and type of offending. Mr Smith then elected not to maintain a submission under DR 6.7.37.

The Player was accordingly suspended from play for a period of two weeks i.e. the period from Monday 14 October 2013 (when he was provisionally suspended) up to and including Sunday 27 October 2013. This represents two matches which were not inconsequential or friendly matches for the purposes of DR 6.7.44 (c). In determining this period of suspension the Judicial Officer took into account the confirmation that the Player was otherwise fit and ready to play and that he would have played in the Amlin Challenge Cup during weekend commencing 18 October and in the English Professional League competition during weekend commencing 25 October were he not suspended.

The Player was found liable for costs amounting to one third of the Judicial Officer's travelling and accommodation costs. The Judicial Officer dealt with two other disciplinary cases on 17 October 2013.

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

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



Rod McKenzie
Judicial Officer
23 October 2013