

DECISION OF THE INDEPENDENT JUDICIAL OFFICER ERC Heineken Cup Season 2011/2012

Held at Huguenot House, 35-38, St Stephens Green, Dublin 2.

23rd November 2011 at 11:30 am

In respect of:

Mike McCarthy (“the Player”)

and

A citing of the Player for an alleged breach of Law 10(4)(e) of the Laws of the Game namely committing a dangerous tackle.

Judicial Officer appointed to hear the case:

Roger Morris (Wales) (“the Judicial Officer”)

Decision of the Judicial Officer:

- (i) The Player accepted that the citing complaint against the Player should be upheld. The Judicial Officer therefore found that the Player had committed an act of illegal and/or foul play as alleged in the citing complaint.
- (ii) The Player did not accept that the act of illegal and/or foul play merited a “red card”. However, the Judicial Officer was satisfied that the act of illegal and/or foul play merited a red card and was therefore satisfied that the Player should have been ordered-off for the offence.
- (iii) The Player is suspended from taking part in a game of rugby up to and including the 7th December 2011. This represents a two-week suspension commencing on the 23rd November 2011.
- (iv) The Judicial Officer ordered that the Player should reimburse to ERC one half of the travel and accommodation costs of the Judicial Officer in connection with the hearing.

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of ERC’s Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup, 2011/2012.

The Judicial Officer was appointed to consider the citing complaint (“the Complaint”) against the Player in the match between Connacht and Toulouse played on the 19th November 2011 at Galway Sportsground..

Mr Bruce Reece Russel was appointed as citing commissioner to this match and had cited the Player for a dangerous tackle in breach of Law 10(4)(e) 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
- Mr Donal Spring, Solicitor for the Player

- Mr Tim Allnutt, Rugby Manager, Connacht Rugby
- Ms Avalon Everett, Solicitor, accompanying Mr Spring

Preliminary Matters & Procedures

At the commencement of the hearing, the Judicial Officer noted the identities of all present and narrated the Complaint reminding the Player that the Complaint was in respect of an allegation that the Player had committed a dangerous tackle in contravention of Law 10.4.(e).

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement of the Heineken Cup, 2011/2012 ("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 had been 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 before him. The evidence for consideration was as follows:

- Citing Complaint Form
- Letter dated 21st November 2011 from the Disciplinary Officer to Professor Crerar.
- Letter dated 21st November 2011 from Professor Crerar convening the hearing.
- Letter dated 22nd November 2011 from Daniel Spring & Co, Solicitors setting out the Player's responses to the standard directions contained in the Disciplinary Rules.
- E mail dated 22nd November 2011 from Kate Saddler containing the comments of the referee and assistant referee.
- The Disciplinary Officer's responses, dated 22nd November, on behalf of ERC to the standard directions together with an attached schedule of other cases.
- Four precedents from previous cases involving the players Hala'Ufia, Gagoshvili, Rasmussen and Hape
- Two memoranda from IRB, respectively dated 21st January 2011 and 4th August 2011.

The Judicial Officer noted the terms of the Player's responses to the standing directions found at Appendix 6 of the Disciplinary Rules ("the Directions"). In essence, the Player accepted that he had committed an act of foul play and therefore that his citing was justified. However, he asserted that the yellow card issued by the referee was sufficient punishment of itself.

The Disciplinary Officer, in his response to the Directions, set out the matters which, in his view, the Judicial Officer should take into account when deciding whether to impose any further sanction. The Disciplinary Officer referred, in particular, to the two memoranda issued by IRB.

The Judicial Officer invited the Player and Disciplinary Officer to confirm whether or not they had any preliminary issues they wished to raise. There were none.

The Judicial Officer noted that there was no medical or other evidence before him either from Toulouse or Vincent Clerc ("T14"), the victim player. The Disciplinary Officer confirmed that statements had been requested but none received. The Judicial Officer said that, in those circumstances, the hearing would proceed on the basis that there was no injury to the other player beyond what might be clear and obvious from the video coverage. The parties agreed to matters proceeding on that basis.

The Judicial Officer reviewed the Complaint and confirmed that the details of the Complaint were as set out in the written report of the Citing Officer. The Judicial Officer asked the Player whether he accepted the accuracy of the Complaint and therefore whether he accepted that the Complaint should be upheld.

Mr Spring, on behalf of the Player, confirmed that the Player accepted he had committed an act of foul play as described in the Complaint but would argue that the yellow card issued by the referee was sufficient punishment and therefore that no other sanction should be imposed.

Evidence Supporting the Complaint

The Disciplinary Officer was asked to present the evidence supporting the Complaint. The video evidence (with sound off) was shown and the Disciplinary Officer commented as follows:

- The Toulouse No. 15 passed the ball in a scissors movement to the Toulouse right wing ("T14") who was running diagonally from the right to left.
- At the same time, the Player was running directly across the field from the Connacht right to left.
- T14 had changed direction so to run inside the right shoulder of the Player such that to tackle T14 the Player would need to stop and change his direction of running.
- As T14 ran to the right of the Player, the Player held out his right arm and caught T14 around the neck.
- The referee, who had a clear view of the incident, issued a yellow card after discussing matters with the assistant referee.
- T14 was treated on the pitch by the Toulouse medical team, but played on without any apparent adverse effect.
- The Disciplinary Officer accepted there was no injury to T14.
- The Disciplinary Officer pointed to a slight dip in the shoulders of T14 as he approached contact with the Player, but said that the dip was so slight as not to provide the Player with an excuse for executing a high tackle.

After viewing the video evidence, the Disciplinary Officer referred to the e mailed reports of the referee and his assistant which confirmed their views that the matter warranted the issue of a yellow card.

The Disciplinary Officer said that although the referee had dealt with the matter on the field, the provisions of DR 6.4.3 allowed the foul to be cited in any event.

He also pointed to the provisions DR 6.7.11 and said that the Judicial Officer should uphold the citing even if he concluded that the yellow card was sufficient punishment.

The Disciplinary Officer went on to say that IRB Regulation 17 did not apply to ERC matches to the extent that there would be no need for the Judicial Officer to make any separate finding, before considering further sanction, that the referee's reasons for only issuing a yellow card were wrong.

The Disciplinary Officer then pointed to the provisions of DR 6.7.32 and made the following points:

- The recommended entry points for sanction for offences of this type were: low-end - two weeks; mid-range - 6 weeks; and top-end 10 + weeks.
- The question of whether there was intent or recklessness was a matter for the Judicial Officer.
- The offence had been committed by the Player using the upper part of his right arm which made contact, high, T14's neck.
- There was no effect on T14 save what was evident from the video i.e. that he was treated on the field but carried on playing.
- There was no effect on the match save that the Player's team was reduced to 14 men.
- T14 was in a vulnerable position as a player always would be when tackled around the neck.
- The Disciplinary Officer accepted there was no premeditation.

The Player's Position

Mr Spring, on behalf of the Player, articulated the following points:

- The referee on the field, who had a good and unobstructed view of the tackle, "got it right" when he issued the yellow card.
- On a greasy pitch, a player, like the Player, running in one direction and having to change direction, frequently and almost instinctively acts in the manner the Player acted.

- The referee not only got it right but got it right after consultation with his assistant referee who had arrived at the same conclusion as the referee.
- Mr Spring categorised this sort of stiff arm, high tackle as the “old-fashioned” short arm tackle that has always occasionally occurred in the game when one player, like the Player, is completely wrong-footed by a change of direction as, in this case, by T14.
- The Player was completely beaten but was still, reaching backwards to T14 with his right arm but at the same time with his left arm outstretched, making a vain attempt to execute a “proper tackle”.
- The Player is 6 foot 6 inches tall compared to T14 who is only about 5 foot 6 inches tall. The difference in height contributed to the point where contact was made.
- The video, in Mr Spring’s view, showed that T14 fell into the Player such that T14 was leaning forward into the tackle.
- Mr Spring further categorised the tackle as “the classic unintended high tackle”.
- The referee was perfectly positioned to see what had happened and decided a yellow card was sufficient.
- The Player accepted that it was a dangerous tackle, but not one that was carried out intentionally.
- Mr Spring said the tackle was more carelessness than anything else.
- Mr Spring distinguished this sort of tackle from those he considered were the subject of the IRB memoranda referred to. The memoranda, he said, were aimed at the high, smother tackles that were now prevalent in the game as well as the dangerous tackle in which the tackler led, charging, with the shoulder.

The Judicial Officer then asked the Player himself to explain what had happened. He responded with the following comments:

- He was playing in Connacht’s first Heineken Cup match and against Toulouse, one of the Europe’s greatest sides.
- All the Connacht team had wanted to perform well but at this juncture in the game they were under severe pressure and he felt as though he was “chasing shadows”.
- He had sprinted across the field and running quickly in one direction when, in a split second, T14 changed direction.
- As an instinctive reaction, he reached with his right arm aiming to make contact with the Player at the point where T14 was holding the ball to his chest.
- He performed the tackle in a clumsy manner and accepted that he had committed a foul.
- He made efforts after the game to find T14 to apologise, but the Toulouse team had left the ground immediately to catch a flight.
- He was sorry for what had happened but had not intentionally sought to foul T14 and was relieved no injury had been caused.

The Disciplinary Officer, commenting on the Player’s evidence, added:

- He pointed to the terms of the memoranda and the requirement that the Judicial Officer take an objective view of what had happened.
- Carelessness was not a feature of the sanctioning process. The tackle was either intentional or reckless.
- The Disciplinary Officer referred to the Player’s disciplinary record. There were two previous matters. He had been banned 4 weeks for a dangerous tackle and for 3 weeks for the use of his head albeit those matters had occurred some seasons ago.
- The Disciplinary Officer also said that it was for the Judicial Officer to decide whether there was a pattern of offending that needed to be dealt with by way of additional sanction as a deterrent.
- Finally, the Disciplinary Officer referred to the provisions of DR 6.7.36 and what was required of the Judicial Officer should he determine that the matter deserved a suspension starting at the lower-end entry point.

Mr Spring, on behalf of the Player, reiterated that he agreed with the decision of the referee, namely that a yellow card was a sufficient punishment in itself.

He again distinguished “this sort of old-fashioned tackle” from those at which, he said, the IRB Memoranda were aimed.

Mr Spring confirmed the Player’s previous record and that he had received two previous suspensions - a 3-week suspension for use of the head in the match between Connacht and Leinster in 2008 and a 4-week suspension for a dangerous tackle in a match against Edinburgh also in 2008. Both offences had occurred in a Magners League match. However, he was not known as a dirty player or a frequent transgressor of the Laws of the Game.

The Player, having the final word, reiterated that the change of direction of T14 had completely wrong-footed him and what had happened was an instinctive reaction to being thus wrong-footed. He was sorry for what had happened and embarrassed that he was required to appear before a Disciplinary Tribunal.

Decision as to Disposal

The Judicial Officer retired to deliberate in private in respect of what, if any, sanction would be appropriate in the circumstances. The Judicial Officer made the following determinations in relation to what had occurred in the incident:-

- T15, running diagonally from left to right, performed a scissors pass with T14 running behind him from right to left.
- As the pass was performed, the Player was running across the field and at right angles to the Toulouse right-hand touchline.
- As T14 swerved in-field, the Player, wrong-footed by the scissors movement, attempted to stop and change direction with the clear intent of trying to tackle T14.
- T14 swerved to run to the right of the Player, but was grasped, in the crook of the elbow, by the right arm of the Player which was lifted to neck height on T14.
- When the chin and neck of T14 made contact with the Player, the Player’s outstretched right arm was bent, behind him and not swinging forward.
- The Player’s intent was to grasp T14 (albeit illegally) and not to hit him with a swinging arm.
- The result of T14 being grasped in this way was that he fell onto his back under the impact of the Player’s contact.
- The video showed T14 receiving attention from the Toulouse medical staff but soon regaining his feet and carrying on with the game.

Having reviewed the video footage, the Judicial Officer also read ,again, and noted the comments of the referee and the assistant referee.

In turning to the question of sanction, the Judicial Officer considered the terms of the Disciplinary Rules including DR 6.7.29 through to DR 6.7.44.

The Judicial Officer first determined the offence perpetrated by the Player was deserving of the issue of a red card and further, that this was an offence for which a suspension ought to be imposed.

The Judicial Officer noted that the offence of committing a dangerous tackle in contravention of Law 10.4(e) was listed within the IRB recommended sanctions for offences within the playing enclosure (found at Appendix 3 of the Disciplinary Rules) as follows:

- | | |
|--------------------|------------|
| • Low-end | -2 weeks. |
| • Mid-range | -6 weeks. |
| • Top-end | -10 weeks+ |
| • Maximum sanction | -52 weeks. |

To decide upon the appropriate entry point, the Judicial Officer assessed the seriousness of the Player’s conduct by reference to the following “on-field” issues set out in DR 6.7.32:

- The Judicial Officer accepted the Player’s assertion that his foul was not committed intentionally.

- However, the Player's actions were clearly reckless and not merely (although not relevant in terms of 6.7.32) careless as claimed by Mr Spring.
- The foul was committed with the Player's crooked arm held out behind him in his effort to impede the progress of T14 by grasping him. The arm was not swung at T14 but held bent such that it might be categorised as a "stiff arm tackle".
- There was no element of retaliation, provocation or self-defence.
- There was no injury to T14 beyond being treated briefly on the field. He played on to the end of the game without effect and no further injury has been reported or evidenced.
- There was no effect on the match save that Connacht played with 14 men for 10 minutes.
- A running player cutting inside another is always vulnerable to a foul of this nature.
- The Player participated fully in the commission of the foul and his actions were completed.

In light of the above, the Judicial Officer determined that the appropriate entry point for this matter was the low end representing a period of suspension of two weeks.

The Judicial Officer then considered the "off-field" issues and in doing so looked at whether there were any aggravating or mitigating factors.

The Judicial Officer first considered the previous record of the Player and was not prepared to ignore the fact that he has served two previous periods of suspension even though they occurred some seasons ago. A further week's suspension would be imposed to reflect this.

The Judicial Officer then considered carefully the representations made by the Disciplinary Officer and the contents of the two memoranda produced by him. He also considered the cases referred to by the Disciplinary Officer which he said were evidence that there was a pattern of offending.

However, the Judicial Officer distinguished the type of tackle in this case – the "old-fashioned stiff arm tackle" alluded to by Mr Spring – from the confrontational high tackle which was the type of tackle involved in the majority of the cases supplied by the Disciplinary Officer. Clearly, the tackle in question was to the head and the Judicial Officer noted the concerns expressed by medical opinion in relation to contact with the head. However, the distinction noted by Mr Spring and accepted by the Judicial Officer, led the Judicial Officer to the conclusion that in relation to the specific type of tackle involved in this case there was no pattern of offending that the Judicial Officer should consider.

In relation to mitigating features, the Judicial Officer recognised the Player's early acceptance that he had committed a foul even though the Player had urged the Judicial Officer to accept that the original yellow card was sufficient punishment. In addition, the Player had conducted himself properly and appropriately at the hearing and responded openly and frankly to the Judicial Officer's questions.

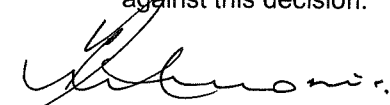
The Judicial Officer concluded that it would be wrong to ignore these factors and was prepared to reduce the period of suspension by one week so that the total period of suspension was to be two weeks.

The Judicial Officer noted the provisions of DR 6.7.36 but they were irrelevant to his considerations in light of his finding that there was an aggravating factor as outlined above.

The Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of the equivalent to two weeks commencing on the 23rd November 2011 and ending at midnight on the 7th December 2011. The Player will be free to play again on the 8th December 2011.

In addition, the Judicial Officer ordered that the Player should pay to ERC such sum as represented half of the Judicial Officer's travelling and accommodation costs.

The Player and the Disciplinary Officer are reminded that DR 7.1.1 provides for a right of appeal against this decision.


Roger Morris

30th November 2011