

EUROPEAN RUGBY CUP
DECISION OF DISCIPLINE COMMITTEE
HELD AT BUSWELLS HOTEL, DUBLIN, IRELAND
24th January 2008

IN RESPECT OF:-

Alexandre Audebert (“the Player”)

AND

Two citing complaints brought by Achille Reali (FIR), the independent Citing Commissioner in respect of infringements of Law 10(4)(a) and 10(4)(b) in the Heineken Cup match between ASM Clermont Auvergne and Munster Rugby played on the 13th of January 2008 at Stade Marcel Michelin, Clermont-Ferrand, France.

MEMBERS OF THE DISCIPLINE COMMITTEE:- (“the Committee”)

Christopher Quinlan (Chairman) (RFU)

Roger Morris (WRU)

John Doubleday (RFU)

DECISION OF THE COMMITTEE:

- (i) In respect of the infringement of Law 10(4)(b) the Committee found
 - (a) the Player committed the act of foul play; and
 - (b) in respect of that act foul play the Player is suspended from taking part in the game of rugby union up to and including 19th March 2008. This represents an eight week suspension commencing from 24th January 2008.

- (ii) In respect of the infringement of Law 10(4)(a) the Committee found the Player committed the act of foul play, but that it did not warrant a red card (ordering off). Accordingly in relation to that act of foul play, the Committee did not impose a period of suspension.

- (iii) The Player was ordered to pay the costs of the hearing.
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INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the *ERC* Discipline Panel pursuant to the *ERC* Heineken Cup Disciplinary Rules 2007-08 (“the Rules”) in respect of two citing complaints made by Mr Achille Reali, the independent Citing Commissioner. The citing complaints concerned the conduct of the Player during a fifth round Heineken Cup match played between ASM Clermont Auvergne (“ASM”) and Munster Rugby (“Munster”) played on the 13th of January 2008 at Stade Marcel Michelin, Clermont-Ferrand, France. The citing complaints alleged that the Player (1) stamped on the head of the Munster No. 10, Ronan O’Gara and (2) punched the Munster No 19 Alan Quinlan.

Present at the hearing on 24th January 2008, in addition to the members of the Committee were:-

Roger O’Connor ERC Disciplinary Officer

Max Duthie, Solicitor instructed by ERC

John Glackin (observing)

The Player

Jim O’Callaghan, Barrister, representing the Player

HEARING

Introduction and Preliminaries

At the commencement of the hearing the Chairman confirmed the identities of all present and established that the Player was before the Committee to answer the said citing complaints. The Chairman outlined the procedure to be adopted by the Committee for the hearing and that the provisions of the Rules would apply.

The Chairman confirmed that all present had in their possession all relevant written materials and the relevant video footage which had been provided to him in connection with the citing complaints.

In advance of the hearing the Player purported to comply with the relevant parts of the standing directions as set out in Appendix 6 to the Rules. In addition, he and his representative confirmed to us that the Player did not require the services of an interpreter.

Citing Complaints

Law 10(4)(a)

At the commencement of the hearing, the Chairman put this allegation of foul play and asked the Player how he wished to plead. He admitted (as he had in his response to the standing directions) the act of foul play, namely that he punched Alan Quinlan, contrary to Law 10(4)(a).

The facts of this incident can be stated shortly. In his citing report S. Reali described the incident, which occurred in the twenty-ninth minute of the second half, thus:

“During an attack of the red team (Munster) in the 22 metres of the yellow team [ASM] the player N.19 Alan Quinlan, holds the Player N.7 yellow...without the ball, who punched with his right hand the player N.19 on his face. The foul play was far from the ball.”

The DVD of the incident was played. From a ruck within the 22, Munster attacked the ASM goal line. The ball was passed from Peter Stringer to Rona O’Gara who then passed to the Munster outside centre. Mr Quinlan, apparently making a dummy run, ran into and then held the Player, who was in the ASM defensive line. In doing so, he prevented the Player from becoming further involved in play. The Player is clearly seen struggling before freeing himself, in significant part, if not entirely. He then swung a single punch that appeared to catch Mr Quinlan’s face. Mr Quinlan went to ground. The incident happened right in front of the referee, who was but three or so feet away. He immediately stopped play and issued a yellow card. Thereafter, Mr Quinlan sat up, removed his scrum cap, felt his left jaw, shook his head and took a drink.

In an email (16th January 08.35) the referee Rob Debney confirmed that he saw the punch and issued a yellow card to the Player. He added that he believed the punch contacted with the side of the head, the player was not injured and resumed play quickly.

The Player admitted punching Alan Quinlan. In his response to the standing directions he accepted “the citing complaint as a true and accurate account of the incident”. He punched Mr Quinlan “exasperated by the way [he] had held me back”. He opined that the act of foul play did not warrant a red card.

There being no issue that the player committed the alleged act of foul play, the Committee upheld the citing complaint. The central question was whether that act of foul play warranted sanction.

Law 10(4)(b)

The Chairman put the allegation of foul play and asked the Player how he wished to plead. He denied the act of foul play, namely that he stamped on the player as alleged, contrary to Law 10(4)(b).

The citing report & DVD

Mr Duthie invited the Committee to the citing report prepared by S. Reali. The incident occurred in the 33rd minute of the first half of the match. In his report, S. Reali states,

“In the 22 metres of the red team (Munster) near the try line, the Player N.6 yellow is running to support the action of his team and when he is near to player N. 10 red, Ronan O’Gara, who is on the ground, he extends the right leg and stamps on the head of the player N.10 red.”

We viewed the DVD footage of the incident. Following an ASM five metre attacking scrum, the ball is passed (from left to right) to the left winger (ASM number 11) who came in field to take the pass. The Munster 10, defending his goal line, attempted to tackle the said winger and ended up holding onto the lower part of his left leg. The winger was at the same time tackled by another Munster player and then take hold of by a third. The tackle was made within the Munster 22, to the left or near side of the posts. Mr

O’Gara let go of the winger and attempted to roll clear. The winger, at this stage, remained on his feet.

Meanwhile, the Player, the ASM Number 7, moved from his position on the open flank of the scrum, running a supporting line towards the said winger. As he reached the immediate vicinity of his winger, from the side and slightly behind, he approached the Munster 10, who was by now lying on the ground, in the Player’s direct path, clear of the tackle area. As he reached Mr O’Gara, he brought his right leg up and then down, such that it made contact with Mr O’Gara’s head. Mr O’Gara immediately moved, clutching his head. The Player from behind grabbed hold of and supported his winger. Mr O’Gara remained on the ground a little longer before running across camera, apparently to take a defensive position.

Ronan O’Gara made and signed a statement, dated 16th January which was put before us. Therein he states as follows

“I wish to confirm that in the 33rd minute of the first half of the match between Clermont Auvergne and Munster played on Sunday 13th January 2008, while on the ground, I received a stamp to the head which resulted in lacerations to my right ear”

An email sent by Rob Debney (the referee) at 08.36 16th January stated that the match officials did not see the incident.

Medical evidence

In the said report, Mr Reali observes that Mr O’Gara received treatment on the pitch. He was bleeding from a wound “around his right ear”. Later in the match one can see Mr O’Gara on the pitch, but his head bound and taped.

We were provided with a letter from Dr Micheal Shinkwin, dated 16th January. Therein and in relation to the injury he states that Mr O’Gara received a “serious injury” to his right ear pinna. He continues that

“The top 1 ½ inches of his ear were torn through the anterior skin and cartilage [*sic*], the flap being held in place by the posterior skin. He also has a deep laceration on the scalp behind the ear an [*sic*] also had stud marks extending from

his ear, down his neck to his shoulder. This would indicate significant pressure from studs possibly cleats and sustained action with the marks on his neck indicating downward pressure and maintained pressure over a length of 8 inches. This would indicate that he was raked by studs rather than stood on. Repair of the ear was difficult and will incur some disfigurement in the long term. Seventeen sutures were inserted into the ear and 3 sutures were inserted into the scalp behind the ear.”

Three photographs of the injured right ear supported the medical evidence. The medical evidence was not challenged. Further, Mr O’Callaghan specifically accepted (when asked) that causation was not in issue.

The player’s case

The Player gave evidence in his own defence. He asserted that he moved from the scrum, intending to support his winger. He was moving “quite fast”, eyes fixed, he said, on the winger’s back, intending to join with and support him. He told the Committee that he was not aware of the presence of the player (Mr O’Gara) on the ground. He did not look down he said, both in answer to questions from Mr Duthie and from the Committee. He told us that he was not aware of making contact with that player though after viewing the DVD (before the hearing) accepted that he had. He said the first he was aware that he was responsible for Mr Gara’s injuries was when his team manager told him of the citing. That contact of which he insisted he was unaware (at the time) was accidental. He denied standing intentionally on the injured player and denied further that his conduct could properly be categorised as reckless. He denied altering his stride in any way as he approached Mr O’Gara.

In support of his case, Mr O’Callaghan informed us that the Player had ever been sent off or received a yellow card for foul play. He supported that submission with documentary evidence. This was an allegation of conduct completely out of character. He produced a copy of a letter (undated) the Player had written to Mr O’Gara (with the help of his team manager) in which he states (so far as is material)

“I write simply to apologise for the head injury that you sustained, I actually didn’t realise that I was involved until I received by the ERC citation and then re-

played the video. It was certainly not intentional...wishing you all the best for the rest of the season, and once again my apologies.”

Further, he produced an article from the website of the Irish Examiner newspaper in which the following quote from Mr O’Gara appears

“I don’t remember much of what happened, I was on the ground and expecting to get up when I was stood on. But to be fair to their fellow (Alexandre Audebert, who has since been cited for the incident), I’m not saying he intentionally stood on my head by any means.”

That article or indeed its existence had not been referred to in the Player’s response to the standing directions, nor had a copy of it been supplied to the ERC and us, as it should have been (*per* Rule 6.7.2). That failure is compounded by the fact that Mr O’Gara had supplied a statement to be used in evidence in the proceedings. The failure so to do was readily accepted by Mr O’Callaghan. When asked by the Chairman whether he had made any effort to speak to or ask Mr O’Gara to give evidence, Mr O’Callaghan candidly said he had not. However, Mr Duthie did not object to it being admitted and we considered its contents.

Submissions

Mr Duthie made succinct submissions on the evidence, as did Mr O’Callaghan. Mr Duthie made it clear that the ERC was not advancing a positive case that the alleged stamp or trampling was intentional or reckless, submitting that was a factual issue for us to resolve. The ERC advanced no positive case either way.

Mr O’Callaghan reminded us of the burden and standard of proof and of the Player’s record which he described as exemplary (as to which see below). He submitted there was no evidence the Player had acted deliberately or indeed “carelessly (as he put it). He submitted that if we upheld the citing then we would, in effect be branding the Player as “very very violent”. He concluded his submissions by observing that there are always two sides to cases of this kind, “the ERC and the player and at some stage the player has to be given the benefit of the doubt”.

Decision

Following submission, the Committee retired to deliberate in private in respect of whether the Player had committed an act of Foul Play. The Committee considered all of the evidence and submissions summarised above. We concluded on the balance of probabilities that –

- (i) As the Player approached the tackle situation, he was aware of the presence a Munster player was on the ground in the position in fact occupied by Mr O’Gara.
- (ii) He could, had he chosen so to do, have avoided making contact with that player by for example stepping, leaping or jumping over him.
- (iii) He did not. There was contact between his right boot and Mr O’Gara’s head.
- (iv) That contact, caused by the Player bringing his right boot down on Mr O’Gara, was not accidental.
- (v) It amounted to a stamp and an act of foul play contrary to Law 10(4)(b).

We rejected the Player’s case that he was not aware of the presence of Mr O’Gara, still more that the contact was accidental. It is of note that the footage of the Player moving from the scrum towards his number 11, shows him running with a wide stride. Immediately before he reached Mr O’Gara, in our judgment he shortened a stride taken by his right leg with the consequence that he stamped on Mr O’Gara. We could see no legitimate reason for his shortening that stride.

As for the newspapers article, we attached little weight to that. The words, quoted as direct speech are attributed to Mr O’Gara. If he said those words, we know not the context. More pertinently, he does not assert that what happened to him was an accident. At its highest he is reported as saying he is not saying it was intentional; of course he is not saying it was unintentional. In short, he can’t say one way or the other. That is all in the context of his having been quoted as saying, “I don’t remember much of what happened”. On our viewing of the DVD, we can well understand why he cannot speak positively as to whether it was deliberate: he was in no position to see the player or what he did (or did not do).

In light of our findings, we concluded the Player stamped on Ronan O’Gara contrary to Law 10(4)(b). Accordingly we upheld the citing complaint.

Sanction

We heard submissions as to sanction, from both Mr Duthie and then Mr O'Callaghan. It is unnecessary to set them out in any detail. In respect of the punch, Mr O'Callaghan sought to rely upon Rule 6.7.41, namely that the act of foul play did not warrant a red card. In relation to the stamp he invited us to conclude it merited a low end entry point. We considered separately each act of foul play.

Stamp

The Committee considered what, if any, sanction would be appropriate in the circumstances. In this regard we took into account the evidence and submissions and considered the terms of Rules 6.7.31 – 6.7.42 and Appendix 3.

The Rules provide for three entry points based on the seriousness of the player's offending. In assessing the seriousness of the foul play we considered the provisions of Rule 6.7.32 and concluded that

- (1) In light of our factual findings, recorded above, it was a deliberate stamp.
- (2) The victim was vulnerable in that he could not see what was coming nor was he in a position to defend himself.
- (3) It was stamp on an exposed, vulnerable part of the person, namely the head.
- (4) It caused injury that resulted in the player having to receive treatment. Although he was able to continue to play in the match, he suffered a significant injury.
- (5) It was a completed act of foul play.

This was a deliberate stamp which landed on and raked the side of Mr O'Gara's head. It caused a not insignificant injury. It is right that it did not have any effect on the game and was "relatively spontaneous". In light of our factual findings, the Committee was driven to conclude that the appropriate starting point was top end.

We then considered the appropriate starting point within that top range (nine to fifty-two weeks), as required by Rule 6.7.33. We noted that Mr O'Gara was able to play on in the said match and played in Munster's sixth round match against Wasps. Still further, although satisfied this was a deliberate stamp, we were not satisfied to the requisite

standard he intended to stamp on the injured player's head, nor that he intended to cause injury.

Rule 6.7.33 involves an exercise of judgment, based on the application of established criteria and our collective rugby experience. We considered anxiously whether we should settle upon an entry point longer than none weeks. Having regard to the matters identified herein, we concluded the appropriate starting point was a period of suspension of nine weeks.

The Committee considered there were no aggravating circumstances (*per* Rule 6.7.34).

Thereafter the Committee considered the following the mitigating circumstances (*per* Rule 6.7.35). In this regard we gave him credit for his record which is not exemplary (he has a number of yellow cards recorded against him but we were told none for foul play), for the fact he is thirty years of age and has played the game to a high (professional) level in France for some years; his conduct at the hearing; and his written apology. The Committee resolved that the Player was entitled to credit for those matters, which we assessed at one week. In all the circumstances the Committee determined that an appropriate sanction was the imposition of a period of suspension of eight weeks (i.e. nine minus one).

Punch

The Committee accepted Mr O'Callaghan's contention that the punch did not warrant a red card (*per* Rule 6.7.41). It was an intemperate single blow delivered after the Player had been improperly held. The victim player was not injured (save for some immediate pain) and able to play on. That is not to excuse the foul play but rather to set it in its proper context. Of course, our conclusion is fact sensitive, establishes no precedent and is certainly not authority for any proposition that a single punch can never warrant a red card. Of course (depending on the circumstance) it might; in our judgment this one did not.

Conclusion

There being no period of suspension for the punch, the Player is suspended for the period of eight weeks, imposed in respect of the stamp. That suspension commences with

immediate effect. Accordingly he suspended from playing rugby union for a period of eight weeks (fifty-six days) commencing on 24th January 2008, up to and including the 19th March 2008. He is free to play on 20th March 2008.

The Disciplinary Officer made an application against the Player for the costs of holding the hearing, which we granted pursuant to Rule 6.7.45.

The Player is informed of his right of appeal against this decision, as provided by Rule 7.

Christopher Quinlan

25th January 2008

Christopher Quinlan (Chairman)

Roger Morris (WRU)

John Doubleday (RFU)