

# EUROPEAN CHALLENGE CUP

## DECISION OF DISCIPLINARY COMMITTEE

Held at offices of Harper Macleod LLP, The Ca'd'oro, 45 Gordon Street,  
Glasgow

Wednesday 19 December 2007

### IN RESPECT OF:

Arnaud Mela ("the Player") and the citing complaint that the Player's actions breached Law 10.4(a) of the Laws of the Game.

### MEMBERS OF THE DISCIPLINE COMMITTEE: ("the Committee")

Rod McKenzie (SRU - Chairman)

Dr Barry O'Driscoll (IRFU)

Richard McGhee (SRU)

### DECISION OF THE COMMITTEE:

- (i) The Player having accepted that he had committed the act of Foul Play (Law 10.4(a)) for which he had been cited the Committee upheld the citing complaint against the Player.
  - (ii) The Committee suspended the Player for a period of 3 weeks from Wednesday 19 December 2007 until Tuesday 8 January 2008 (inclusive).
  - (iii) The Committee determined that the Player should bear the costs of the hearing and of the Disciplinary Officer (including legal costs). However, by reason of there being four hearings on the same day and in all four cases costs being awarded against the player concerned, the Player in this case is to bear one quarter of the costs of the day's hearings and the legal costs of the Disciplinary Officer.
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## **INTRODUCTION**

The Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel, pursuant to the Disciplinary Rules of the European Challenge Cup 2007/2008 in respect of a citing complaint made by Iain Goodall, who The European Rugby Cup Limited ("ERC") appointed to act as the Citing Commissioner for a Match between Sporting Club Albigeois ("Albi") and Bath Rugby in the 2007/2008 European Challenge Cup on 7 December 2007 at the Stade Municipal Albi ("the Match"). The citing complaint alleged that the Player had struck the Bath number 4, Steve Borthwick, on the face with his fist. The Citing Commissioner cited the Player for infringement of Law 10.4(a).

Present at the hearing, in addition to the members of the Committee, were:-

John Doubleday (RFU – observing)

Roger O'Connor (Disciplinary Officer, ERC)

Max Duthie (Lawyer for Disciplinary Officer)

The Player elected not to attend or be represented.

## **HEARING**

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 a complaint by the Disciplinary Officer pursuant to a citing complaint arising out of the Match for which the ERC had appointed Mr Goodall as Citing Commissioner.

The Chairman confirmed that all present had in their possession all relevant written materials and video coverage of the incident which had been provided to the Chairman in connection with the citing complaint and that the Player had been sent copies.

### **CITING COMPLAINT**

In a letter from Albi sent on behalf of the Player he accepted that he had committed the act of Foul Play alleged against him. The Committee therefore upheld the citing complaint and proceeded to determine what sanction, if any, should be imposed on the Player.

### **SANCTION**

In determining the appropriate sanction, if any, to be imposed on the Player the Committee had regard to the video evidence made available to them, representations on that video evidence by Mr Duthie, two emails from Bath giving details of the injuries sustained by Mr Borthwick and the letter from Albi dated 29 November 2007 (sic). The Committee also considered submissions made on behalf of the Disciplinary Officer by Mr Duthie.

The Committee found it established that at approximately the twentieth minute of the Match the Player was in a ruck along with Mr Borthwick. Mr Borthwick made legal contact with the Player over the ball and when the ball had gone the Player punched Mr Borthwick on the face with considerable force. Mr Borthwick then went to ground. The punch caused 2 of Mr Borthwick's teeth to go through his upper lip causing bleeding. No stitching was required. Treatment was given on the field. Mr Borthwick was not replaced and he missed no matches. The Player's claim of being head butted by Mr Borthwick could not be verified.

An intentional blow having been delivered by the Player to Mr Borthwick and that blow having been delivered with force, the Committee did not believe that the act of Foul Play committed by the Player would not have warranted a red card. Accordingly, a period of suspension falls to be imposed on the Player. This is not a case in which Disciplinary Rule 6.7.41 applies.

In determining the appropriate sanction the Committee are required to have regard to Disciplinary Rules 6.7.32, 6.7.34 and 6.7.35 and the current IRB table of sanctions which is reprinted as appendix 3 to the Disciplinary Rules.

With respect to Disciplinary Rule 6.7.32 the Committee determined that the offending was intentional, in the sense that the Player intended to punch Mr Borthwick on the face. The offending was reckless in the sense that striking out in the way that the Player did recklessly exposed Mr Borthwick to the danger of injury. Under reference to 6.7.32(c) it was the fist of the Player that was used to deliver the blow. There is no element of self-defence. The Player claimed provocation in the form of a head butt, but this could not be verified.

The effect on the victim was a minor injury. Mr Borthwick was not removed from the game.

Mr Borthwick was vulnerable, in the sense that he would not have been expecting a blow to the face and the part of his body affected was vulnerable to injury. There was a significant level of participation in the offending by the Player but no premeditation. This was not a premeditated act but it was completed. There is no other feature in the conduct which was relevant.

Taking all of these factors into account the Committee determined that this was a mid-range offence.

The mid-range figure, per appendix 3, for a strike with the fist is five weeks and that was the Committee's starting point. The Committee then considered Disciplinary Rule 6.7.34, to identify if there were any aggravating features. The Committee did not consider that there were any aggravating features in this case.

As far as Disciplinary Rule 6.7.35 is concerned, that is mitigating features, we acknowledge that there was an early admission of guilt. The Player is of good record and of good character. The Player gets no credit for age and experience because no information was provided to the Committee on these issues. He did not attend the hearing. He showed and gets due credit for, showing full remorse for his actions. There were no other off-field mitigating factors. The Committee decided that the appropriate discount from five weeks was 50%, the maximum permitted by Disciplinary Rule 6.7.37, which results in a suspension of between 2 and 3 weeks. On application of Disciplinary Rule 6.7.38 the suspension is rounded up to the nearest whole number of weeks and, therefore, the period of suspension is three weeks, effective as of 19 December 2007.

## **COSTS**

The Disciplinary Officer sought an order for costs against the Player in terms of Disciplinary Rule 6.7.45. The Committee determined to award costs against the Player in relation to the costs of holding the hearing, the travel and accommodation costs of the members of the Committee and the legal and travel/accommodation costs of the Disciplinary Officer.

In respect that there were four hearings on the same day, and in each case costs were awarded in favour of the Disciplinary Officer, this Player will be responsible for one quarter of the total costs of the day.

The parties were advised of their right to appeal in the notification of the decision of the Committee.

Date

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**Rod McKenzie**  
**Chairman**  
**Disciplinary Committee**