

EPRC CHALLENGE CUP

Decision of Disciplinary Committee

Hearing Held at Sofitel, Heathrow

27 January 2017

In respect of:

Ben Howard ("the Player"), Worcester Warriors.

And

A Citing Complaint ("the Complaint") brought by Tim Lowry, the Citing Commissioner appointed to the match played between Worcester Warriors and Enisei-STM at Sixways Stadium, Worcester on 21 January 2017 ("the Match") alleging that during the Match the Player committed an act of foul play contrary to Law 10.4(a) of the Laws of the Game, striking an opponent with his knee.

The Disciplinary Committee ("the Committee"):

Roger Morris (Wales) (Chair) (Wales)

Jean-Rene Hegoburu (France)

Tom Rees (England)

Decision

- (i) The Committee found that the Player did not commit the act of foul play alleged and therefore the Complaint was not upheld.
- (ii) The Player is immediately free to play the game.

Introduction

The Committee was appointed by Professor Lorne D Crerar, Chairman of the EPRC Disciplinary Panel, to consider the Complaint made against the Player for his alleged offending in the Match played in the EPRC Challenge Cup ("the Tournament"). A hearing was necessary because Tim Lowry, the Citing Commissioner appointed to the Match, had cited the Player for an alleged breach of Law 10.4(a) of the Laws of the Game – striking an opponent with his knee.

In addition to the members of the Committee the following were present at the hearing:

- The Player
- Mark Hewitt – Head of Worcester academy
- Ray Tully – Counsel representing the Player.
- Liam McTiernan – the Tournament disciplinary officer ("the Disciplinary Officer")
- Danny Rumble – assisting the Disciplinary Officer

The parties agreed that the Hearing would be conducted in accordance with the provisions of the Tournament's Disciplinary Rules applicable to Season 2016/2017 ("The Rules" in the plural and "DR" in the singular").

The materials distributed to the parties in advance of the Hearing comprised:

- Citing Commissioner's Report – the Complaint
- Letter from the Disciplinary Officer to Professor Crerar informing him of the complaint
- Notice of Hearing dated 24 January 2017
- Statement from E11
- Letter from E11's club
- Medical reports and photographs concerning E11's injury
- The Player's responses to standing directions
- Video of the incident under consideration

In addition Worcester had a video of the incident from a different angle. It was agreed that that be shown as well as the video upon which the Complaint was based.

There were no preliminary issues that either party wished to raise.

The Hearing

It was noted that in his responses to the standing directions set out in the Rules the Player denied that his actions constituted foul play or that they warranted his ordering off by the issue of a Red Card. The Player confirmed that remained his position. It was agreed, therefore, that the first purpose of the Hearing was to consider the evidence with a view to deciding if an act of foul play had been committed by the Player and if so whether that act warranted the issue of a Red Card.

The Chairman said that in circumstances where a player faced a citing complaint, the burden of proving the case on behalf of the Tournament lay with the Disciplinary Officer. Mr Tully and the Disciplinary Officer agreed.

The Tournament's Case

The Disciplinary Officer first referred to the written items of evidence before the Hearing.

The medical evidence was deficient in that no report had been obtainable from the Royal Worcester Hospital where the E11 had been taken from the Match and a final full report was still awaited from his home in Russia. There was, however, a report from E11's club's doctor which spoke of E11 having suffered fractures to his right cheekbone and upper jaw. Clearly therefore the impact between the Player and E11 had been significant but, as the Disciplinary Officer helpfully conceded, the seriousness of injury did not of itself measure the seriousness of the act that caused it.

The two photographs of E11 showed bruising around his right eye. That one of those photographs appeared to show bruising to the left eye was explained by the fact that the image had been reversed by the camera. Both photographs actually showed a bruised right eye.

The Disciplinary Officer then referred to the officials' reports. He read the description of the incident set out in the Complaint but again conceded that the report had been written from viewing the same video footage that was available to the Hearing. The Committee would therefore be able to form its own

opinion of what was shown. The incident had not been noted during the Match by the citing commissioner and the referee, as his email confirmed, saw nothing untoward either.

The matter had been referred to the citing commissioner by E11's club.

The Disciplinary Officer read a letter from the club expressing the view that their player's injury was the result of foul play that should be dealt with by the disciplinary process. E11 himself had written as follows:

“During the game our #10 kicked the ball near the opponent's score line. I run towards the ball. Firstly, the ball seem to go out but then I saw it moving towards the score line. I decided to pick it while falling down and score a try. When I started falling down I got hit on the face by a leg. I did not see the very moment, it may have been a knee. I asked for a substitution since the pain was unbearable and I could not keep on playing. Then I understood that something wrong was with my face and went to the hospital. There I got x-rayed and was told that it was a fracture.”

The Disciplinary Officer then introduced the video evidence. The videos showed Enisei-STM in possession of the ball attacking into Worcester's 22 and toward the left hand corner. The Player was tracking across the field behind his three quarters and parallel with the try line. The ball was chipped through by an Enisei-STM payer and rolled towards the corner. The Player and E11 arrived at the ball together and there was a collision between the two of them as the Player attempted to take the ball out of play as E11 dived at it in attempt to score in the corner.

There was a collision between the two protagonists from which E11 was left laying in the ground where he was treated by his team's physios and from where E11 left the field of play.

The Disciplinary Officer suggested the videos supported the facts as set out in the Complaint

The Player's position

Dealing first with the Tournament's video the Player, questioned by Mr Tully and pointing to the video as it was played frame by frame, made the following points:

- E11's team was attacking when the ball was chipped into the Worcester 22
- At this moment E11 was following up but the Player, tracking across the field, was entirely focussed on the rolling, bouncing ball immediately alive to his responsibility to shepherd it out of play
- He would have been aware of the approaching E11 but only in his peripheral vision, concentrating as he was on the job in hand and weighing his options for doing that job
- Initially the ball seemed to be rolling into touch a meter or so short of the line but it bounced awkwardly and diverted towards the corner flag presenting an opportunity for the opposition to score
- Having weighed his options the Player decided to kick at the rolling ball which he considered to be bouncing free of any other player's possession and therefore a legitimate target for his kick
- In the event the Player and E11 reached the ball at almost the same time so that they collided with both players and the ball all falling out of play together
- Although acknowledging that E11 was injured in the collision such that there must have been forceful contact, the Player himself had not felt any appreciable contact with his knee or any other part of his leg and, as could be seen, walked away from the incident with no ill effect
- He doubted in any event that it was specifically his knee that could have made contact and pointed to frames in the video to support that contention
- He was unaware that E11 had suffered serious injury until Monday after the game and although acknowledging the injury happened as a consequence of the collision, maintained the collision

was a rugby accident that happened in a 50/50 situation in which the Player had done what he was legitimately entitled to do.

Answering questions posed by the Committee the Player also said:

- Although he was aware of the presence of the opposition that awareness was peripheral to his prime focus which was the ball
- He had felt no sense of impact and, for example, had no dead leg or pain in his knee indicative of the part of his leg that must have made contact with E11
- He could not say if E11 had grasped the ball before the impact or not but when he set himself to kick, the ball was rolling along the floor and therefore free to be played

The Parties' submissions :

The Disciplinary Officer suggested that whatever the Player could have done he should not have kicked at the ball and that it was not reasonable for him to have done so in the circumstances. He accepted the Player did not intentionally set out to kick E11 but that in doing so he had acted recklessly and therefore in a manner contrary to the Laws of the Game.

The Disciplinary Officer urged the Committee to find on the balance of probabilities that an offence had been committed and that the Complaint be upheld.

Mr Tully urged a contrary view. What the Player had done in pursuit of his legitimate objective of clearing his line was not uncontrolled, unconsidered or reckless. He pointed again to the lack of reaction by any player or official to what had happened and pointed also to the Player's own account which, he suggested, was given with honesty and openness.

Mr Tully also suggested that E11 had a responsibility for his own safety and that diving on a loose ball at the feet of another player might also be considered reckless in the sense that he had no concern for his own safety.

Consideration by the Committee

The Committee, reminding itself that the applicable standard of proof in disciplinary cases brought under the Rules is the balance of probabilities, reviewed all the evidence placed before it and did so in the light of the representations made by the Disciplinary Officer and by the Player and Mr Tully on his behalf.

In particular the Committee reviewed the video evidence.

The Committee concluded as follows.

As the Player tracked across the pitch and E11 chased the rolling ball both anticipated, at first, that it would roll out of play short of the Worcester try line. At the last moment it bounced right and towards the try line giving the Player the responsibility of getting the ball out of play and E11 the opportunity of scoring a try. Both were focussed on the ball and concentrating on their own objectives.

In terms of the Player's actions the Committee accepted that in no sense could he be said to have deliberately aimed his knee, leg or foot at E11. The question for the Committee to answer was whether the Player had been reckless about the consequences of his actions or whether E11, perhaps reckless for his own safety, had dived into the path of the Player such that their collision was nothing more than an accident of the sort that is always possible on the rugby pitch.

The video evidence, unfortunately, was not sufficiently clear to allow the Committee to analyse what had happened with any precision and therefore to answer the question with certainty. The video was however consistent with the Player's account of what had happened.

The Committee also noted the complete lack of reaction from any player on either side and also from the referee and his assistant who were in close proximity to the incident.

In the final reckoning there was sufficient doubt in the Committee's mind that it would be impossible for them to uphold the Disciplinary Officer's submission that on the balance of probabilities the Player had committed the cited foul. On the balance of probabilities what happened was an accident. The Complaint would be dismissed.

The Hearing was re convened and the parties told of the Committee's decision.

Before ending proceedings the Chairman reminded the parties that the Rules afford them the right of appeal.

A handwritten signature in black ink, appearing to read 'R. Morris', written in a cursive style.

Roger Morris (Chairman)

4 February 2017