

EPRC CHAMPIONS CUP

DECISION OF JUDICIAL OFFICER
Hearing Held by Skype Conference Call
14 December 2016

In respect of:

Cyril Baille (“the Player”) , Toulouse

and

The Citing Complaint (“the Complaint”) brought by Tim Lowry, the Citing Commissioner appointed to the match played between Zebre and Toulouse at Stadio Lanfranchi, Parma, Italy on 10 December 2016 (“the Match”) alleging that during the match the Player committed an act of foul play contrary to Law 10.4(f) of the Laws of the Game, playing an opponent without the ball.

The Judicial Officer:

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

Decision

- (i) The Player having accepted that he had committed the alleged act of foul play and that his act warranted the issue of a red card, the Complaint was upheld;
- (ii) The Player is suspended from playing the game until midnight on 18 December 2016 (1 week)

Introduction

The Judicial Officer 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 Champions 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(f) of the Laws of the Game – playing an opponent without the ball.

In addition to the Judicial Officer the following were present at the hearing:

From Toulouse:

- The Player
- Ugo Mola – Coach of Toulouse
- Jean-Luc Brumont – Toulouse
- An interpreter

From Sofitel Hotel, London

- Liam McTiernan, the Tournament's Disciplinary Officer ("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 Disciplinary 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 13 December 2016
- Email from M Brumont timed at 10.39 a.m. on 13 December 2016 setting out the Player's position
- Video clips of the alleged incident

The Hearing

It was noted that the Email from M Brumont indicated the Player accepted he had committed an act of foul play.

The parties and the Judicial Officer coordinated their watching of the video.

The Player and his team's coach were invited to comment on what was being watched and to explain the Player's position in relation to it. The Player explained that his role in the instant ruck was to clear out his opponent ("Z3") in an effort to help his team win the ball and his only intention as he approached the ruck was to do just that.

He attempted to get his body position above that of Z3 who was facing him and in a low position. If, from here, he could have got his body positioned such that his head was near the bottom of Z3's back he could have grasped him around his torso and used their combined body weights to roll him away from the ruck.

In the event he mistimed and so misdirected his arm movements so that, without an intention to do so, he found his arm around Z3's neck. He accepted that in trying to roll Z3 away from the ruck, with his arm around Z3's neck, he committed the cited foul.

The Judicial officer confirmed with the Disciplinary Officer and the Player's coach that they agreed with the Player in describing the relevant passage of play as a ruck. The Judicial Officer referred to the terms of Law 10.4.(f) which says: "**Except in a scrum, ruck or maul....**". The Hearing might, therefore, need to consider whether the alleged offending should be more accurately classified as a foul in contravention of Law 10.4(k). The distinction, however, might prove to be academic and therefore consideration of the distinction could be left to a later point in the hearing if indeed it then proved necessary to do so.

For the moment it was noted that the Player accepted his actions constituted foul play whatever the classification.

The Disciplinary Officer then sought to clarify whether or not the Player accepted that the foul he admitted committing was sufficiently grave to have warranted the issue of a Red Card. He had not responded formally to the standard directions raised in all cases. Although the e mail written by M Brumont indicated the Player accepted he had committed an act of foul play it did not go further than that.

Before clarifying the position with the Player the Disciplinary Officer thought it might be helpful if he was to adduce at that point further evidence the Tournament wished to place before the hearing. The further evidence comprised a World Rugby memorandum dated 22 May 2015 written by Tim Gresson and Joel Jutge.

The Disciplinary Officer said with candour that when he had first considered the Complaint he had doubts as to whether the Player's offending warranted a Red Card and thought seriously about referring the matter to the citing "gate keeper". Having read the Memorandum, however, and noted the section headed "Dangerous Grasping" he had concluded that the matter should be placed before a hearing and the Memorandum cited in evidence to support the contention that the offending in this case was sufficiently grave that a referee, had he seen it, would have issued a Red Card.

M Ola confirmed that Toulouse was aware of the Memorandum and he had in fact himself heard a presentation from Joel Jutge about it.

The Judicial Officer checked carefully with the Player that he understood the distinction between an act of foul play and an act of foul play meriting a Red Card. Having satisfied himself that the Player understood, the Judicial Officer then asked if the Player accepted the cited foul play as sufficiently serious to merit a Red Card. The Player said that he did. The Judicial Officer, wary of any misunderstanding as a consequence of communicating at a distance and through an interpreter, asked a second time and the Player confirmed a second time that he accepted his actions would have led to a Red Card had they been observed by the referee.

The Judicial Officer therefore confirmed with the parties that the purpose now of the hearing was to determine what sanction, if any, should be imposed on the Player. He explained that his thought processes when making his decisions were required to follow the path set out in the Rules and invited representations from the parties. The Disciplinary Officer had no representations to make in relation to the entry point to be applied.

The Player reiterated that his intention was to grasp Z3 around his torso and the fact that he grasped around the opponent's neck was an unintentional if reckless mistake. Z3 did not suffer any injury or harm. The Player is enthusiastically still learning the game and made an unfortunate error for which he apologised.

Assessment of Sanction:

The Judicial Officer made the following assessments by reference to DR7.8.32 and the features listed in the rule.

(a) & (b) : the offending was the reckless consequence of an attempt to perform a legitimate act and not a deliberate or intentional commission of a foul

(c) & (d) : the strength of the grasp by the Player's arm around the neck of Z3 was sufficient to achieve the intended purpose of removing Z3 from the ruck but the grip was swiftly released and caused no ill effect.

(e) (f) & (g) : there was no provocation, retaliation or self defence involved.

(h) & (i) : there was no effect either on Z3 or the Match

(j) : there was no unusual vulnerability of Z3 to the foul that was committed against him.

(k) & (l) : the level of participation was full, the act was completed but there was no premeditation to commit a foul.

(m) : there were no other features to be considered

In the light of the above the Judicial Officer was satisfied that the Lower End entry point was the correct entry point to reflect the seriousness of the Player's offending. For an offence in breach of Law 10.4(f), as cited, this represents an entry point of two weeks' suspension. The parties had however agreed that the offence had taken place in a ruck, an observation with which the Judicial Officer agreed. Law 10.4(f) says in terms: "**Except in a scrum, ruck or maul...**". Law 10.4 (f) should not, therefore, have been the Law cited in the Complaint.

The Judicial Officer noted that the Sanction Table at Appendix 3 of World Rugby's Regulation 17 (specifically incorporated in the Rules) sections 10.4(f) not only as a stand alone section but also as a combined section with 10.4 (k). Law 10.4.(k) deals with dangerous play in scrums, rucks and mauls. It seemed to the Judicial Officer that the appropriate classification of the offending being considered was as a breach of Law 10.4(k).

But dangerous play is dangerous play whatever the classification and in this case the debate was academic because the lower end entry point for both classifications is two weeks' suspension. It would however have made a difference at a higher entry point and therefore emphasises the need for citing complaints to consider carefully where an act of offending sits within Law 10 of the Laws of the Game.

The Judicial Officer then turned to consider, in terms of DR 7.8.34, whether there were any aggravating features that might increase the period of suspension. The only relevant consideration was whether, by virtue of the Memorandum introduced into evidence by the Disciplinary Officer, it was necessary to reflect a pattern of offending within the game. The Disciplinary Officer had been reluctant to urge that the Memorandum be taken into account in this way, noting that in his lengthy experience of dealing with discipline cases, this was the first case of this kind that he had dealt with or seen. Hardly a pattern, at least in the Tournament.

The Judicial Officer, inclined to agree with the Disciplinary Officer, also noted that the Memorandum itself is somewhat confused and confusing in its references only to Laws 10.4 (e) and 10.4(f). Although the Memorandum refers to grasping around the neck it does so in the context of these two Laws and what it terms "the breakdown". There is no reference to Law 10.4(k) or rucks (or, for that matter, mauls).

Law 10.4 (f) could not apply because what happened took place in a ruck and Law 10.4 (e) could not apply because that relates to tackles and this was not a tackle because, apart from anything else, Z3 did not have the ball.

"The breakdown" is a term, although widely used in the Game, that is neither defined nor mentioned in Law 10. The Judicial Officer did not consider it his role to create his own definition of "the breakdown" so as to massage the terms of the cited Memorandum to allow him to conclude there was a pattern of offending that needed deterrent by further penalising the Player in this case. That notion was reinforced by what the Disciplinary Officer had said about his experience.

Turning to mitigating features in terms of DR 7.8.35 the Judicial Officer noted the Player's clean record as a senior player, his good character as attested to by his coach, his youth and inexperience to the particular extent that he had recognised the need to learn and improve his technique, the positive manner in which he and his club had embraced and approached the disciplinary process and his ready and remorseful acknowledgement of culpability. In the light of these observations the Judicial Officer was comfortably satisfied that the Player could properly be afforded the benefit of maximum mitigation possible under the Rules, 50% of the Entry Point suspension, in this case one week.

The Player would be suspended from playing for the period of one week, a length of suspension, in the Judicial Officer's determination, that was not, again in terms of the Rules, wholly disproportionate to the

level of the Player's offending. The period of suspension would run up to and include Sunday 18 December so that the Player would be free to play again on Monday 19 December.

The parties were informed of the Judicial Officer's decision and reminded that the Rules provide the means to appeal against it.

A handwritten signature in black ink, appearing to read 'Roger Morris', with a stylized flourish at the end.

Roger Morris

December 16 2016