

DECISION OF THE INDEPENDENT JUDICIAL OFFICER
AMLIN CHALLENGE CUP 2013/14

Held by video conference (Skype), on Thursday 24th October 2013

In respect of:

Giacomo BERNINI (“The player”)

And

The Ordering-off of the Player for an offence contrary to Law 10.4(a) of the Laws of the Game namely striking with head in the Amlin Challenge Cup match between I Cavalieri Prato and Stade Français played on 19th October 2013 at the Enrico Chersoni Stadium, Prato.

Judicial Officer appointed to hear the case:

Jean Noel Couraud (France) (“The judicial Officer”)

Decision of the Judicial Officer:

(i) As the Player had accepted that the Referee was correct to order him off, the Judicial Officer had to determine what suspension or other sanction should be imposed upon the Player, if any;

(ii) The Player is suspended from taking part in the game of rugby up and to including Sunday 8th December 2013. The Player is free to resume playing rugby on 9th December 2013. This represents a 5 week suspension commencing on Saturday 19th October 2013.

(iii) The judicial Officer made no award for the costs.

Introduction.

1. The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the ERC’s Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Amlin Challenge Cup 2013/2014.

2. The Judicial Officer was appointed to consider the Ordering-off of the Player in the match between I Cavalieri Prato and Stade Français played on 19th October 2013 at the Enrico Chersoni Stadium, Prato.
3. David Wilkinson was appointed as the referee to this match and had ordered the Player off for striking an opponent with his head in contravention of Law 10.4(a) of the Laws of the Game.
4. In addition to the Judicial Officer, the following persons were present at the hearing by video conference (Skype):
 - The Player
 - Mr Frederico Oggioni , I Cavalieri Prato
 - I Cavalieri Prato Assistant Coach
 - Mr Liam Mc Tiernan, Disciplinary Officer, ERC

Preliminary matters and procedure.

5. At the commencement of the hearing the Judicial Officer confirmed the identities of all present.
6. The Player confirmed that he had received all relevant documentation circulated by the Disciplinary Officer which is set out below.
7. The Judicial Officer outlined the procedure to be followed to determine the matter .The Player and all present agreed to proceed on that basis.
8. The Player and Mr Frederico Oggioni stated that no preliminary matters arose and therefore the following documents were considered:
 - Sending Off Report from David Wilkinson, Match Referee;
 - Report on Red Card from Eddie Hogan-O'Connell, Assistant Referee;
 - Statement from Richard Kerr, Assistant Referee;
 - Statement Letter to Chairman of the Disciplinary Panel;
 - Statement in French from Adrea Cocagi, 'victim' player;
 - Translation in English of Statement of Adrea Cocagi;
 - Medical Statement in French from Alexis Savigny, Stade Francais Team Doctor;
 - Translation in English of Medical Statement from Alexis Savigny;
 - Statement of Giacomo Bernini, the Player;
 - The video footage of the incident;
 - *Tsnobiladze* and *Guillemain* Decisions.
9. The Judicial Officer had noted that the Player accepted in his written statement that he committed an act of foul play and that this act warranted a red card. The Player confirmed the terms of his written statement.

10. In those circumstances the Judicial Officer stated that he would determine an appropriate sanction, if any.

Evidence supporting the Ordering-off

11. The Ordering-off report stated:

“After 23mins of the first half, AR 1 (Eddie Hogan-O’Connell), had a flag for foul play. I had not seen the incident. He reported to me that the C. Prato No.8 had run into a ruck leading with his head. Upon doing so, he struck an opponent (Stade 14) on the head, with his head.

Having not seen the incident, I asked AR1 for a recommendation and he recommended a Red Card.

As a result, I dismissed the C. Prato No.8 from the field of play.”

12. The report on red card from the Assistant Referee stated:

“N°8 (Prato) ran into a ruck leading with his head. He struck an opponent (Stade 14) on the top of his head with his own head”

13. The Adrea Cocagi’s statement read as follows:

« I, the undersigned, Adrea Cocagi, attest to having played in the match in the Amlin Challenge Cup 2nd Round against Cavalieri Prato on Saturday 19th October. The match took place in Italy on the ground of the Prato team.

In the course of the match, I was hurt on the head by an opponent on the Prato team, GiacomoBernini, in the course of a ruck in the 23rd minute. As the ball came out of the ruck, my opponent came up against my head with his. My feeling is that the action was done in a voluntary manner and knowingly by my opponent.

My opponent did not come to me and offer any apologies after the match. I did not speak with Giacomo Bernini after the match, but I have asked his team-mates to tell him not to repeat such actions on the pitch (...).”

14. The video footage showed:

- A ruck is formed;
- The Player comes a first time into the ruck to clean it and hits the Stade Français number 2 in the head with his head;
- The Player gets up and goes out of the ruck;
- He looks only at the Victim Player that protects the ball with two Stade Français players (number 3 and number 7) behind him;
- At this time the Player is clearly not interested to the ball (protected by Stade Français ‘s players) and the game;
- Thereafter he runs into the ruck and strikes the Victim Player in the top of the head with his head.

15. The Stade Français Team Doctor stated that Victim Player “(.) *was the victim of a contusion of the skull without cerebral concussion (.)*”. He said that the Victim Player is fit to participate in the planned next match.

Player’s defence

16. The Player said that:

- He intended to enter the ruck to speed up the game because this opponents wanted to slow the ball down;
- The infringement was not intentional or deliberate but reckless;
- He tried to meet the Victim Player after the match to apologize but the Stade Français team was already gone ;
- He has a clean disciplinary record.

17. The Player suggested that:

- The appropriate entry point of available sanctions for a law 10.4 (a) was low end in those circumstances;
- There were no aggravating factors;
- There were mitigating factors.

Disciplinary Officer Submissions

18. The Disciplinary Officer suggested that the judicial Officer should consider the Rugby World Cup Decision of Tsnobiladze and the Amlin Challenge Cup Decision of Guillemain to determine the entry point of the sanction.

19. He seemed considered that the Offence should be categorise as being “low end” of the scale of seriousness, but left the matter to the discretion of the Judicial Officer.

20. He accepted that there were no aggravating factors and that there were mitigating factors.

Findings

21. The Judicial Officer retired to consider his decision in private. The Player had admitted the act of foul play and it was to the judicial Officer to review all the evidence and consider whether the act merited a suspension from the game.

22. In determining the true facts of the incident, in particular whether the act was intentional or reckless, the Judicial Officer having taken into account a detailed consideration of the video footage and the statement of the Victim Player.

23. The video footage demonstrated the intentional and deliberate nature of the infringement, attested by the Victim Player in his statement.

Sanction

24. The Judicial Officer noted that the offence of 10.4(a) 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, 4 weeks.
- Mid range, 10 weeks.
- Top end, 16+ weeks.
- Maximum sanction, 104 weeks.

25. Applying his findings to the criteria under DR 6.7.32 ,the judicial Officer determined as follows:

- *The offending was intentional and deliberate;*
- *It was not reckless.*
- *There was no provocation and the Player did not act in retaliation and in self defence.*
- *There was a little effect upon the Victim Player as it was described in the Stade Français Team Doctor Statement.*
- *The Victim Player was vulnerable in that he was not able to prevent, or defend himself from, the infringement.*
- *The offending was premeditated and complete.*

26. In these circumstances, this offending can be assessed as at the Mid Range of the scale of seriousness.

27. The entry point for Mid Range offending under law 10.4(a) namely striking with head is 10 weeks.

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

29. In assessing aggravating factors as required by DR 6.7.34, the Judicial Officer then considered that there was no aggravating factor.

30. With reference to DR 6.7.35, the Judicial Officer considers that the following are mitigating circumstances to take into account in determining the appropriate period of suspension.

31. The Player was entitled to credit for immediately admitting the act of foul play. He had demonstrated some remorse.

32. He has a clean disciplinary record and a good character. He is inexperienced.

33. His conduct at the hearing was good.
34. In those circumstances, the Judicial Officer felt that he was entitled to the maximum mitigation at 50 % and would reduce the sanction by a period of five weeks.
35. The Judicial Officer determined that the appropriate sanction was the imposition of a period of suspension of five weeks.

The Imposition of the Period of Sanction further to DR 6.7.44

36. The player's suspension commenced from the date of the incident namely Saturday 19 October 2013.
37. Further the DR 6.7.44 (b) (iii) the Judicial Officer in determining the length of the suspension, shall take in consideration all playing consequences of such a suspension, and exclude any period in which the player is not expected to play.
38. The Player is expected to play four matches before the "2013 Autumn Internationals". He is not expected to play during "2013 Autumn Internationals".
39. He is expected to play, after the "2013 Autumn Internationals", for the next Amlin Challenge Cup round in 7 December 2013.
40. Consequently, the Player is suspended from taking part in the game of rugby up and to including Sunday 8th December 2013. The Player is free to resume playing rugby on 9th December 2013. This represents a 5 week suspension commencing on Saturday 19th October 2013

Appeal

41. The Player and the Disciplinary Officer are reminded that DR 7.1 provides a right of appeal against this decision.

Costs

42. The Judicial Officer made no award for the costs.
43. There being no further matters to consider, the proceedings were closed.

Dated 28th October 2013

Jean Noel COURAUD
Judicial Officer

