

# HEINEKEN 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:

Perry Freshwater ("the Player") and the citing complaint that the Player's actions contravened Laws 10.4(a) and 10.4(k) 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 (contravention of 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 4 weeks, from and including 19 December 2007.
- (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 Heineken Cup 2007/2008 in respect of a citing complaint made by John West, who The European Rugby Cup Limited (“ERC”) appointed to act as the Citing Commissioner for a Match between USA Perpignan and London Irish in the 2007/2008 Heineken Cup, on 15 December 2007, at the Stade A. Giral (“the Match”). The citing complaint alleged that the Player had struck the London Irish number 6, Mr Kieran Roche on the face. The Citing Commissioner cited the Player for infringement of Laws 10.4(a) and 10.4(k).

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 (Solicitor) (for the Disciplinary Officer)

The Player (by teleconference)

Patrick Dahann (Advocaat) (for the Player)

## **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 West as Citing Commissioner.

The Chairman confirmed that all present (personally and by teleconference) 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.

## **CITING COMPLAINT**

The Committee identified that the cited infringement of each of Laws 10.4(a) and 10.4(k) arose out of the same set of facts. There were not two separate incidents of Foul Play involved in this matter. The Committee therefore disregarded the cited infringement of Law 10.4(k) and proceeded on the basis that the citing was for an infringement of Law 10.4 (a), the facts alleged against the Player being that the Player struck the London Irish number 6 on the face.

The Player was asked whether he accepted that he had committed the act of Foul Play alleged against him and the Player accepted that he had committed that act of Foul Play. The Committee then 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 and Monsieur Dahann, oral evidence from the Player, a photograph of the injuries sustained by Mr Roche, a report by Dr Mike Bundy in relation to Mr Roche and a statement from Mr Roche dated 17 December 2007. The Committee also considered submissions made on behalf of the Disciplinary Officer by Mr Duthie and on behalf of the Player by Monsieur Dahann.

The Committee found it established that at approximately the thirty first minute of the Match the Player was standing and leaning over a collapsed scrum. The Player had his hands on one or more of the players in the collapsed scrum. Mr Roche came up behind the Player and took hold of the clothing of the Player to pull him away from the collapsed scrum. This is an unexceptional act, is seen routinely in rugby and has little, if any, provocative content. The Player reacted by lashing backwards with his left arm in order to strike a blow to the player who had hold of his clothing. The Player was apparently indifferent as to whom he was lashing out at. A forceful blow was struck to the left eye socket of Mr Roche by the left elbow of the Player. Mr Roche immediately went to ground. The Player intended to strike the player who had hold of his clothing although he did not intend to strike that player in the eye with his elbow. The Player was reckless as to which part of his arm struck the player behind him and where on that player the blow would fall.

Mr Roche was immediately removed from the Match and played no further part. An urgent ophthalmological examination took place following the Match where it was established that Mr Roche's eyeball had taken a significant blow but had not been ruptured. However there was bleeding from the anterior chamber. A detached retina could not be excluded but a CT scan confirmed a fracture of the orbit with pooling blood. Eye drops were prescribed to prevent infection and reduce pressure within the eye.

The fracture was later confirmed by a surgeon and it was anticipated that Mr Roche would be out of rugby for 4 weeks. The surgeon took the view there had been a significant impact although bleeding had by that time ceased. The eye pressures were stable and the eye was to be allowed to settle. At the time of the hearing there was no confirmation of retinal detachment.

An intentional blow having been delivered by the Player to Mr Roche 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 physically remove Mr Roche from contact with him. The Committee did not consider that the Player intended to strike Mr Roche in his eye with the Player's elbow but, in the context of 6.7.32(a) there was an intended strike with some part of the arm to some part of the person of Mr Roche. The offending was reckless only in the sense that striking out in the way that the Player did recklessly exposed Mr Roche to the danger of a blow from the Player's elbow.

Under reference to 6.7.32(c) it was the elbow of the Player that came into contact with the eye socket of Mr Roche, and not any other part of the Player's arm. This was partly established by the video evidence and partly on the medical input from Dr O'Driscoll, one of the members of the Committee, who was able to advise that a fracture of the base of the orbit of the eyeball would not typically be caused by a forearm. It would need some hard object, such as an elbow, into the eye socket to cause the fracture, unless there was a punch directly in the eyeball, which was not the case in this incident. The video clearly shows that the blow was caused by a violent lashing out and not by a shrug, as unconvincingly claimed by the Player. It was a directed physical effort by the Player to remove Mr Roche from contact with the Player.

There was no element of self-defence. Conceivably, one could regard Mr Roche's pulling the clothing of the Player in order to remove him from the collapsed scrum as being provocation but provocation only of the mildest kind. It is the sort of thing that happens in match after match where scrums have collapsed or rucks have come to an end. Players are routinely pulled away in such circumstances. Such innocuous behaviour cannot justify or excuse the sort of violent response that occurred in this case.

The effect on the victim was serious. The injury was serious, although not as catastrophic, as it could conceivably have been. Mr Roche was removed from the game. It is impossible to say what the effect of the Player's actions were on the outcome of the game but we do note that it was 3-3 at the time and it was 31 minutes into the Match so it was apparently, until that point at least, a tight game. In terms of effect on the game we are only prepared to go as far as saying the effect was the enforced substitution of Mr Roche at a time when he would not otherwise have been substituted.

Mr Roche was vulnerable, in the sense that he would not have been expecting and was not defending himself against a blow to the face and the parts of his body affected, his eye and eye socket, were particularly 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 was 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. Given the extent of the injury and the violence of the act, this might have been categorised as a top end offence but the Committee came to the conclusion that, because it was not a directed blow, involving intentional use of the elbow to the eye, it would be appropriate to categorise the offence as mid-range.

The mid-range figure, per Appendix 3, for a strike with the elbow 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, mitigating features, we acknowledge that there was an admission of guilt, although only at the commencement of the hearing.

There was no response to the standard directions notified in the email from the Committee Clerk of 17 December 2007. In those standard directions the Player was specifically asked whether or not he admitted the act of Foul Play. Whilst the Committee did not decide to impose any specific additional sanction on the Player for failure to respond to the standard directions, in terms of Disciplinary Rule 6.7.10, the failure to respond counts against the Player, in terms of the extent of mitigation, having regard to Disciplinary Rule 6.7.35(a) (timing of acknowledgement of guilt/culpability).

The Player is of good record and of good character. The Player gets no credit for age and experience, in respect that, broadly speaking, he should know better at his age and level of

experience. His conduct, other than in respect of responding to the standard directions, prior to and at the hearing was exemplary and that counts in his favour. He showed and gets due credit for showing, due remorse for his actions in the sense of contacting the doctor and the coach of Mr Roche after the incident and apologising. He repeated this at the hearing. There were no other off-field mitigating factors.

The Committee decided that the appropriate discount from five weeks was 33%, which results in a suspension of between 3 and 4 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 four weeks, effective from and including 19 December 2007.

A potential mitigating factor, per Disciplinary Rule 6.7.35, is “the presence and timing of an acknowledgement of culpability/guilt by the Player;”. In the context of the ERC Disciplinary Rules the presence and timing of a response to the standard directions may be relevant in this context. In a citing case the third question in the standard directions is “whether he [the Player] accepts the citing complaint as a true and accurate account of the incident that resulted in the citing”. The fourth question is “whether he [the Player] accepts that he committed an act or acts of Foul Play and that/those act(s) warranted a red card”.

If a player intends to accept the account of the incident in the citing complaint and/or accept that he committed the act or acts of Foul Play asserted and/or that those act or acts warranted a red card then the appropriate time to communicate such an intention/intentions is by responding timeously to the standard directions. In the view of the Committee a player who fails to respond to the standard directions, and in particular a player who fails to answer questions (c) and (d) in the affirmative, where he intends to do so, within the time provided for in relation to the standard directions, is not giving notice of an acknowledgement of culpability/guilt at the time when he



ought to so acknowledge same. A Player who fails to respond in the affirmative to those questions in the standard directions, where he ultimately intends to respond positively, ought not to get full credit for acknowledging culpability/guilt.

Had the Player in this case responded to the standing directions within the time provided in the Disciplinary Rules, i.e. not less than 24 hours prior to the hearing (Disciplinary Rule 6.5.5), then the discount would have been 40% and the period of suspension would have been 3 weeks from and including the date of the hearing. This was the consequence of the Player's failure to respond timeously to the standard directions. See the terms of Disciplinary Rule 8.7.10.

## **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 rights of appeal at the conclusion of the hearing.

Date

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