

DECISION OF THE INDEPENDENT JUDICIAL OFFICER
EPCR Challenge Cup 2014-15

Held at Huguenot House, St Stephens' Green, Dublin
On Wednesday 21th January 2015

In respect of:

David PAICE ("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 EPCR Challenge Cup match between London Irish and Grenoble played on 17th January 2015 at the Madejski Stadium, Reading.

Judicial Officer appointed to hear the case:

Jean Noel Couraud (France) ("the Judicial Officer")

Decision of the Judicial Officer:

- (i) The Judicial Officer determined that the Player's challenge to the Referee's decision to order him off should not be upheld;
- (ii) The Player is suspended from taking part in the game of rugby up and to including Sunday 8th February 2015. The Player is free to resume playing rugby on 9th February 2015. This represents a 3 week suspension commencing on Saturday 17th January 2015; and
- (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 EPCR's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the European Rugby Challenge Cup 2014/2015 (the "Disciplinary Rules" and "DR" in the singular).

2. The Judicial Officer was appointed to consider the Ordering-off of the Player in the match between London Irish and Grenoble played on 17th January 2015 at the Madejski Stadium, Reading (“the Match”).
3. Dudley Phillips was appointed as the Referee to the 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:
 - The Player
 - Mr Kieran McCarthy, London Irish Head of Rugby Operations
 - Mr Glenn Delaney, London Irish Head Coach
 - Mr Liam McTiernan, representing the EPCR Disciplinary Officer

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 stated that no preliminary matters arose and therefore the following documents were considered:
 - Statement Letter from David Paice to the EPCR Disciplinary Officer;
 - Statement from Bernard Jackman, Head Coach of Grenoble;
 - Referee’s Report on Red Card from Dudley Phillips, Match Referee;
 - Referee’s Report on Red Card from Nigel Correll, Assistant Referee;
 - Statement in French from Julien Caminati, “G 15”;
 - Translation in English of Statement of G 15;
 - Medical Statement in French from Florent Vejux, Grenoble Team Doctor;
 - Translation in English of Medical Statement from Florent Vejux;
 - The video footage of the incident;
 - The video footage of the incident from London Irish; and
 - *Tsnobiladze, Guillemain and O’Connell (Appeal Committee) Decisions.*

9. The parties complied with the Standing Directions. The Player indicated in his written statement sent before the hearing:

“(..) 4. I do not accept that the Official Report (Assistant Referee’s) is a true and accurate account of the incident that resulted in the showing of the red card and the facts surrounding the incident.

5. I do not accept that I committed an act of Foul Play as set in the Official Report (Assistant Referee’s).

6. I do not accept that the act warranted a red card.

7. I will try to show that the referee’s decision to show me a red card was wrong.

8 I say that the referee’s decision was wrong as it was based on the Assistant Referee’s report which I believe to be factually incorrect as stated at Point 4 above. I will rely on the following evidence: my own oral testimony at the Hearing, my Head Coach’s oral Testimony at the Hearing; FC Grenoble’s Head Coach written statement (attached); Video including an end-on angle which I will present at the hearing. (..)”

10. The Player confirmed the terms of his written statement at the Hearing. In those circumstances the burden will be on the Player to prove, on the balance of probabilities, that the Referee’s decision to show him a red card (including where that was the result of consultation with one or both Assistant Referees) was wrong (DR 7.2.10). The procedure to be followed is stated at DR 7.2.2.

Evidence supporting the Ordering-off

11. The Referee’s Report on Red Card stated:

“I was made aware by AR2 (Nigel) that he had a serious flag for foul play against a London Irish player. When the ball was out of play I went and spoke with Nigel. He informed me that he had seen the London Irish No.2 lead with his head and making contact with a Grenoble player”

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

“London Irish (“LI”) were attacking deep into the Grenoble 22. A ruck occurred approximately 5 metres from the Grenoble goal line and approx. 5 metres from my touch line. As the ball was being passed away by the LI half back, a Grenoble player attempted to counter ruck. LI 2 took exception to the counter ruck and re-entered the “ruck” area leading with his head and making contact with the head of the Grenoble player. I flagged the incident and communicated to the referee that I had a “serious” flag against green. After relaying the incident to the referee I recommended a red card be issued to LI 2.”

13. G 15 's statement read as follows:

*"I, Julien Caminati, professional rugby player with FC Grenoble Rugby, certify that:
- I participated in the Challenge Cup match between London Irish and FC Grenoble Rugby at the Madejski Stadium in Reading, on 17th January 2015
- At the 57th minute, M. David PAICE commits a powerful clear out on a ruck and touches the upper part of my shoulder and neck;
- I turn to the assistant referee to protest, thinking it was foul play
- I want to point out however that I was not injured by this action that I was able to keep playing and that I had no trauma after the match;
- In addition, M. David PAICE came to see me in the changing-rooms after the match to Apologise "*

14. The Grenoble Team Doctor certified that G 15 did not receive any particular medical care during the Match.

15. The video footage and the London Irish clip(end –on angle) showed:

- A ruck is formed near Grenoble try line;
- The Player comes into the ruck to protect the ball and the London Irish 9;
- The London Irish 9 takes and passed the ball out of the ruck;
- At the same time G 15 counter rucks the Player strongly but lawful;
- The Player is pushed back;
- The ball is gone;
- The Referee goes to the ball direction;
- The Player re-enters the ruck and makes contact with his left shoulder and his head (the top of the skull);
- He touches G 15's shoulder and neck;
- G 15 reacts immediately. He complains of an illegal act;
- The assistant is approximately 2 metres when the Player re-enters in the ruck. His view is always in the direction of the ruck and nothing obstructs it; and
- He flags the incident.

Player's challenge

16. The Player said that he came at first in the ruck to protect the ball and London Irish 9. He intended only to regain his position in the ruck after he was pushed back by G 15.

17. He touched G 15 only with his shoulders and G 15's head moved back from the impact of a lawful "clean". It was an act in the game and not an act of Foul Play. He confirmed his statement and he said that Assistant Referee's report is factually incorrect because he had no contact to G 15's head with his head.

He referred to the Grenoble Head Coach statement on this point. Mr Jackman stated in the following terms:

"My name is Bernard Jackman and I am the Head Coach here at FCG Grenoble. I am writing this in relation to an incident that lead to a Red Card for the London Irish Hooker David Paice during our European Challenge Cup match last Saturday the 17th January at the Majeski Stadium in Reading.

Having looked at the video footage of the incident and spoken with our player involved our number 15 Julien Caminati I am happy that there was no intent to use the head by the London Irish player. Julien Caminati counter rucked David at the same time as the Irish number nine was passing the ball and David having been knocked backwards during the contact from Caminati moved back forward to regain his position and protect his player. There was no contact made with our players Head and he suffered no injury from the contact. It looks like there may have been contact with his head on the video but Julian told me that his head moved back from the impact of the "Clean"(..)"

18. The Player concluded that the Referee's decision was wrong as it was based on the Assistant Referee's Report.
19. He suggested that the red card should be dismissed.

Disciplinary Officer Submissions

20. Mr McTiernan submitted that the video evidence demonstrates the offending. He said that the Assistant Referee was very near the incident with nothing there to obstruct his view.

Findings

21. The Judicial Officer retired to consider his decision in private.
22. The Player challenged the Referee's decision because some conclusions of the Assistant Referee Report are for him factually incorrect. For him the Assistant Referee erred by writing in his Report that the Player made contact with his head to G 15's head. The Player did not accept that the act warranted a red card.

23. The Judicial Officer referred to the procedure to be followed which is clearly stated at DR 7.2.2 in the following terms:

“ (...) subject to clause 7.2.10 , below the Player may seek to show that the referee’s decision to show the Player a red card (including where the decision was the result of consultation with one or both assistant referees and/or the television match official) was wrong (for example, because the Player had committed no act of foul play or because the act of foul play he had committed did not warrant a red card). For the avoidance of doubt, where a referee’s decision to show a Player a red card was based on the referee at the time of the incident drawing conclusions about certain matters in respect of the incident (for example, the specific point of contact between the Player and an opponent), and some or all of those conclusions subsequently turn out to have been mistaken (for example, because the Player made contact with a different part of his body from that which the referee had initially considered), the Disciplinary Committee will not be precluded from determining that the referee’s decision was not wrong if, for example, regardless of the referee’s conclusions on such matters, the Disciplinary Committee is in any event satisfied that the Player committed an act of Foul Play that warranted a red card”.

24. The issue is to determine if the Player committed or not an act of Foul Play that warranted a red card.
25. In determining the true facts of the incident, the Judicial Officer having taken into account a detailed consideration of the video footage and the statement of G 15.
26. The video footage demonstrated that the Player made a contact with his head to the upper part of G 15’s shoulder and neck. This contact was not lawful or accidental.
27. In *Valery Tsnobiladze*, 28 September 2011, The Judicial Officer stated :

“An act of Foul Play contrary to law 10.4 (a) occurs if a player strikes an opponent with his head. That is what occurred here. If that contact is accidental, as effectively is suggested in this case by the Player and his representatives, then either there is no act of foul play or if there is, there should be no sanction. However, if that contact is deliberate or reckless, then a sanction must be considered.”

28. Therefore The Judicial Officer is satisfied that the Player committed an act of Foul Play that warranted a red card. In those circumstances The Judicial Officer is not satisfied that the Referee’s reasons for ordering the Player off were wrong. He is satisfied that the Player was properly shown a red card.
29. This act of Foul Play is an offence contrary to Law 10.4(a) of the Laws of the Game namely striking with head.

Submissions as to Sanction

30. The Judicial Officer heard representations from Mr McTiernan and the Player as to sanction.
31. Mr McTiernan 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.
32. He seemed considered that the Offence should be categorised as being “low end” of the scale of seriousness.
33. He accepted that there were no aggravating factors and that there were mitigating factors.
34. The Player submitted that:
 - The appropriate entry point of available sanctions for a law 10.4 (a) was low end;
 - The Offending was reckless in the circumstances;
 - There were no aggravating factors; and
 - There were mitigating factors.

Sanction

35. 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.
36. Applying his findings to the criteria under DR 7.8.32, the Judicial Officer determined as follows:
 - *The offending was reckless;*
 - *It was not intentional or deliberate;*
 - *There was no effect upon G 15;*
 - *There was no effect on the Match;*
 - *G15 was vulnerable;*
 - *The offending was not premeditated but complete.*

37. In these circumstances, this offending can be assessed as at the Low End of the scale of seriousness.
38. The entry point for Low End offending under law 10.4(a) namely striking with head is four weeks.
39. The Judicial Officer then considered the "off field" issues and in doing so looked at whether there were any aggravating or mitigating factors.
40. In assessing aggravating factors as required by DR 7.8.34, the Judicial Officer considered that there were no aggravating factors.
41. With reference to DR 7.8.35, the Judicial Officer considered that the following were mitigating circumstances to take into account in determining the appropriate period of suspension.
42. The Player went to see G 15 in the changing-room after the Match to apologise.
43. He has played for London Irish since 2003 and is very involved in his club. He is 31 years old and has 8 caps for England. He has a good character.
44. His conduct at the hearing was good.
45. In those circumstances, the Judicial Officer felt that he was entitled to reduce the sanction by a period of one week.
46. The Judicial Officer determined that the appropriate sanction was the imposition of a period of suspension of three weeks.
47. The Player is expected to play three matches in the three weeks after the ordering off.
48. Consequently, the Player is suspended from taking part in the game of rugby up and to including Sunday 8th February 2015. The Player is free to resume playing rugby on 9th February 2015. This represents a 3 week suspension commencing on Saturday 17th January 2015.

Appeal

49. The Player and Mr McTiernan are reminded that DR 8.1 provides a right of appeal against this decision.

Costs

50. The Judicial Officer made no award for the costs.

Dated 26th January 2015

Jean Noel COURAUD
Judicial Officer

