

**DECISION OF THE INDEPENDENT DISCIPLINARY COMMITTEE
EPRC Challenge Cup, Season 2016/2017**

**Held at Sofitel, Terminal 5, London Heathrow Airport,
on Wednesday, 21st December 2016, at 11.00 a.m.**

In respect of:

George Earle (“the Player”) of Cardiff Blues

and

The red card shown to the Player by Match Referee Alexandre Ruiz for a breach of Law 10.4(m) of the Laws of the Game (acts contrary to good sportsmanship – contact with the eye/eye area) in the European Rugby Challenge Cup match between Bath Rugby and Cardiff Blues played at The Recreation Ground on 15th December 2016 (“the Match”).

Disciplinary Committee (“the Disciplinary Committee”) appointed to hear the case:

Jeremy Summers (England) (Chairman)
John Doubleday (England)
Jean-Rene Hegoburu (France)

Decision of the Disciplinary Committee:

- 1. The Player's challenge to the issue of the red card was not upheld, the Disciplinary Committee being satisfied, to the standard required, that the Referee had not been wrong to dismiss the Player.**
- 2. The Player is suspended for 8 weeks. This will cover the period from 21 December 2016 until 12 February 2017 inclusive. He may play again on 13 February 2017.**
- 3. There was no order for costs.**

Introduction

1. The Disciplinary Committee was appointed by Professor Lorne D Crerar, Chairman of EPRC’s Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Challenge Cup 2016/2017.
2. The Disciplinary Committee was required to consider the ordering off of the Player for an offence of contact with the eye/eye area contrary to Law 10.4(m) in the 44th minute of the Match (second half) when the score was Bath Rugby 15 Cardiff Blues 3.
3. Present at the hearing in addition to the Disciplinary Committee were the following persons:
 - The Player
 - Gafyn Cooper – Rugby Operations Manager, Cardiff Blues
 - Jennifer Rae – Solicitor, Secretary to the Disciplinary Committee
 - Lionel Fintoni - Interpreter
 - Liam McTiernan - EPCR Disciplinary Officer
 - Danny Rumble - EPCR Disciplinary Manager

Preliminary Matters and Procedures

4. At the commencement of the hearing, the Chairman noted the identities of all present and narrated the contents of the red card report.

5. The Chairman reminded all parties that the EPRC Disciplinary Rules found in the Participation Agreement of the Challenge Cup 2016/2017 ("the Disciplinary Rules" and "DR" in the singular) would apply.
6. The Chairman outlined the procedure to be followed to determine the matter, and indicated that the purpose of the hearing was to review the showing of the red card and determine what action (if any) should be taken. The Player would be invited to attempt to show that the Referee's decision to award the red card was wrong, either because no act of foul play had been carried out or because the act had not warranted a red card. The Player and all present agreed to proceed on that basis.
7. The Chairman confirmed what evidence had been placed before the Disciplinary Committee prior to the hearing, and that all present had received this in good time.
8. The evidence for consideration comprised of the following:
 - The red card report from the Match Referee, Alexandre Ruiz.
 - Match footage of the incident.
 - Letter from the Disciplinary Officer to Professor Lorne Crerar, dated 16 December 2016.
 - Statement of Television Match Official, Thomas Charabas.
 - Statement from the Player.
 - Statement of Tom Ellis, Bath Rugby.
9. In advance of the hearing the Chairman had requested that Mr Ellis was available to give oral evidence by way of a telephone conference call, and the Disciplinary Committee was grateful to Mr Ellis for his assistance in this regard. The Chairman confirmed that the parties did not wish to produce any further evidence.
10. The Disciplinary Committee noted the term of the Player's response to the Standing Directions set out at Appendix 6 DR:
 - A) *I confirm I (GEORGE EARLE) am the player who was shown the red card.*
 - B) *I will not be arguing any preliminary matters.*
 - C) *I accept the officials report is, on the whole, a true and accurate account of the incident. However, I feel that the referee statement should say contact with the face.*
 - D) *I do not accept that foul play was committed as set out in the official's report*
 - E) *I do not accept that that my acts warranted a red card*
 - F) *Yes – at the hearing*
 - G) *I don't believe foul play has taken place. I will be relying on the Bath players statement as well as my own statement (attached). Mr Cooper of Cardiff Blues will also make submissions at the hearing.*
 - H) *[Attending at the hearing] Myself and Gafyn Cooper – Team Manager – Cardiff Blues*

Evidence Supporting the Ordering Off

Match Official Reports

11. The Referee's report read:

"In a maul Cardiff number 4 throw (sic) the middle and, trying to catch the ball or opponent, did a contact with EYES. The Cardiff player will not be injured.

After call made by TMO, I gived (sic) RED CARD."
12. The TMO's report read:

"I was TMO on the game and I spotted Cardiff n4 in live: in a Bath's maul, Welsh player came through the middle and, trying to catch the ball and/or an opponent, did a contact

between his hand (and his fingers) and eyes Bath's player (ophthalmic (sic) area).

I called referee to check this on big screen and we took decision to give a RC. Bath's player could continue the game after that."

Match Footage

13. The match footage was viewed and it showed the following sequence of events:
- Bath secure possession from a lineout approximately 8m from the Cardiff goal line on the right hand side of the pitch. Bath form a maul to drive the ball forward, which Cardiff attempt to disrupt.
 - The Player is seen in the middle of the maul and to be looking down and towards his left.
 - The Player's right arm comes up and over towards the head of B6, the rear of which is facing toward the Cardiff goal line.
 - The Player's right hand is seen to make contact with the right side of B6's face over and around the right eye.
 - Contact is fleeting but the force and/or reaction from B6 is sufficient to cause B6's head to move backwards and to the left.
 - B6 then uses his hand to remove the Players' hand and there is no further contact.
 - Shortly thereafter B6 is seen to be looking at the Referee in an apparent attempt to gain his attention.
 - Play carries on over several phases and a try is scored close to where the original lineout had been contested. The Referee is alerted to the potential foul play by the TMO and, after consultation between the officials, the Player is issued with a red card.

The Player's position

14. The Player stated that he had been coached to attempt to split the jumper and his front lifter in a defensive lineout. His head had been below the top of the maul and he had no vision (of what was above). He had been trying to focus on the ball and did not know where his hand was. He had only realised he made contact with B6's face on seeing the replay on the big screen.
15. He had not acted with adverse intention or malice. He had apologised to B6 after the game, and reported that B6 had informed him that, he too, had only appreciated what had happened having seen the footage on the big screen.
16. He had been trying to reach the ball and had therefore wanted to get his right hand through the maul to get to the ball.
17. On questioning from the Disciplinary Committee, he accepted that he did not know where the ball was but knew where B3 was and that B3 had the ball. He was therefore attempting to get through to B3. He believed that moving his right arm as he had would have given him the necessary momentum. In response to a further question, he stated that he had not, at the time, known he had been touching B6's head and claimed not to have known (at the time) what he had been in contact with.
18. The Player drew attention to the speed and dynamics of the incident and the fact that incidents can look worse in slow motion. He stressed that he had not indented to gouge and asserted that the contact had been accidental.
19. In support of the Player, Mr Cooper conformed that he had been "swimming" to get through to the ball as coached. In effecting a legitimate action, the Player's hand had unfortunately come into contact with B6's face. He believed that the incident looked worse

that had actually been the case, but there had been no intent and no pre-determination. The Player's body position had been technically correct.

20. Mr Cooper accepted on behalf of the Player that the Player's right hand had made "minor contact" with B6's face just below the eye socket. He characterised that contact as a "brush" with no pressure being applied. There had, however, been no digital pressure in the eye.
21. Mr Cooper similarly accepted that the footage showed that B6 had moved his head backwards in reaction to the contact.

Other Evidence

22. B6 (Mr Ellis) gave evidence by telephone. He had been aware of contact with his face whilst in the maul but had not appreciated exactly where contact had been made until he had seen the big screen. He confirmed that a finger had not gone into his eye and there had been no rubbing of the eye. The incident had happened due the "unfortunate" way the Player had been trying to get through the ball. In his view the Player had not intended any harm but had been reckless.
23. In answer to questions from the Disciplinary Committee, he confirmed that he had reacted to the contact but had not felt that he was being attacked. He had attempted to take C4's hand away to stop him swimming rather than in response to pain. He confirmed that he had tried to alert the Referee and thought that this was probably to ensure that he manged any contact with the head.

Submissions as to whether the Referee had been correct to issue a red card

24. As reflected in his response to the Standing Directions (paragraph 10 above), the Player contended that the incident had been accidental and that, accordingly, there had been no act of foul play.
25. In the alternative, any act of foul play as might have arisen, had not merited a red card. In either event the Referee's decision to show the Player a red card had been wrong and no further action should therefore be taken (see DR 7.2.2).
26. In response, Mr McTiernan noted that the concept of accidental conduct had not been defined in the DR but pointed to the possibility of reckless conduct as provided for in the DR, which would constitute foul play. He also referred to the EPCR decision in *Leo (2012)* which had attempted to address what might constitute accidental behaviour. This in turn had been applied in *Ashton (2015)*, being a case that had also been concerned with contact with the eye/eye area.
27. Mr McTiernan drew the Disciplinary Committee's attention to IRB (as then was) Memoranda issued in 2009 and 2014, ("the Memoranda") both of which remain in force and emphasise the inherent danger that contact with the eyes give rise to the risk of serious and long term injury arising.
28. Mr McTiernan also cited the Memoranda in submitting that contact with the eye/eye area was viewed as an offence of sufficient seriousness to require an offender to be issued with a red card.

Decision on the red card

29. The Disciplinary Committee retired to consider the position in private and gave careful consideration to all the evidence and submissions.
30. The Disciplinary Panel found that the Player's right hand had come around B6's head, and had, as accepted, made brief contact with B6's face just below the right eye socket. This had caused B6 to immediately react by moving his back and away from the contact.

31. In determining whether the Player's actions constituted foul play, the Disciplinary Committee had regard to the RFU decision in *Wilson and Kruis* (April 2016), which indicated that the test to be applied is as follows:

30. Paragraph 4 cites the above passage from Quinlan. It does so with clear approval. In any event, the reality is that the definition had been accepted to be the correct definition of the "eye area" since the Quinlan decision in 2009. The test is this:

- a. Was there contact by DW in respect [of] any area of GK's face in close proximity to the eye?*
- b. If so,*
 - i. would that contact cause GK to fear for the safety of his eye or*
 - ii. was there a substantial risk that there could be contact with the eye.*

32. The Disciplinary Committee found that there had been contact with B6's face in close proximity to his right eye. In the view of the Disciplinary Committee, B6 moving his head away was an instinctive reaction to a fear for the safety of his eye but that, in any event, the Player's right hand had been in such proximity to B6's right eye that there had been a substantial risk that there could have been contact with the eye.
33. Whilst the Disciplinary Committee did not consider that the Player had acted intentionally, the submission that the contact should be viewed as accidental was rejected. The Disciplinary Committee disregarded the opinion of B6 in this regard, and came to an objective view based on all the available admissible evidence.
34. The Disciplinary Committee accordingly found that the Referee's decision to issue a red card had not been wrong. That decision having been made, it was required to proceed to consider the issue of sanction.
35. The hearing was reconvened and the parties advised of the findings made by the Disciplinary Committee.

Submissions as to sanction

36. The Chairman reviewed with Mr Copper and the Player the entry point criteria prescribed by DR 7.8.32. Mr Copper submitted that the offending should be found to require a low end entry point. In this regard, the offending in his view was reckless and had not led to any injury being sustained. He submitted that by reason of Cardiff being reduced to 14 men there had been an effect on the game, and Cardiff had gone on to suffer a heavy defeat.
37. The Player has a clear disciplinary record. This is to his credit given an 11 year professional playing career to date in South Africa and Wales.
38. Mr Cooper submitted that the Disciplinary Committee should apply DR 7.8.37 and find that even a 6 week suspension (being 50% of the entry point) would be wholly disproportionate to the level and type of the Player's offending. Accordingly, the sanction to be imposed could and should be less than 50% of the low end entry point.
39. Mr McTiernan indicated that EPCR would not urge for an entry point beyond low entry. With regard to the application of the wholly disproportionate provision, Mr McTiernan submitted that the Disciplinary Committee would need to find that a sanction of above 6 weeks would be entirely disproportionate.
40. He noted that whilst the Player had apologised after the game no remorse had been expressed today. That having been said EPCR did not begrudge the not guilty plea, and

noted that the Player, happily, had no previous experience of the disciplinary process and how it worked. The case advanced by the Player had not been so unreasonable as to be misleading.

Decision as to Disposal

41. The Disciplinary Committee noted that the offence of acts contrary to good sportsmanship contrary to Law 10.4(m) is listed within World Rugby recommended sanctions for offences within the playing enclosure – *Contact with Eye(s) or the Eye Area* – (found at Appendix 3 of the European Rugby Disciplinary Rules) as follows:
- Low end, 12 weeks
 - Mid range, 18 weeks
 - Top end, 24 + weeks
 - Maximum sanction 208 weeks

Factual Findings

42. The Disciplinary Committee considered DR 7.8.32 and made the following findings:
- a) The offending was not intentional or deliberate;
 - b) The offending was reckless;
 - c) The gravity of the offending lay in the risk of serious and/or long term injury to an opponent;
 - d) As set out above, the offending consisted of brief contact by the Player's right hand in the area just below the right eye socket of B6;
 - e) There was no provocation;
 - f) The conduct was not retaliatory;
 - g) There was no element of self-defence;
 - h) There was no injury to B6;
 - i) There was no effect on the Match (the removal of a player following a red card is not relevant in this regard);
 - j) B6 was to some extent vulnerable as he was facing away from the Player's incoming hand and was bound into a maul;
 - k) There was no premeditation;
 - l) The conduct was complete; and
 - m) There were no other relevant features of the Player's conduct connected with the offending.
43. In light of the above findings, the Disciplinary Committee determined that the seriousness of the offending should be assessed as being at the LOW END of the scale of seriousness.
44. The entry point for the offending was accordingly 12 weeks.

Aggravating Features

45. The Disciplinary Committee determined that the entry point should be increased by one (1) week to reflect the issues addressed in the Memoranda but otherwise found no aggravating factors as set out in DR 7.8.34 to be present.

Mitigating Factors

46. The Disciplinary Committee noted the Player's clear record, the fact that he had apologised to B6 immediately after the game and his conduct at the hearing. However, whilst the Player's position was understandable, he had opted to contest the red card and the Disciplinary Committee therefore rejected the submission that he should receive a 50% reduction from the entry point.
47. In all the circumstances, the Disciplinary Committee concluded that the entry point should be reduced by 5 weeks from the entry point.
48. The Disciplinary Committee, whilst broadly sympathetic to the Players' position¹ declined to apply the wholly disproportionate provision of DR 7.8.37 as had been requested. In so doing it adopted the findings on this point made in Galarza (RWC2015). This decision similarly concerned contact with the eye/eye area and was upheld by an RWC Appeal Committee:

The adverb "wholly" means completely, totally or entirely and modifies by addition "disproportionate". It connotes a sanction which is really exceptional for that level and type of offending. It is worth noting that the sanctions are of universal application and were determined at the 2012 Morality of the Game conference, with contributions from all stakeholders. Further, it is to be remembered that the 2009 and 2014 Memoranda addressing this type of offending remain in force.

49. Whilst there was no ultimate contact with the eye of B6 itself, and no malicious intention, the Disciplinary Committee was not able to conclude, having regard to the above, that the sanction, already reduced from the entry point, fell to be viewed as completely, totally or entirely disproportionate.

Sanction

50. Accordingly, the Player is suspended for a total of 8 weeks, from 21 December 2016 until 12 February 2017 inclusive. He may play again on 13 February 2017. The Disciplinary Committee was satisfied that this period covered 8 games due to be played by Cardiff and that this accordingly constituted a meaningful period of suspension.
51. No order for costs was made.

Appeal

52. The Chairman reminded all present that the Disciplinary Rules afforded them the right to appeal against this decision.

.....*Jeremy Summers*.....

Date: 22 December 2016

Jeremy Summers, Chairman

John Doubleday
Jean-Rene Hegoburu

¹ Noting the changes to the World Rugby prescribed sanctions that will come into effect on 3 January 2017.