

DECISION OF THE INDEPENDENT JUDICIAL OFFICER
EPCR Champions Cup 2015-16

Held at the Sofitel Hotel, Heathrow London
On Wednesday 20th January 2016

In respect of:

Chris Ashton ("The Player")

And

A citing by Yves Thieffine (France) Citing Commissioner, in respect of an act contrary to good sportsmanship contrary to Law 10.4 (m) in the Match between Saracens and Ulster Rugby on 16th January 2016 at the Allianz Park, London.

Judicial Officer appointed to hear the case:

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

Decision of the Judicial Officer:

- (i) The Judicial Officer found that the Player committed an act of Foul Play namely Acts contrary to Good Sportsmanship, Law 10.4 (m);
- (ii) The Player is suspended from taking part in the game of rugby up and to including Sunday 27th March 2016. The Player is free to resume playing rugby on 28th March 2016.

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 Champions Cup 2015/2016.
2. The Judicial Officer was appointed to consider a citing by Yves Thieffine (France) Citing Commissioner, in respect of an act contrary to good sportsmanship contrary to Law 10.4 (m) in the Match between Saracens and Ulster Rugby on 16th January 2016 at the Allianz Park, London.

3. In addition to the Judicial Officer, the following persons were present at the hearing :

- The Player
- Mr JP O'Reilly , Saracens Team Manager
- Mr Chris Smith, Player's legal representative
- Mr Liam Mc Tiernan, Disciplinary Officer, EPCR
- Ms Jennifer Rae; Clerk to the Discipline Panel, Observer
- Ms Rhian Williams, Observer

Preliminary matters and procedure.

4. At the commencement of the hearing the Judicial Officer confirmed the identities of all present.

5. The Player confirmed that he had received all relevant documentation circulated by the Disciplinary Officer which is set out below.

6. The Judicial Officer outlined the procedure to be followed to determine the matter .The Player and all present agreed to proceed on that basis.

7. The Player and Mr Chris Smith stated that no preliminary matters arose and therefore the following documents were considered:

- The Citing Report from Yves Thieffine, Citing Commissioner;
- The Gatekeeper decision;
- The Citing Commissioner Supplementary Report;
- The Referee's Report;
- The Assistant Referee's Report;
- A Statement from Luke Marshall, "The Victim Player";
- A Medical Statement from Michael Webb, Medical Director- Ulster Rugby;
- A Medical Statement from Gareth Robinson, Head Physio- Ulster Rugby;
- A series of photographs (3) of the victim player;
- The video footage of the incident;
- A document named " Contact with eyes case law"
- *Quinlan, Hartley, Flannery, Leo, Moody, Galarza, Carmichael, Matthews, Etzebeth, Tucker* decisions.

8. The Player had provided responses to the Standing Directions. He gave the following responses:

« Whether he is the player named in the citing complaint;

- Yes.

Whether he will argue any preliminary matters, and if so what they are (in summary);

- No.

Whether he accepts that the citing complaint is a true and accurate account of the incident that resulted in the citing;

- The Player agrees with the factual description of the incident in the citing complaint, but as set out below will argue that when "he puts his right hand on the face of his opponent" this was due to supervening circumstances out of his control and the contact with the Ulster player's face was inadvertent and purely accidental.

Whether he accepts that he committed an act or acts of foul play as set out in the citing complaint;

- No.

Whether he accepts that that/those act(s) warranted a red card;

- No.

If he does not accept one or more of the propositions above, why he does not accept it/them (in summary), and what evidence (and/or authorities) he will rely on to support his position (any written evidence and/or authorities must be attached to the written statement when sent by the Player and the names of any witnesses to be called must be set out in the statement);

- The player and the player's legal representative will use the video footage to explain the player's position.

- The footage will show that the player was intending to grab onto Ulster 13's right shoulder and remove him from the tackle situation – a completely legitimate rugby technique.

- At the split second before the player did so – and before he had time to adjust to what was happening - Ulster 13 and Ulster 14 clashed heads in an unexpected and abrupt manner. This caused Ulster 13's head and upper body to unexpectedly rise and then fall backwards and downwards. As a result, Ulster 13's right shoulder was no longer in the position it was when the player intended to grab it.

- The head clash between the two Ulster players was a completely unexpected incident which the player could not and did not foresee.

- As a result of the head clash and the change in body position of Ulster 13, the player's right hand came into contact with Ulster 13's face for less than half a second – an incident which was purely accidental. The player's fingers did not touch or go into Ulster 13's eyes.

- The player and the player's legal representative will have recourse to several decisions to support the player's position – and will confirm these to the JO and Mr McTiernan as soon as possible.

- The player and the player's legal representative will present to the JO character references in support of the player. The character reference from Saracens Head Coach Mark McCall is attached. »

9. In those circumstances the Judicial Officer stated that he would determine whether or not the Player committed an Act of Foul Play.

Evidence supporting the Citing Report

10. The Citing Report stated :

« Action starts with an attack by #15 SAR. #14 ULS attempts to stop him, soon joined by his mate #13 ULS. Together they try to remove #15 SAR from the game field. #14 SAR pulls #13 ULS by the shirt with his left hand, then puts his left arm around the neck and, at the same time, puts his right hand on the face of his opponent. So he throws the player on the ground, out of the pitch.

While on the ground, #13 ULS puts his hands on his face, asks for care and shows his face and eyes.

TMO call. Ref decision : high tackle and penalty.

#13 ULS receives care and resumes to play.

TV footages : 15'52 to 15'55/ 16'18 / 16'37 / 4 different angles DVD »

11. The Referee 's Report reads as follows :

« (..) About the TMO decision, on the field with the replay showed by the broadcaster, we can't identify a potential contact on the eyes by 14 SARACENS on the 13 Ulster player.

I decided to penalize the 14 SARACENS for "head grabbing" only 5 (..) ».

12. In an email The Assistant Referee stated that he did not see the incident clearly.

13. The video footage showed a dynamic Saracens attack near the touch line. Ulster N° 14 tackled Saracen N°15. The Victim Player joined tackle and then Saracen N° 6 too. A maul is formed. The Victim Player tried to carry Saracens N°15 into touch. The Player was at first on the right of the maul .He got onside to hold his team mate going over the touch line. The Player got round play and pulled the Victim Player's shirt. In the same time Saracens N° 6 moved the maul toward the touch line. The Player put his left arm around the Victim Player's neck and reached and grabbed with his right hand the Victim Player's head and face. He pulled the Victim Player to the ground over the touch line. The Victim Player reacted immediately by placing his right hand over his eyes or eyes area. The game is stopped and the Victim Player received attention from the medical team.

14. The victim Player stated:

“1. I was attempting to carry Saracens number 15 into touch and Chris Ashton tried pull me off by putting his arms around my head, which is when his hand came into contact with my face and my eye area for a sustained period of time. His fingers however did not go into my eyes just the area around.

2. His fingers were around the eye area, more so pressed than scratching.

3. It was across my whole face the area around both eyes.

4. Contact was made with just the outer area skin around eye.

5. There was pain at time of incident but no lasting injury.

6. Vision has not been affected at all. “

15. The Ulster Rugby Team Doctor and Physio statements read as follows:

Doctor Michael Webb:

"The incident occurred on the far side of the pitch to where I had been standing. When I noticed Luke down on the ground and potentially injured I ran across to see if he required medical attention.

When I got to Him he was complaining that contact had been made to his face and eyes by another player's hand.

On examination both of his eyes were watering slightly, but I was able to quickly ascertain that there was no specific injury to the eyes themselves and that his vision was normal. He was deemed fit to play on and didn't require any specific treatment on the pitch.

After the game Luke confirmed that he had no problems with his vision. He did have some minor grazes to his face - I know that the citing officer took photographs of these. I don't anticipate that he will miss any time from training or playing as a result of his injuries sustained in this incident."

Physio Gareth Robinson:

"Following the stoppage of play Luke remained hunkered down so I attended him. As it was on 'my side' of the field and I was following play I was with the player within a matter of seconds of play stopping.

On arriving with Luke he was holding his face and clearly reported to me that he had been "gauged deliberately" in the eyes.

Having established that there was no medical concern beyond the player subjective - i.e. head neck concerns I commenced my assessment of Luke.

At this time I alerted the touch judge who was in attendance to the subjective concerns of the player and asked him if it were possible to have the incident checked.

On assessment there was an initial clear reluctance from the player to open his eyes. Once function had been established the player reported his vision resolving to normal over the period I was with him. Objectively he initially presented with both eyes 'watery' and 'tear-like' which again resolved by the end of my time with Luke.

As a medical team in attendance we were satisfied he was fit to return to the field of play."

Submissions

16. The Disciplinary Officer commented all the evidence available. He submitted that the Player had committed the act of Foul Play alleged in the Citing Complaint.

17. The Player and Mr Smith submitted that there was no act of Foul Play. They submitted that the contact with the Victim Player's face was entirely accidental and unintended. The Player and Mr Smith then reviewed and commented on the video footage. The Player and Mr Smith suggested that the video footage showed that the contact with the Victim Player's face was accidental. Mr Smith provided *Galarza, Carmichael, Matthews, Etzebeth, Tucker* decisions for consideration. He contrasted the incident with the factual findings of these decisions and submitted that the contact was accidental.

Findings

18. The Judicial Officer retired to consider his decision in private. The Judicial Officer was satisfied that The Player had committed an act of Foul Play. The contact with the face and the eyes or eyes area could not be challenged. The analysis of the video footage was confirmed by the Victim Player's Statement" *His fingers were around the eye area (..) more so pressed than scratching.(..) It was across my whole face the area around both eyes (..) and evidence given by Ulster medical team. The Player clearly grabbed the Victim Player's face and put his right hand in eyes or eyes area of his opponent.*
19. This act was not accidental. The Judicial Officer referred to The Judicial Officer's decision in *Leo*. The Judicial Officer considered in this case that *"accidental could be further defined as including circumstances which would have happened in any event and where no other outcome could have ensued"*.
20. In this case, the Player made a conscious effort to play the head area and face of the Victim Player. He intentionally reached and grabbed with his right hand the Victim Player's head and face. The Player knew (or should have known) that there is a risk of committing an act of Foul Play.
21. In the act of grabbing the Victim Player's face and pulling back his head, he made contact with the Victim Player's eyes or eyes area. This contact was not accidental but was reckless because the Player took inevitably the consequent risk to commit an act of Foul Play, which resulted in contact with the eyes or eyes area, when The Player made contact with the Victim Player.
22. Therefore he committed the act of Foul Play alleged in the Citing Complaint. This act warranted a red card.

Submission as to sanction

23. The Disciplinary Officer considered that the Offence should be categorise as being "low end" of the scale of seriousness. He suggested that the 2009 and 2014 memoranda have an aggravating effect on the sanction in relation to DR 7.8.34(b).
24. On behalf of the Player it was submitted that the Offence was reckless and did cause any injury. It was submitted that the infringement had no significant effect on the match and that the Victim Player was not vulnerable. Mr Smith submitted that the appropriate entry point was lower end. He considered that memoranda does not compel the Judicial Officer to increase the sanction. As for mitigation, Mr Smith submitted that the Player has a good character as stated in the reference provided by the Player's head coach. He is 28 years old and professional since 10 years. He has not a significant record and his conduct at the hearing was exemplary. The Judicial Officer was invited to apply DR 7.8.37 and conclude that by application of Appendix 3 of the Rules, the sanction imposed would be wholly disproportionate to this type and level of this offending and therefore impose a sanction less than 50 % of the lower entry point.

Sanction

25. Judicial Officer retired in private to deliberate. In applying his findings of fact to the entry point criteria under DR 7.8.32, the Judicial Officer concluded as follows:

- The offending was not intentional or deliberate the offending was reckless. The Player knew (or should have known) there was a risk of committing an act of Foul Play and exposed his opponent to a risk of serious injury (DR Clause 7.8.32 (a)(b));
- The Player's action was grave in that it was a contact with eye or eye area (DR Clause 7.8.32 (c) (d));
- There was no provocation, the Player did not retaliate, nor did an act of self-defence (DR Clause 7.8.32 (e) (f) (g));
- No injury was caused (DR Clause 7.8.32 (h));
- The conduct had no effect on the match(DR Clause 7.8.32(i))
- The Victim Player was vulnerable (DR Clause 7.8.32 (j)) ;
- The offending was complete and was not premeditated (DR Clause 7.8.32 (k) (l));
- There were no other relevant features (DR Clause 7.8.32 (m)).

26. Accordingly the Judicial Officer concluded that the act of Foul Play was at the lower end of the scale of seriousness of offending. The applicable entry point in terms of DR Appendix 3 is 12 weeks.

27. With regard to Aggravating factors The Judicial Officer found that :

- The Player is not an offender of the Laws of the Game (DR Clause 7.8.34 (a))
- As for the need for a deterrent to combat a pattern of offending, the act of Foul Play was covered by the 10 July 2009 and 24 October 2014 Memoranda (DR 7.8.34 (b)). The Judicial Officer concluded that an additional period of suspension should be imposed.
- There were no other relevant off-field aggravating factors (DR Clause 7.8.34 (c)).

28. The Judicial Officer found that the offence is of the type referred to in the 10 July 2009 and 24 October 2014 Memoranda and there is a need for a deterrent to combat the offending that occurred in this case. The Judicial Officer therefore added a period of one 1 week to the entry point of 12 weeks.

29. The Judicial Officer considered the following Mitigating factors with reference to DR Clause 7.8.35:

- The Player denied committing an act of Foul Play (DR Clause 7.8.35 (a));
- The Player has a disciplinary record (DR Clause 7.8.35 (b));
- He has a good character (DR Clause 7.8.35 (c));
- The Player's conduct before and at the hearing was exemplary (DR Clause 7.8.35 (d));
- The Player was remorseful (DR Clause 7.8.35 (e));

30. Accordingly, after taking into account the above Mitigating factors, The Judicial Officer have concluded that the Player is entitled to a 3 week reduction of sanction.

31. The Judicial Officer determined that the appropriate sanction was the imposition of a period of suspension of 10 weeks.

32. The Judicial Officer did not consider that the sanction of 10 weeks was "Wholly disproportionate." The Judicial Officer referred to the *Galarza* decisions (JO and Appeal Committee) where it was determined that a sanction of 10 weeks for this type and level of this offending is not wholly disproportionate.

33. Consequently, the Player is suspended from taking part in the game of rugby up and including Sunday 27th March 2016. The Player is free to resume playing rugby on 28th March 2016.

Appeal

34. The Player and the Disciplinary Officer are reminded that DR 8.1 provides a right of appeal against this decision.

Dated 22th January 2016
Jean Noel COURAUD
Judicial Officer

