

# **DECISION OF THE INDEPENDENT JUDICIAL OFFICER**

EPCR

Held at Sheraton Hotel, Charles de Gaulle Airport, Paris on 13<sup>th</sup> January 2016

In respect of

**Josaia Raisuqe** of Stade Francais (“**the Player**”)

and

**The ordering off of the Player in the Match played between Stade Francais –v– Munster on 9<sup>th</sup> January 2016 at Stade Jean Bouin, Paris for an act of striking a player contrary to Law 10.4(a), of the Laws of Rugby Union.**

Judicial Officer appointed to hear the case:

**Simon Thomas (Wales)** (“**the Judicial Officer**”)

**Decision of the Judicial Officer:**

- (i) That the charge be amended pursuant to Rule 9.8 to one of an act contrary to good sportsmanship, namely making contact with the eye or eye area of an opponent contrary to Law 10.4(m) of the Laws of Rugby Union.
- (ii) The Player having admitted the allegation and accepting that his actions constituted such an act, the Judicial Officer found that the Player had committed an act of illegal and/or foul play contrary to Law 10.4(m) and that this had merited an ordering off.
- (iii) The Player is suspended from taking part in the game of rugby up to and including 1 May 2016. This represents 15 weeks suspension commencing 9<sup>th</sup> January 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 Champions Cup 2015/2016. The Judicial Officer was appointed to consider the ordering off ("the Complaint") against the Player in the match played between Stade Francais –v– Munster on 9<sup>th</sup> January 2016 in the Heineken Cup 2015/2016.
2. Mr Nigel Owens was appointed as match referee to the match and had ordered off the Player for placing his fingers in the eye or eye area of the Munster player CJ Stander. The law cited by the referee in his written report was 10.4(a) "striking an opponent".
3. Present at the hearing in addition to the Judicial Officer were the following persons:
  - Mr Liam McTiernan, Disciplinary Officer EPCR
  - Mr Josaia Raisuqe ("the Player")
  - M. Pierre Arnald, Chief Executive Officer, Stade Francais

## **Preliminary Matters & Procedures**

4. At the commencement of the hearing the Judicial Officer noted the identities of all present and narrated the Complaint reminding the Player that the Complaint was in respect of an allegation the Player had committed an act of foul play by making contact with Mr Stander to his eye or eye area.
5. The Judicial Officer reminded the parties that the EPCR Disciplinary Rules found in the Participation Agreement for the Champions Cup 2015/2016 ("the Disciplinary Rules" and "DR" in the singular) would apply. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.
6. The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was as follows:
  - The referee's report
  - Supplemental email from Mr Nigel Owens concerning the classification of the act of foul play.
  - The assistant referee report of Sean Brickell.
  - Two emails from CJ Stander of Munster

- The report from Dr James O'Donovan, Munster Team Doctor
- A table of cases concerning the sanctioning process of acts contrary to Law 10.4(m) concerning contact with the eye or eye area.
- The written statement of the Player dated 12<sup>th</sup> January 2016.
- Memoranda from Tim Gresson, IRB Judicial Panel Chairman dated 24<sup>th</sup> October 2014 and 10<sup>th</sup> July 2009 concerning cases involving contact with eyes or eye area..

7. The Judicial Officer noted the terms of the Player's response to the Standing Directions found at Appendix 6 of the Disciplinary Rules ("the Directions") as follows:

"I... testify that I am indeed the Player who was shown a 'red card' during the game Stade Francais –v– Munster that was taking place in Stade Jean Bouin, Saturday 9<sup>th</sup> January 2016.

I accept the official report from the referee is true and accurate regarding the incident. I just want to be more specific about my movement. I just wanted to push back the Player because he wants to take the ball from me. It was just a bad reflex.

I accept that I have committed one act of foul play in that game as set out in the official report and I accept that, as my fingers were near the eyes zone, my act warranted a red card.

I want apologise for my gesture because it is not something you wanted to see on a rugby pitch".

### **Preliminary Application**

8. The Disciplinary Officer invited the Judicial Officer to amend the charge pursuant to Rule 9.8 from Law 10.4(a) (i.e. striking an opponent) to Law 10.4(m), namely an act contrary to good sportsmanship, in particular making contact with the eye or eye area of an opponent. He submitted that this was the correct classification for the incident as identified by the referee in his detailed report and which the referee confirmed in his second email was more appropriate.
9. Having heard from the Player's representative who stated that the Player's instructions were not to oppose the application, the Judicial Officer was satisfied that no injustice would be caused to the Player by the amendment. Accordingly the Judicial Officer amended the allegation to an act contrary to Law 10.4(m).
10. The Judicial Officer enquired of the Player whether his response to the standing directions remained accurate i.e. that he admitted an act of foul play as set out in the amended allegation and that he accepted the referee's report. He confirmed that he did.

11. Accordingly the Judicial Officer explained that he would now consider the facts surrounding the case and decide in accordance with the Rules what sanction (if any) should be imposed as a result of the foul play.
12. The evidence was as follows:

#### **Referee's Report**

13. The referee's report stated that at 40 minutes of the match in the first-half the following had occurred:

"The above player put his hand in the face of an opponent player after the whistle had gone and then put his fingers in the player's eyes in a claw like movement with his hand/fingers. I was alerted to this by the TMO and after reviewing it on the big screen I gave a red card as I deemed his actions to be of the gouging motion into a player's eye. I double-checked with the TMO to make sure that contact was made with the eyes and he confirmed it was."

#### **Assistant Referee's Report**

14. The report of Sean Brickell stated that he was two metres away when the ball went into touch over the line in front of him. The Player gathered the ball, the Munster player then grabbed him, to which the Player took exception by what looked like from his angle pushing him away with his hand to the face of the opponent. He shouted to both players to stop what appeared to be just a bit of pushing and shoving and then they stopped.

#### **Evidence of CJ Stander**

15. CJ Stander was the Munster player who was in confrontation with the Player and his evidence read as follows

"Just before half-time in the Stade Francais match I reached for a pass down the touchline and knocked it on. No. 14 from Stade Francais picked up the ball and I tried to tackle him. The whistle went and he made contact with my eye. I felt a scratch but nothing serious. I did not need or get medical treatment and kept on playing".

16. Having asked by the Judicial Officer for clarification of the precise area of or around the eye where the contact had been made his second email read as follows:

"I felt the scratch in the corner to the middle of my left eye. I was playing with a broken nose from the weekend before and felt that more than anything."

## **Munster Team Doctor**

17. The medical evidence from the Munster Team Doctor, James O'Donovan read:

"I was the doctor covering the match on behalf of Munster and was present during the reported incident.

CJ did not seek any medical assistance at any stage during the match or after. He did not require any treatment to his facial area.

He is not due to miss any training or matches as a result of this instance".

## **Video Footage**

18. The video footage showed that after the elapse of 40 minutes when the scores were Stade Francais 10, Munster 0 the ball is in the possession of Munster and is passed out to the right wing. CJ Stander is positioned on the right wing. The ball is passed forward and he dives for it but fails to catch it. He knocks it forward and falls to the ground. The Player gathers the ball and moves forward towards Stander. Stander gets to his feet and wraps his arms around the Player. The Player can be seen gripping the ball to his own chest with his right hand and arm and whilst facing Stander he reaches over and across Stander's face with his left hand. The Player places his left-palm on the right cheek of Stander and his fingers are over the bridge of Stander's nose onto the left side. He attempts to push Stander away. He then closes his fingers into the corner of Stander's left eye in what appears to be a claw like movement. During this time he is looking towards Stander's head and face area and would appear to be able to see what he was doing.
19. The Judicial Officer invited the Player to give his explanation for what had occurred.

## **The Player's Evidence:**

20. The Player started by indicating that he did not intend to target the Munster player's eyes or eye area. He explained that when the ball was on the ground having gone into touch, his team mate shouted to him to take a quick throw in. He therefore grabbed the ball and when the Munster player tried to take it off him, he reacted by trying to push the Munster player away with his left-hand only because his right-hand was gripping the ball strongly. The Player described how he wanted to push the player off by using the palm of his hand and the closing of his fingers was just a part of this movement and was not indicative of any attempt to insert his fingers in the eye or eye area of the Munster player.

21. Upon questioning by the Disciplinary Officer, it was put to the Player that there appeared to be, in effect, two motions. The first was where he was trying to push the Munster player away when the palm of his left-hand to the Munster player's face area with his fingers open which, at that time was legitimate. The second motion was when the fingers of his left-hand had been curled into a claw and appeared to be in contact with the Munster player's left eye or eye area.
22. The Player repeated that his actions were simply an attempt to push off the Munster player and that there was no intention on his part to target the eye.
23. The Judicial Officer made clear to the Player that the issue of his intent or recklessness as to act of making contact with the eye or eye area was very important in the context of this case and the Judicial Officer ensured that the Player had every opportunity to address the Judicial Officer on the point. In response to this the Player had nothing to add in addition to what he had previously said.

#### **Sanction**

24. The Judicial Officer explained to the Player that his function under the Rules was firstly to determine the seriousness of the incident and the "entry point" by reference to the criteria set out under DR 7.8.32 and that once entry point had been established the Disciplinary Officer would need to consider the existence of any aggravating factors under DR 7.8.34 and thereafter the existence of any mitigating factors under 7.8.35.

#### **Disciplinary Officer's Submissions as to Sanction**

25. The Disciplinary Officer submitted that whilst he did not suggest that there was any premeditation or intention to cause injury, the evidence showing the Player looking directly at Mr Stander supported the proposition that he had intended to make contact with the eye or eye area when he closed his fingers. He explained that the facts of this case were distinct from other types of contact with the eye/eye area cases where a player is unsighted and reaches around another player and where the fingers happen to come into contact with another player's eyes in a reckless manner.
26. As far as the gravity of the Player's actions were concerned the act had potentially serious consequences. The Disciplinary Officer accepted that the actions of Stander might have constituted a small level of provocation and that the Player may have reacted to this. The Disciplinary Officer did not suggest there was any breakdown of order as a consequence of the incident. He stated that Stander would have been vulnerable and that players to not

expect to have their eyes interfered with. He did not suggest or seek to persuade the Disciplinary Officer that there had been any premeditation in his actions. He also stated that the conduct had been completed not simply attempted and there were no other features concerning the case which were of particular relevance.

27. The Disciplinary Officer concluded by stating he did not advocate any particular entry point but stated that this would be for the Judicial Officer to determine based upon his findings of fact.

#### **Player's Submissions as to Sanction**

28. Mr Arnald was invited by the Judicial Officer to address him in relation to DR 7.8.32. He stated as follows:

The Player's conduct had not been intentional but was more of a reflex. The Judicial Officer clarified precisely what the Player meant by reflex and Mr Arnald confirmed that it had amounted to recklessness i.e. that the Player had not intended to make contact with the eye area but he should have been aware that his actions could have resulted in this. He accepted the Disciplinary Officer's assessment of the gravity of the incident that the Player's actions could have affected Mr Stander's eyeball. He submitted that this was not a "gouging" case where as player has used his fingers like a "fourchette" (i.e. fork). However, he pointed out that Mr Stander had stated that he had no problem or injury as a consequence of the action. It was confirmed that there had been no provocation beforehand which had caused the incident and that his conduct was simply reaction from his team mate telling him to pick up the ball and his efforts to prevent Stander wrestle it from him. Mr Arnald drew the Judicial Officer's attention to the expression of the Player's face after the incident which was a smile to his team mate which was as if to say that he had succeeded in retaining possession of the ball. As far as the effect of the match was concerned, his own team had had to play for a whole half of the match with only 14 members and to that extent his team had been adversely affected. He referred to the fact that the Player was focused solely on the ball and that he had not been expected to be selected for the match but had played because of injuries to team mates. Mr Arnald reminded the Judicial Officer to be cautious about the use of the slow motion replay because the incident had taken only 1.5 secs or thereabouts.

29. He summarised by informing the Judicial Officer that the appropriate entry point was lower end.
30. As far as off-field factors were concerned, and in particular whether there should be an increase in the suspension from the entry point as a consequence of the World Rugby Memoranda on contract with the eye or eye area, Mr Arnald suggested that because in his

submission this was a reckless, rather than an intentional, act the Judicial Officer should not increase the sanction.

31. As far as the Player's previous record was concerned, he had one suspension recorded against him. This had occurred on the 14<sup>th</sup> December 2015 when he was playing in the under 23 National Championships. It was for a late tackle which had resulted in a lower entry point of four weeks reduced to two weeks suspension due to his record and behaviour.
32. As far as a mitigation was concerned, the Judicial Officer was informed by Mr Arnald that he was 21 years of age. He had been born and brought up in Fiji and had only played professional rugby whilst representing Fiji Sevens. He had played in four sevens tournaments in Hong Kong, Japan, Scotland and England. He had moved to France in August 2015 and therefore was very young and inexperienced. Further, it was confirmed that as far as his future playing pattern was concerned if he was not selected for the Stade Francais senior team he would be selected for the Stade under 22's team. Also, at the end of April 2016 he was expected to return to the Fiji National Sevens side with the hope of participating in the Rio de Janeiro Olympics in 2016.
33. The Judicial Officer invited the Player to make any final submissions before he retired to consider his decision.
34. The Player simply repeated what he had said before, i.e. that his actions had not been intentional and that he wanted to apologise for what had occurred and wanted to apologise to the Munster player.

### **Decision as to Sanction**

35. The Judicial Officer retired in private to deliberate as to the facts of the matter and to sanction. He reviewed the video repeatedly both in real time and in slow motion.
36. The Judicial Officer reminded himself that the standard of proof in EPCR disciplinary cases was the "balance of probabilities". The Judicial Officer concluded that the contact between the Player's fingers and CJ Stander's eyes had been intentional rather than reckless. The Judicial Officer's reasons for this were two fold. Firstly, the Player could be observed looking directly at the CJ Stander's face area during the time when his left-hand was on Stander's face and his fingers were across the bridge of Stander's nose and open. Secondly, there was an obvious closing of his fingers either on or in very close proximity to CJ Stander's left eye (certainly in the eye area) whilst he continued to look directly at him. The Judicial Officer was comfortably satisfied on the balance of probabilities that the act of foul play was intentional.



37. In applying his findings of fact to the entry point criteria, the Judicial Officer concluded as follows:
- a and b. The offending was intentional and deliberate rather than reckless.
  - c and d. The Player's actions were grave in that the contact with the eye or eye area of Stander was not with an open hand but with clawed fingers.
  - e. There was no provocation of any significance.
  - f. The Player had not been acting in retaliation.
  - g. The Player was not acting in self-defence.
  - h. Fortunately there was no significant impact on the victim. Whilst Stander had felt a minor scratch to his left eye he did not require any treatment. However serious injury could easily have been caused.
  - i. The only real effect of the Player's actions on the match appeared to be that his own side was disadvantaged.
  - j. Stander was vulnerable to injury. The Judicial Officer noted that both of Stander's arms were wrapped around the Player and he had no opportunity to remove the Player's hand from his eye or eye area.
  - k. The Judicial Officer was satisfied on the balance of probabilities whilst his actions had been intentional the Player had not acted with any significant level of premeditation as the incident had lasted little more than a second.
  - l. The Player's conduct was completed and not simply attempted.
  - m. There was no other feature of the Player's conduct in relation to or connected with the offending.
38. Taking all of the above matters into account and in particular the finding concerning the Player's intentional act, the Judicial Officer was satisfied that the appropriate entry point was mid range.

39. In accordance with the World Rugby Table of Sanctions which appear at Appendix 3 of the Rules, the entry point for a mid range 10.4(m) acts of foul play has a starting point of 18 weeks.
40. The Judicial Officer considered whether there were any aggravating factors present. The only aggravating factor which he found present in accordance with DR 7.8.34(b) namely “the need for a deterrent to combat a pattern of offending in the game”.
41. The Judicial Officer noted that under DR 7.8.34(h) the World Rugby Memoranda dated July 2009 and October 2014 concerning contact with the eye or eye area are specifically referred to and the Judicial Officer concluded that an additional period of suspension should be imposed to reflect this. The Judicial Officer considered that for this particular mid range act an increase of the sanction by a further 3 weeks was appropriate.
42. Turning to mitigation, the Judicial Officer carefully considered DR 7.8.35 and noted the following:
  - a. The Player had admitted culpability/wrongdoing at the very earliest opportunity and that, therefore, went to his credit. The Judicial Officer had, however, found that his admission had been qualified to some extent by stating that his actions had been reckless rather than intentional and the Judicial Officer had found against him on that point.
  - b. The Player had one recent finding against him resulting in a period of suspension of two weeks and therefore did not have a clean disciplinary record.
  - c. The Judicial Officer took into account the youth and inexperience of the Player. He, apparently, has played little 15 a side rugby and has not played at this level before this season. To that extent this was in the Player’s favour.
  - d. The Player had demonstrated appropriate respect prior to and at the hearing.
  - e. Whilst the Player had not made any attempt to contact Mr Stander to apologise for his actions during the hearing, the Player had expressed sorrow for the incident to Mr Stander.
  - f. There were no other off field mitigating factors that the Judicial Officer considered appropriate.

43. Taking all of these matters into account the Judicial Officer considered that the entry point suspension of 18 weeks should be reduced by one-third (i.e. 6 weeks) and therefore the net result was that the Player should be suspended for a period of 15 weeks.
44. Mr Arnald had earlier produced to the Judicial Officer the Stande Francais calendar showing the games both for the senior team and the Under 22 team which the Player would be selected for, if he was not selected for the senior team.
45. The period of 15 weeks based upon the evidence provided by Mr Arnald covered the period up to and including Sunday, the 1<sup>st</sup> May 2016. This was not challenged by the Disciplinary Officer.
46. The Judicial Officer reconvened the hearing and announced his decision to the parties and confirmed that the Player was therefore suspended up to and including Sunday, 1<sup>st</sup> May 2016. He is free to play on Monday, 2<sup>nd</sup> May 2016.

#### **Right to Appeal**

47. The Judicial Officer reminded the parties of their right to appeal in accordance with Rule 8.1.

Date: 14 January 2016

Simon Thomas  
Judicial Officer