

# EPRC CHAMPIONS CUP

## Decision of Judicial Officer

Hearing held by Skype conference call.

27 January 2016

In respect of :

**Tom Youngs (“the Player”)**

and

A citing complaint (“the Complaint”) brought by Peter Ferguson, the citing commissioner appointed the match played between Stade Francais Paris and Leicester Tigers at Stade Jean Bouin on 24<sup>th</sup> January 2016 (“the Match”) alleging that during the Match the Player committed an act of foul play contrary to Law 10.4(a) of the Laws of the Game.

Judicial Officer (“the Judicial Officer”): Roger Morris

### Decisions:

- (i) That the Player committed an act of foul play contrary to Law 10.4(a)
- (ii) That the act of foul play was serious enough to warrant a “red card”.
- (iii) That the Player be suspended from playing the game up to and including 31 January 2016 - a period of suspension representing one week.

### Introduction:

The Judicial Officer was appointed by Professor Lorne D. Crerar, Chairman of the EPCR Disciplinary Panel, to consider the Complaint made against the Player for his alleged offending in the Match played in the EPRC Champions Club (“the Tournament”). A hearing was necessary because Peter Ferguson, the Citing Commissioner appointed to the Match, had cited the Player for an alleged breach of Law 10.4(a) of the Laws of the Game and specifically that he had struck an opponent, the Stade Francais player, Rabah Slimani (“SF 3”), with his hand or fist..

## **Hearing:**

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

- The Player
- Simon Cohen, Leicester Tigers' CEO
- Mr Liam McTierman (Tournament's Disciplinary Officer) on behalf of EPCR

The parties agreed that the hearing would be conducted in accordance with the provisions of the Tournament's Disciplinary Rules applicable to Season 2015-2016 ("the Disciplinary Rules" in the plural and "DR" in the singular).

The evidential and other materials that had been distributed to the parties and the Judicial Officer in advance of the hearing were:

- The Citing Commissioner's report and attached narrative.
- Letter dated 25 January 2016 from Mr McTierman to Prof Crerar.
- Email from Prof Crerar dated 26 January 2016 containing notice of the hearing.
- Referee's standard form "yellow card" report from George Clancy
- Assistant referee's report by way of email from Peter Fitzgibbon.
- Assistant referee's report by way of email from Mark Patton.
- Email from the television match official, Marshall Kilgore.
- Email from SF3
- Email from Simon Cohen containing certain representations as well as the Player's responses to standing directions
- Email from Mr McTierman with the Tournament's response to the Player's position.
- Further email from the Match referee.
- Video footage of the alleged foul play as referred to in the Complaint.

## **Preliminary Matters**

Mr McTierman raised a preliminary issue arising out of the email received from SF3. He said that email contained information extraneous to the substance of the Complaint and suggested that such extraneous references should be ignored. The Judicial Officer agreed.

## **Evidence**

The Judicial Officer first sought to establish the Player's position in light of his responses to the standing directions and the other written representations made on his behalf. Mr Cohen had said the Player accepted he had committed an act of foul play and conceded that to that extent the Complaint would be upheld. But, whilst the Player accepted the accuracy of the factual description set out in the

Complaint he did not consider his offending so serious that it warranted sanction more serious than the yellow card that had been issued by the referee.

In these circumstances it was agreed by the parties that the Judicial Officer's first function was to consider the evidence so as to establish whether or not the alleged offending was indeed so serious as to have merited the issue of a red card.

Mr McTiernan formally produced to the hearing the various written materials. It was agreed that they could be taken as read on the basis that Mr Cohen and the Player could make any points they wished to make in relation to the evidence contained in them. Mr Cohen pointed out that there was no evidence to support the assertion by SF3 in his e mail that he had received a bloody nose. There was no corroborative doctor's report and he was not treated on the field of play after the incident had occurred.

In terms of the video evidence the parties also agreed they had had ample time to view what was shown and had no points to make that required the video to be shown and reviewed during the hearing. They were content for the Judicial Officer to watch it in private and had no need or wish to prompt his interpretation of what he saw.

The Judicial Officer nevertheless required to hear the Player's own explanation of what had occurred. The essence of that explanation was as follows:

- He approached the relevant ruck with the intention of clearing out SF3.
- In performing that intended act, SF3 had grabbed the Player, holding him down and preventing him from getting to his feet.
- The Player first attempted to free himself by pushing out at SF3 with an open hand but that attempt failed to achieve the desired result.
- He therefore made a second attempt to free himself
- That second attempt was not with a tightly clenched fist but he accepted it amounted to a strike in terms of the Laws of the Game.
- He had made contact with SF3 around or about his chin or cheek.

There were no other points any party wished to make or matters to raise so the Skype conference call was paused to allow the Judicial Officer to consider matters in private.

### **Adjudication as to red card**

The Judicial Officer reminded himself that the applicable standard of proof in all factual determinations is the balance of probabilities. With this in mind he read again the various written materials and viewed the video a number of times.

In terms of the facts of the matter he found as follows:

- The Player, as he had said, made an attempt to clear SF3 from the relevant ruck.
- As the players in the ruck disbursed, SF3, lying on his back and holding the Player's shirt front, prevented the Player from leaving the ruck.
- The Player, first pushing his right-hand through the various bodies in the ruck, attempted to free himself from SF3.
- That attempt to free himself failed.
- Still held by SF3, the Player with bent fingers (but not clenched fist) hit towards SF3.
- The movement from his shoulder and with bent elbow was clearly indicative of a punch.
- On the Player's own evidence, he had made contact with SF3's chin.

In the light of these determinations and in particular that the Player had struck the head of an opponent with a punch, the Judicial Officer was not persuaded that the Player's act was insufficiently serious to have warranted the issue of a red card.

#### **Submissions as to Sanction**

The hearing was reconvened and the Judicial Officer informed the parties of his decision in relation to the "red card test". He therefore invited Mr Cohen and the Player to address the hearing on the question of appropriate sanction.

Mr Cohen referred to the email he had written setting out the Player's submissions as to the appropriate entry point. He urged that the facts of the offending pointed clearly to an offence that should be categorised as at the Lower End of World Rugby's recommended sanctions for an offence of this nature. He then submitted that there were no features aggravating of the offending.

In terms of mitigation, the Player had a completely clean disciplinary record, never having received a red card and never previously having faced a citing complaint. That record, for a player one day short of his 29<sup>th</sup> birthday and playing in the most confrontational position on the field, was indeed exemplary and one which other players playing in the same position might envy. He had accepted at the earliest opportunity his culpability and even though he questioned the seriousness of the offending, he had not contested the facts of the offending. His commitment to Leicester Tigers and its wider community was also exemplary. The Player was entitled to the maximum mitigating allowance possible.

Finally, Mr Cohen asked the Judicial Officer to consider whether he might find any period of suspension disproportionate to the level of offending in this case.

Mr McTiernan, on behalf of the Tournament, pointed the Judicial Officer to his responsibilities and powers under the Rules and confirmed that the Player's responses and submissions, even though they contested that a red card was appropriate, had caused neither the Tournament nor him as representative of the Tournament any additional work or inconvenience.

The Player was invited to have the last word. He apologised for what had happened and for causing the inconvenience to everyone that was the consequence of his offending and expressed his thorough embarrassment at having to appear before a hearing.

There was nothing further that any party wished to raise. The hearing was further adjourned for the Judicial Officer to consider matters in private.

### **Disposal**

The Judicial Officer considered all that he had been told and all he had read and did so by reference to the different possible features of the offending set out in Rule 7.8.32. By reference to that Rule and its lettered points, he concluded as follows:

- a & b The act of foul play perpetrated by the Player was an intentional in that he deliberately struck the other player in order to free himself from that player's grip;
- c The act of foul play, a punch, was not particularly powerful nor delivered insidiously;
- d The punch was delivered with a half closed hand not with a tightly clenched fist with sufficiently light force to give credence to the Player's claim that his intention was neither retribution or intimidation but part of his attempt to free himself from SF3's grip
- e f & g There was provocation in the sense that the Player was held on the ground and retaliation to the extent that the Player reacted to that provocation. That, however did not amount to self defence.
- h & i SF3 in his email claimed a bloodied nose and blurred vision as a consequence of the Player punching him. He also claimed that these injuries resulted from the Player making contact with his head/face, in one form or another, three times . The Judicial Officer had paid particular attention to the video footage to assess the accuracy of what SF3 had said. The video clearly showed the Player making contact twice but there was no third contact. One of the clips (from a wide angle) showed all the players from both sides milling around on the field for a lengthy period of time whilst the referee and his officials considered matters at the time There was no indication whatsoever that SF3 had been treated on the field or anything else to show or indicate that his nose had been bloodied or that he had suffered any other injury. He had not, as Mr Clancy, the referee, had confirmed, complained to the referee and neither had he produced any medical evidence to support what he said. The Judicial Officer considered the evidence of SF3 to be unreliable and misleading. In terms therefor of the Judicial Officer's consideration of the effect on SF3 in determining the seriousness of the Player's offending, he

found there was none. Neither was there any effect on the Match other than that the Player's team was reduced to fourteen men

j. SF3 was vulnerable to the extent that he was laying on the floor on his back as he held on to the Player.

k & l The Player fully participated in what happened and what he did was completed and not a mere attempt.

m There were no other features of the offending that needed to be taken into account.

Based on the above assessments the Judicial Officer determined that the appropriate entry level to reflect the seriousness of the Player's offending was the Lower End entry point which for a breach of Law 10.4(a) amounts to a period of suspension equivalent to 2 weeks.

In terms of Rule 7.8.34 there were no features aggravating of the offending.

As to mitigation, required to be considered under Rule 7.8.35, the Judicial Officer noted the Player's previously unblemished record over many years of playing the game at the highest level; found himself able, by dint of the Player's frank acceptance of the facts of his actions, not to penalise him for asserting that his offending fell short of the red card test; also noted the Player's significant example in relation to his club's participation in the wider community and was particularly impressed both by the Player's and his club's whole approach to the hearing and the processes leading up to it. The Judicial Officer was left with the clear and refreshing impression that both club and Player understood and accepted the importance of the role of the disciplinary process to the game of rugby as a whole.

The greatest mitigation allowance under the Rules (50%) would be applied so reducing the Player's period of suspension to 1 week.

The hearing was reconvened and the Player told that he was suspended from playing the game of Rugby up to and including Sunday 31 January 2016 so that he could resume playing on Monday 1 February 2016.

The parties were reminded that the Rules gave them the right to appeal against the Judicial Officer's decisions.

There were no other matters to consider so the hearing was closed.

  
Roger Morris

2 February 2016