

**DECISION OF THE INDEPENDENT JUDICIAL OFFICER
EPCR Champions Cup, Season 2015-2016**

**Telephone Conference Call Hearing
Held at the offices of Osborne Clarke LLP, One London Wall, London.
On 27 January 2016 at 9am.**

In respect of:

Maselino Paulino (“the Player”)

and

The citing of the Player, for a breach of Law 10.4 (a) of the Laws of the Game in the Champions Cup match between Scarlets and Northampton Saints played at Parc Scarlets on 23 January 2016.

Judicial Officer appointed to hear the case:

Jeremy Summers, England (“the Judicial Officer”)

Decision of the Judicial Officer:

- i. The Player had committed an act of foul play as alleged.**
- ii. The act of foul play warranted the issue of a red card.**
- iii. The Player was suspended from taking part in the game of rugby until midnight on 14 February 2016. This represents a 3 week suspension commencing on 27 January 2016.**

Introduction

- a) 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.
- b) The Judicial Officer was appointed to consider the citing of the Player in the match between Scarlets and Northampton Saints played at Parc Scarlets on 23 January 2016.
- c) The Player had been cited for striking an opponent in breach of Law 10.4(a) of the Laws of the Game.

The Parties at the Hearing

1. Present at the hearing in addition to the Judicial Officer were the following persons:

The Player
Mr Garan Evans, Team Manager, Scarlets
Mr Liam McTiernan, EPCR Disciplinary Officer

Preliminary Matters

2. At the commencement of the hearing, the Judicial Officer noted the identities of all present and narrated the contents of the Citing Report reminding the Player that he had been cited in contravention of Law 10.4(a).
3. The Judicial Officer reminded all parties that the EPCR Disciplinary Rules found in the Participation Agreement of the Champions Cup 2015/2016 ("the Disciplinary Rules" and "DR" in the singular) would apply.
4. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.
5. No other preliminary matters arose.

Procedure

6. The Judicial Officer established what evidence was placed before him prior to the hearing and enquired as to 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.
7. The evidence and other material for consideration comprised of the following:
 - The Citing Commissioner Report dated 25 January 2016.
 - Email from the EPCR appointed "gatekeeper" dated 25 January 2016.
 - Match Official Report Yellow Card dated 25 January 2016.
 - Notice of Hearing dated 26 January 2016.
 - Email from Assistant Referee dated 26 January 2016.
 - Email from TMO dated 26 January 2016.
 - Email from Northampton No. 4 dated 26 January 2016.
 - Email medical update from Northampton Saints dated 26 January 2016.
 - Written responses to the Standing Directions submitted on behalf the Player dated 26 January 2016.
 - Written responses to the Standing Directions from the Disciplinary Officer dated 27 January 2016.
 - Video footage of the incident.
 - Player's playing schedule for rest of season.
8. The Judicial Officer noted the terms of the Player's responses to the Standard Directions which were as follows:
 - a) *I am the player named in the citing complaint.*
 - b) *I will not argue any preliminary matters.*
 - c) *The citing complaint is a true and accurate account of the incident that resulted in the citing.*
 - d) *I accept that I committed and act of foul play as set out in the citing complaint.*
 - e) *I accept that the act warranted a red card.*
 - f) *Whilst I do accept that I committed an act of foul play, I would like to show that it was never my focus to strike the Northampton player in the head. There is a 'close up' view of the incident from behind the goal line where you can see that as I rise up to impact the driving maul, the Northampton 4 moves lower at exactly the same time and therefore I make contact with his head. It was not my intention to make contact with the player in this area, however, I admit that I was careless with my actions and I'm very sorry for the incident.*
 - g) *I will be attending the hearing along with Scarlets Team Manager, Garan Evans.*
9. The Judicial Officer similarly noted the terms of the Disciplinary Officer's responses as follows:

- (a) *The Player will not argue any preliminary matters.*
- (b) *The Player accepts that the citing complaint is a true and accurate account of the relevant incident, accepts that he committed an act of foul play and accepts that it warranted a red card (so pursuant to clauses 7.8.11, 7.8.23 and 7.8.28 of the Disciplinary Rules, the citing complaint should be upheld and you should then consider the evidence and the question of sanction).*
- (c) *Other than that which has already been circulated, I do not currently intend to refer to any further evidence or authorities but if that changes for any reason (for example, if I receive any further evidence), I will communicate that to all relevant people as soon as reasonably practicable.*
- (d) *I will attend the hearing alone and in person.*

Evidence Supporting the Citing

The Citing Commissioner's Report

10. The Citing Report¹ (Yves Thieffine, France) read as follows:

At a maul. #4 Northampton Saints is at the front row of the maul. #5 Scarlets comes to stop the move and strikes his opponent with right arm and shoulder. Point of contact is neck and head. #4 Saints falls down on the pitch. Ref stops the game and asks for TMO details. Answer is "...shoulder on the face - agree with YC..." #5 Scarlets is given a YC by Referee. # 4 Saint receives on-field care then resumes to play.

11. The incident had occurred in the 48th minute of the match (play clock) at which juncture Northampton were in front by 17 points to 3. The report noted that the ground conditions were good then slippery following heavy rain.
12. The Northampton player concerned (N4) received on field head injury assessment treatment following the incident, but was thereafter able to resume playing.

Video evidence

13. The Judicial Officer then considered the available match footage, which was viewed in full and at reduced speed.
14. Northampton attack through a dynamic maul within the 15metre channel close to the right hand touch line, and advance towards the half way line.
15. N4 is at the very front of the maul on the right.
16. The Player is positioned about 1 metre away from the left of the maul as it approaches him.
17. The Player comes from a crouching position and drives up and into N4.
18. The Player's body goes to the left of N4 and the front (bicep) of his right arm/ upper right forearm follows round and makes forceful contact with the right hand side of N4's head/jaw.
19. N4 falls to the ground and play continues.
20. Play is brought back and N4 receives on-field treatment whilst the match officials consult over the incident.

¹ As is provided for under DR 7.4.6 the EPCR Disciplinary Officer had referred the citing to a further Citing Officer as a so called "gatekeeper" to determine if the evidence presented a case for the Player to answer as to whether he had committed an act of foul play that warranted a red card, and therefore that the citing should proceed.

21. N4 is cleared to play on after relevant head injury protocols have been followed. The Player is issued with a Yellow Card.

Other Evidence

22. A short statement was received from the N4 which read:

It was in the second half and we had just caught a kick off and set up a maul. We were driving forward and were making good progress up the pitch. As we were going forward, the Scarlets were trying to stop our drive and their number 6 came in to try and stem it. I was at the front of the maul and had dealt with the 6 as he went past me. As he went past me, I was turned sideways and at that point I felt something hit me across the jaw. It stunned me causing me to go to ground. Play went on and I got some treatment from our physio and Doctor and I was fine to continue playing and finish the game.

23. The medical report from Northampton Saints confirmed that the Player had suffered no ill effects after the game and had been released for international duty.

24. The Referee's Yellow Card report read:

In the maul, N 5 SCARLETS charges with his arm the number 5 Northampton on the face. After check with TMO we decided PK and YC against 5 Scarlets.

25. The Assistant Referee had not seen the incident and the statement from the TMO did not materially take the position any further.

Mitigation

26. The Player gave evidence. He stated that he had been trying to stop the momentum of the maul, and had set to do so with the intention of using his full body weight to halt the attack. He accepted that he had gone too high, but felt that the situation had been caused in part because at the same time he had driven up, N4 had dropped lower and this has resulted in contact having been made with N4's head.

27. He had not intended to strike the head and was sorry that this has happened. He had apologised to N4 after the game and they had enjoyed a friendly discussion. He readily accepted he had committed an act of foul play and was sure that he would not make the same mistake again.

28. Mr Evans supported the Player's submission that, N4 having lowered his body position immediately before impact, had resulted in the head being struck. Had that not happened he considered contact would have been made with either N4's stomach or chest. He directed the Judicial Officers attention to 3.27 of the footage timer, which he submitted supported the Player's case. The Player had started in a good position but had then gone too high as N4 had simultaneously come down. This had resulted in the impact between the Player's forearm and N4's jaw. The Player had set off legally and with a lawful intent but his poor technique had then led to the foul play.

29. The club's coaches had previously identified a problem with the Player's body position being too high, and the Player is working hard with them to rectify that issue.

30. The Player is 27 and has been playing rugby for 9 years albeit that only for 4 months, of that period, has that been as a professional player. He has one previous disciplinary matter recorded against him arising out a strike to an opponent during a Pacific Cup (Samoa v Argentina) match in 2014.

Decision on Foul Play/Red Card

31. The Player had accepted having committed an act of foul play that warranted the issue of a red Card and the citing was accordingly upheld.
32. For the purposes of determining what, if any sanction was appropriate the Judicial Officer made the following findings:
- i. The Player had been entitled to seek to stop the momentum of the advancing maul and had attempted to do so from an onside position.
 - ii. He had, however, made no legitimate attempt to bind onto the maul and thereafter his swinging arm made forceful contact with N4.
 - iii. N4's upper body was already approaching being horizontal to the ground and was being pushed in that direction by a further Scarlets player.
 - iv. This had occurred before the Player started to drive up and into N4.
 - v. Contact with N4's head had not occurred as a result of N4's downward movement and the Player's case in this regard was rejected.
 - vi. The Player's right bicep/upper right forearm had struck the right side of N4's head/jaw.
 - vii. Some transitory injury had resulted. The Judicial Officer was however satisfied that the Player had not set out with the intention of causing injury to N4.

Decision as to Disposal

33. The Judicial Officer noted that the offence of striking an opponent was listed within World Rugby recommended sanctions for offences within the playing enclosure (found at Appendix 3 of the Disciplinary Rules) as follows:
- Low end, 2 weeks.
 - Mid-range, 5 weeks.
 - Top end, 8+ weeks.
 - Maximum sanction 52 weeks.
34. In applying DR 7.8.32 the Judicial Officer made the following findings:
- (a) The offending in so far as it involved the Player striking N4 was intentional;
 - (b) To the extent that the Player had connected with N4's head and caused injury this had not been intentional but had plainly been highly reckless;
 - (c) The gravity of the offending lay in the fact that forceful contact with the arm/forearm had been made with N4's head;
 - (d) The nature of the actions were as set out above (paragraphs 15 to 19);
 - (e) There was no provocation;
 - (f) The conduct was not retaliatory;
 - (g) There was no element of self-defence;
 - (h) The Player received on field treatment after the incident but was otherwise not injured;
 - (i) There was no effect on the game;
 - (j) N4 was exposed and vulnerable;

- (k) There was no premeditation;
- (l) The conduct was complete;
- (m) There were no other relevant features of the Player's conduct connected with the offending.

35. In light of the above findings, the Judicial Officer determined that the seriousness of the Player's offending, should be assessed as being at the MID-RANGE of the scale of seriousness.
36. The entry point for the offending was accordingly a suspension from playing of 5 weeks.
37. The Judicial Officer carefully considered the appropriate assessment in this instance. Having regard that offending involved an intentional strike, forceful contact with the head and vulnerability on the part of the victim, he concluded that this offending should be categorised as mid-range.
38. The Judicial Officer found that none of the aggravating factors prescribed by DR 7.8.34 were present and thus the entry point was not required to be increased.
39. Having regard to the Player's plea, remorse and conduct at the hearing which are mitigating features prescribed under DR 7.8.35, the Judicial Officer determined that it was appropriate to allow a 40% discount from the entry point. This resulted in the imposition of an overall period of suspension of 3 weeks.
40. The Player was suspended for playing for a period of 3 weeks up to and including midnight on 14 February 2016. The Player will be free to play again from 15 February 2016. The suspension will take effect during Pro 12 and Principality Premiership games scheduled to be played in that period and as such represents a meaningful period of suspension.
41. There being no further matters to consider the proceedings were closed.
42. The Judicial Officer reminds the parties that the Disciplinary Rules provide the right of appeal against his decision.

Jeremy Summers
Judicial Officer
28 January 2016