

DECISION OF THE INDEPENDENT JUDICIAL OFFICER

EPRC

Held at Sofitel Hotel, Heathrow, London on 20th January 2016

In respect of:

Ryan Wilson of Glasgow Warriors (“**the Player**”)

and

The citing of the Player in the match played between Northampton Saints –v– Glasgow Warriors on 17th January 2016 at Franklin’s Gardens, Northampton for an alleged act of foul play contrary to Law 10.4(m) of the Laws of Rugby Union, namely an act or acts contrary to good sportsmanship.

Judicial Officer appointed to hear the case:

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

Decision of the Judicial Officer:

- (i) The Player denied the alleged act of foul play. The Judicial Officer found that the Disciplinary Officer had failed to prove, on the balance of probabilities, that the Player had committed the alleged act of foul play. Accordingly the citing complaint was dismissed.

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 Citing Complaint ("the Complaint") against the Player in the match played between Northampton Saints and Glasgow Warriors on 17th January 2016 in the Champions Cup 2015/2016.
2. Mr Jeff Mark (Wales) was appointed as the Citing Commissioner to the match and had cited the Player for an act of foul play contrary to Law 10.4(m) of the Laws of Rugby Union, namely an act or acts contrary to good sportsmanship. The specific allegation was that the Player had grabbed the testicles of an opponent (Lee Dickson, Northampton No.9).
3. Present at the hearing in addition to the Judicial Officer were the following persons:-
 - Mr Liam McTiernan, Disciplinary Officer, EPCR.
 - Mr Ryan Wilson ("the Player").
 - Mr Bruce Caldow, Solicitor for the Player.
 - Mr John Manson, Glasgow Warriors Rugby Operations Director.
 - Ms Jennifer Rae, clerk to the Tribunal.
 - Ms Rhian Williams (observing).

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 that the Player had committed an act of foul play contrary to Law 10.4(m), namely an act contrary to good sportsmanship by grabbing the testicles of Lee Dickson (Northampton Saints No. 9).
5. 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. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis. The Judicial Officer established what evidence had been 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 before him. The evidence for consideration was as follows:-

- The Citing Complaint.
 - The match official report of the TMO Philippe Bonhoure.
 - Email from Paul Shields, Team Manager, Northampton Saints.
 - Email from Lee Dickson.
 - Player's response to the standing directions contained within the Rules.
 - Text message exchanges between the Player and Lee Dickson.
 - A number of previous rugby disciplinary judgements to be relied upon by the Player.
 - Additional match footage of scrums subsequent to the cited incident during the match produced by the Player.
 - EPCR's response to the Player's replies to standing directions.
 - A number of rugby disciplinary judgements upon which the Disciplinary Officer intended to rely.
6. The Judicial Officer noted that the terms of the Player's response to standing directions found at Appendix 6 of the Disciplinary Rules ("the Directions") which can be found at Appendix A to this judgment.
 7. The Judicial Officer invited the Player and the Disciplinary Officer to confirm whether or not they had any preliminary issues they wished to raise. Each confirmed they did not.
 8. The Judicial Officer outlined the procedure to be adopted explaining his function was to put the Citing Complaint to the Player. He explained that if the Player admitted the act of foul play as alleged in the Complaint, then the Complaint would be upheld and the Judicial Officer would proceed to hear the case and decide what sanction (if any) should be imposed.
 9. The Judicial Officer explained that if, on the other hand, the Player denied the allegation, he would consider the evidence. Thereafter if the Citing Complaint was not upheld, then that would be the end to the matter. If, however, the Judicial Officer concluded that the act of foul play had occurred, then he would proceed to deal with sanction (if any) as above.
 10. The Judicial Officer reminded all parties that in accordance with DR 7.8.11 the assessment of the evidence would be on the balance of probabilities.

The Citing Complaint

11. The Citing Complaint read that after approximately 25 minutes of the first half:

"At a scrum, the two No. 9s were tussling when N. 9 (Dickson) reached between his legs with a pained expression which suggested he had been grasped by the testicles by G9. I viewed the incident in the truck and the incident had already been noted. The offending player was in fact G6 (the Player) who can be seen reaching out, grabbing N. 9 between the legs and the

look of pain can be seen on the victim player. I had the player spoken to by his manager and he confirmed that he had been grasped by the genitals. No injury reported and I am told the offending player later apologised.”

12. In accordance with DR 7.8.9 the Judicial Officer sought clarification as to the key issues in this case as far as liability was concerned. It was confirmed that they were the following:
 - (i) Did the Player grab, squeeze or twist the testicle or testicles of Lee Dickson? If the answer to this question was no, the citing complaint would be dismissed (“Issue 1”).
 - (ii) If the answer to the first question was in the affirmative, the Judicial Officer would need to determine whether this act was purely accidental in which case there was no foul play whether it was reckless or intentional in which case foul play would be established and the citing complaint would be upheld (“Issue 2”).
13. Mr Caldow and Mr McTiernan confirmed that these were the issues which the Judicial Officer had to determine.
14. The Citing Complaint was therefore put to the Player. He denied the allegation of foul play and confirmed that his responses to the standing directions remained accurate.
15. The Disciplinary Officer therefore presented the evidence which was as follows:

Match Footage

16. The match footage presented by the Disciplinary Officer was taken from a number of angles and is both shown in real time and slow motion.
17. At a scrum inside the Glasgow Warriors’ half, the ball is put in by the Glasgow Warriors’ scrum half. The ball is channelled not directly to the Glasgow No. 8 but appears at the feet of the Player who is in the blind side flanker position. As the ball travels from the front row to this position, Lee Dickson (Northampton 9) puts his right hand on the left buttock of the Player who is packed down and who remains bound in the scrum. Dickson then puts his left hand momentarily on the shirt of the Player near his shoulders. As the ball reaches the back of the scrum, Glasgow No. 8 picks it up while Glasgow No. 9 shields him preventing Dickson from being able to get to him as the ball is released. At this moment, the Player can be seen moving his left hand from the ground and reaching up between the legs of Lee Dickson who is still beside him. He appears to grasp Dickson between his legs and in the groin area. It cannot be seen precisely where or what is being gripped. As he is held, Dickson brings both his hands quickly to his groin area seemingly in an attempt to free himself and he raises his head with a grimace on his face. The Player’s grip is released after about a second and

Dickson retreats behind his forwards to begin to follow the play as the ball is passed along the Glasgow three quarter line.

TMO

18. Mr Phillipe Bonhour's emailed statement confirmed that he had not observed the incident either during live play or on any replay.

Paul Shields - Northampton Team Manager

19. Mr Shield's statement confirmed that Lee Dickson had received no treatment at all, had not been injured in any way and had been able to continue in the match.

Lee Dickson – Northampton Saints No.9

20. Lee Dickson had provided an email which read as follows:

"It was a Glasgow scrum and the ball was at the back. I tried to get as close as to No. 8 as I could in case he picked the ball to run with it so I could tackle him. As I came down the side of the scrum, the flanker grabbed me and I shouted and he let go straightaway. At the next breakdown, he came straight up to me and apologised and I told him it was no problem."

21. In light of the lack of detail contained within Mr Dickson's emailed statement the Judicial Officer had directed that he be available by telephone to answer questions..
22. In answer to questions put, Mr Dickson confirmed that he recalled making his statement on 18th January 2016 in respect of the matter and that the contents were true.
23. The Judicial Officer read back to him his statement slowly and asked him to provide as much detail as possible on it, in particular which part of him had been grabbed.
24. Mr Dickson said that the Player's actions had been typical of an effort to prevent him from putting pressure on his opposing scrum half. He described how the Player had grabbed him and had got a piece of his clothing. There had been no squeezing. It had all been over in a split second.
25. The Judicial Officer asked Mr Dickson to confirm whether the Player had grabbed his testicle or testicles. Mr Dickson replied that he had been grabbed "in that region". When he was asked further questions he was not specific in his replies as to the precise part of him which had been grabbed.

26. The Judicial Officer and Mr Dickson then had the following exchange:
- JO: "Was pressure applied around your testicles?"
- LD: "It was very quick, more a touch. There was no grab, squeeze or twist or anything like that."
27. He was asked about his reaction as the match footage could see him recoiling. He said that his actions as seen from the match footage were more to do with shock rather than any pain.
28. Mr Dickson also stated that he made no mention of the incident to any match official and had simply "got on with the game." He added that when the Player apologised to him at the next breakdown he had made light of it.
29. Upon questioning by Mr Caldow, Mr Dickson confirmed that he had been wearing lycra (compression) shorts which mean that his genitals were held close to his body. He described how the Player had taken hold of his shorts and that as far as he was concerned any contact with his testicles had been inadvertent and it happens quite a lot.
30. This therefore concluded the evidence of Mr Dickson.

Player's Evidence

31. The Player gave evidence in conjunction with the match footage. He said that he had experience at playing in the position of number 8 and from his own position at number 6 during this match, his job was to protect his number 8 from the opposing scrum half. He explained that there were two techniques of effecting this. The first was for the number 6 to kick his hips out away from the scrum which puts more distance between the opposing scrum half and the number 8 in possession of the ball. Northampton were renowned as having a very strong scrum and he decided on this occasion to put an arm out in an attempt to use the other tactic i.e. grab Dickson to slow him down.
32. When the ball had gone in to the scrum, rather than the ball passing through the second row's legs and back to the number 8, the ball had gone through the wrong channel and towards his legs. He described how the footage showed him looking down at the ball. As he was doing this he then tried to take hold of Dickson. He said that as he reached for Dickson (and he demonstrated the manner of doing so) he grabbed Dickson's shorts high up on the inside of Dickson's right thigh. He said that he knew when he had hold of the shorts that he had clipped the testicle and had accidentally put some pressure on his testicle however he had not intended to interfere with the testicles and had not grabbed it or them in any way.

33. He described that at the next breakdown he spoke to Dickson and apologised for the contact that he had made and Dickson had acknowledged this and laughed it off.
34. The Judicial Officer invited the Disciplinary Officer to ask questions of the Player but he confirmed that he had none.

Submissions as to the evidence on Issue 1 by the Disciplinary Officer

35. Mr McTiernan submitted that the Judicial Officer had heard the evidence and the effect of the compression shorts which would have made the grabbing of the testicles more difficult. He acknowledged that the description given by Mr Dickson in his written statement was vague and having heard the evidence today the Disciplinary Officer conceded that Dickson was not able to confirm whether or not he was grasped. However based upon the totality of the evidence, he submitted that the Judicial Officer was entitled to find that there had been a grasping of the genitals from the video footage and in particular the reaction of Dickson when he recoiled after contact with made. Mr McTiernan submitted that Dickson could be seen in some considerable discomfort. Furthermore, the footage showed that contact between the Player and Dickson was a sustained grasp and had lasted more than a second.

Submissions as to the evidence on Issue 1 on behalf of the Player

36. Mr Caldow stated that based upon the evidence before the Judicial Officer there was no reasonable basis that he could conclude on the balance of probabilities that the Player had been guilty of grasping Mr Dickson's testicle or testicles. The evidence of Dickson was that there had not been a grab, nor had there been any squeeze or twist. The evidence from both Dickson and the Player was that the shorts had been grasped and that Dickson had merely felt pressure applied to his genital area. His reaction as shown on the footage was explained by Dickson as being shock rather than pain from pressure to his genitals. The Player had given evidence which was clear and not contrary to the footage which did not show clearly the precise nature of the contact. Accordingly the Judicial Officer should not find in favour of the Disciplinary Officer.

Decision as to Issue 1

37. The Judicial Officer retired in private to consider his findings on the matter and reminded himself when doing so that he had to apply the balance of probabilities to the evidence available.

38. He examined the match footage repeatedly. Whilst the match footage was suggestive of a grabbing of N.9 by the genitals, the part of the groin area (or shorts) where the Player had gripped could not be seen. Each available angle of footage was behind Dickson or to the sides rather than the front of him. The hand of the Player or Dickson was obscured at all times.
39. The second piece of evidence which supported the allegation was the statement from the Citing Commissioner that he had Dickson spoken to by his team management and that “he confirmed he had been grasped by the genitals”. However there was no statement from Lee Dickson immediately after the match nor any team official confirming this and the evidence of Dickson both in his written statement and his oral evidence, whilst somewhat vague in parts until he was directly questioned on the issue, was not supportive of an allegation of a grabbing of the testicles by the Player.
40. Conversely, the Player had given clear evidence regarding the matter. This evidence was not inconsistent with the match footage. The Judicial Officer also took in to account that the grasping of Dickson by the Player had lasted for more than a second. The evidence from both Dickson and from the Player was that immediately after the incident the Player had apologised to Dickson for the contact with his genitals and Dickson had immediately accepted that and “laughed it off”. In the view of the Judicial Officer the unqualified and good natured acceptance of the apology was less likely to have occurred had his testicles been grabbed for more than a second. The Judicial Officer also noted that there had been no complaint by Dickson to the referee or assistant referee immediately after the incident or at any time thereafter.
41. The Judicial Officer reminded himself that the allegation of foul play required, either the grabbing, squeezing or twisting of the testicles.
42. Taking all matters carefully in to account, the Judicial Officer concluded he was not satisfied that the Disciplinary Officer had discharged his burden under DR 78.11 “to prove, on the balance of probabilities, that the Player cited committed the act of foul play specified in the complaint” and that Issue number 2 (the state of mind of the Player) did therefore not need to be considered.
43. The Judicial Officer therefore reconvened the hearing and announced his decision to the parties dismissing the complaint.
44. The Judicial Officer reminded the parties of their right to appeal under DR 8.1.

Dated 20th January 2016

Simon Thomas
Judicial Officer

Annex A to Decision in the case of
Ryan Wilson.

EPRC

Statement in response to directions by Ryan Wilson

I deny the citing allegation.

To start with I was looking into the scrum to see the ball coming back and I was also trying to keep the scrum straight. As blindside flanker I've also got to try to protect the scrum half and put off the other scrum-half.

I was looking back to see the ball and it came down the wrong channel so it was near to my side and I had to try to make sure it didn't come out on my side.

Lee went back up the side of the scrum (he'd been pushing, I was aware of him, he'd been doing it earlier in the match), I had to try to stop this also.

I reached back to stop Lee from pushing our scrum-half who is a new and inexperienced scrum-half. I had done this earlier in the match also because Lee was putting pressure on him.

I wanted to hold Lee and stop him from getting round on to Ashley, Adam our number 8. A move was planned for Adam to pick up the ball and then pass. Northampton have a strong scrum. It was our put-in.

I took hold of his shorts and then felt something (other than cloth) and released. I didn't try to grab his penis or testicles and I didn't pull at, or twist or squeeze his penis or testicles.

I was trying to hold his shorts and protect our 9 and also our 8. I wasn't looking at him (Lee) and my hands were not trying to get in contact with his penis or testicles.

Whatever contact there was, was light, it was for a split second and I didn't "grab" his balls or "squeeze" him or "twist" him.

I think I may have just caught him on a nut when making contact with his shorts and getting a hold of the cloth.

It's embarrassing to be accused of this. It's not unheard of in a contact situation on the pitch to make contact with an opponent's private parts but it would be in the ruck or in a tackle are obvious examples and it's a bit embarrassing. If it happens you just want to kind of acknowledge it to an opponent and laugh it off.

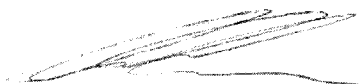
That's why I said to Lee that there was no intention to do anything to him and it was laughed off. He didn't confront me. I was the one to say to him about it and apologise.

I am totally convinced that if I had grabbed his nuts or squeezed or twisted him I'd have done damage and he'd have been in pain. He never made anything of it. He played on and said nothing about it to anyone.

I texted him on Monday because I know a player at Northampton. I tried to call him and he wasn't around. I sent him a text and he replied. In it he said to me "Yes was told last night and I said that there was nothing in it [at] all"

I'm genuinely totally embarrassed by this and grabbing someone by the testicles is just not something I would do or even try to do to someone.

I will attend the hearing and be accompanied by John Manson who is our Team Manager. Bruce Caldwell will attend as my lawyer.



RYAN WILSON
19/1/16