

# ERC HEINEKEN CUP

## DECISION OF THE INDEPENDENT JUDICIAL OFFICER

Hearing held at Huguenot House, Dublin on 23<sup>rd</sup> January 2014.

### IN RESPECT OF:

Nathan White ("the Player")

**and**

A citing complaint ("the Complaint") brought against the Player alleging that he had committed an act of foul play in contravention of Law 10.4(b) of the Laws of the Game (stamping or trampling on an opponent) in the Heineken Cup round 6 match ("the Match") between Saracens and Connacht Rugby played at Allianz Park on 18<sup>th</sup> January 2014.

### Judicial Officer appointed to hear the case:

Roger Morris (Wales) ("the Judicial Officer")

### Decision of the Judicial Officer

- (i) The Player having accepted that the cited act of foul play had deserved the issue of a red card and his ordering off, the Judicial Officer upheld the Complaint.
- (ii) The Judicial Officer considered the appropriate sanction was to impose a period of suspension upon the Player and as such the Player was suspended from taking part in the game of rugby up to and including the 23<sup>rd</sup> day of February 2014 which (taking into account weeks when he would not play) represents a period of suspension of three weeks.
- (iii) The Player was ordered to pay one half of the transport costs of the Judicial Officer attending the hearing.

### Introduction

The Judicial Officer was appointed by Prof Lorne D Crerar, Chairman of the ERC Discipline Panel pursuant to the discipline regulations found in the Participation Agreement of the Heineken Cup 2013/2014.

The Judicial Officer was appointed to consider the Complaint which had been brought by Richard McGhee, the citing commissioner appointed to the Match.

The Complaint alleged that, in the 36<sup>th</sup> minute of the Match, the Player stamped three times on the prone body of the Saracens player, Brad Barritt ("S12"), in breach of Law 10.4(b) of the Laws of the Game.

### **Persons present at the hearing**

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

- The Player.
- Kevin Dineen – Counsel representing the Player.
- Max Duthie – Solicitor representing ERC.
- Liam McTiernan – ERC.

### **Preliminary matters and procedure**

At the commencement of the hearing the Judicial Officer noted the identities of all present and said that the purpose of the hearing was to consider the Complaint and its allegation that the Player had committed the cited act of foul play.

The Judicial Officer reminded all parties that the ERC disciplinary rules found in the Participation Agreement of the Heineken Cup 2013/2014 (“the Disciplinary Rules” and “DR” in the singular) would apply and that the hearing would be conducted under the provisions of the Disciplinary Rules. The Player and all present agreed to proceeding on that basis.

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 materials received and to be considered at the hearing comprised the following:

- the Complaint;
- letter dated 20<sup>th</sup> January 2014 written by the tournament Disciplinary Officer to Prof Crerar;
- notice of hearing sent by Prof Crerar to the parties dated 20<sup>th</sup> January 2014;
- e mail dated 20<sup>th</sup> January 2014 written by the Match referee , Leighton Hodges;
- e mail dated 20<sup>th</sup> January 2014 written by one of the Match assistant referees, Greg Morgan;
- e mail dated 20<sup>th</sup> January 2014 written by the television match official (“TMO”), Gareth Simmons;
- e mail dated 21<sup>st</sup> January 2014 written to Mr McTiernan by Saracens’ rugby manager, J.P. O’Reilly,
- e mail dated 20th January 2014 written by S12;
- e mail dated 22nd January 2014 written by ERC’s disciplinary officer setting out ERC’s response to standing directions.
- e mail dated 22nd written by Tim Allnut setting out the Player’s responses to standing directions.
- Video clips.

Everyone had received all of the above and neither party wished to raise any preliminary issues.

The Judicial Officer noted the terms of the Player’s responses to the standard directions and in particular that he accepted the alleged foul to be a “red card” offence warranting his ordering off. The Player confirmed that remained his position.

In those circumstances, the purpose of the hearing would be to determine what sanction, if any, should be imposed and the evidence would be viewed and considered with that purpose in mind.

In advance of considering any of the evidence and with the permission of Mr Dineen, the Judicial Officer invited Mr Duthie to make his submissions on behalf of ERC.

Mr Duthie made the following points:

- In terms of the video footage circulated, he suggested it was possible, in one of the clips, to see S12's head move under the impact of the Player's boot.
- He acknowledged there was not significant contact, but there was contact with S12's face.
- There were three different points of contact and the last of the three was to the face.
- Although the match officials said that contact with the face was not clear and obvious, there was fresh evidence before the hearing to confirm that such a contact had occurred.
- The Judicial Officer would need to adjudicate on the intention of the Player because if, for example, contact was the inadvertent consequence of legitimately rucking the ball, it would not be foul play.
- ERC did not advocate a particular sanction but Mr Duthie pointed to the different categorisations of stamping set out by the appeal panel (a very experienced panel he further noted) in the Thompson case a copy of which had been attached to ERC's responses to the standing directions. He acknowledged those categorisations were not binding upon the Judicial Officer but they might be helpful.
- Mr Duthie also referred to the IRB's Ruling in Law dated the 1<sup>st</sup> April 2005 which remained pertinent to rucking.
- He reminded the Judicial Officer that, if mitigation was to be awarded, the Judicial Officer was limited to allowing 50% of the length of suspension contemplated by the relevant entry point except that in the case of low end entry point, if the Judicial Officer felt that even allowing a 50% reduction resulted in a suspension that was "wholly disproportionate" to the level of offending, he could impose a period of suspension of even shorter length.
- In terms of DR 6.7.34 it was incumbent upon the Judicial Officer to exclude certain weeks in which the player would be inactive so that any period of suspension was "meaningful".

The Judicial Officer asked Mr Dineen if he had any points he wished to challenge or question whilst Mr Duthie was present. Mr Dineen intimated that he would be able to make all his submissions without Mr Duthie being present. At this point, Mr Duthie was excused from the hearing.

### **Video Evidence**

The video footage showed that the incident in question happened at a ruck which formed on the halfway line as a consequence of S12 tackling C15. Following the tackle, S12 was pinned to the ground on the Connacht side of the ruck as the Player sought to enter that ruck.

In commenting on the video Mr Dineen explained the Player's case as follows:

- The Connacht full back carried the ball into a tackle performed by S12.
- As a consequence of the tackle a ruck formed with S12 lying on the Connacht side of the ruck.
- The Player's intention was to ruck the ball and his focus was on getting over S12 for that purpose.
- He did not appreciate at the time of the incident that he had made contact with S12's face and was "appalled" afterwards when he saw the video.

- The Player's principal intention was to get himself over the prone body of S12.
- The Player has admitted that, in his attempts so to get over S12, he had been reckless as to where he placed his feet.

The Player added:

- He had gone into the ruck looking for the ball and was trying to find it so as to ruck the ball away.
- He had not intended to stamp on S12 and that he did so was the reckless consequence of what he was trying to do.

### **Written Evidence**

#### Referee's report

In his written report, the referee, Leighton Hodges, confirmed that, after the incident, he had stopped play and consulted the TMO. He confirmed that he had not issued a red card because, from his view of the footage, he "could not see any clear or obvious contact with the face". He went on to say: "I needed to see a definitive footage that he came into contact with the face. This, coupled with the fact that I had seen no marks on the player's face, I showed the Player a yellow card".

Mr Dineen pointed to the fact that the referee confirmed there was no mark on the player's face which further confirmed there was no injury. He also said that although the Player accepted that he had hit S12's face with his boot, the referee's view of the footage was that there was no definitive evidence.

#### Assistant referee's report

In his report, assistant referee, Greg Morgan, said that he saw contact with the Player's right foot on the Saracens player's upper arm, but he could not be sure whether any more contact was made with the player on the floor.

#### TMO's report

The essence of the TMO's report was that he had spotted, in real time, that something had happened at the ruck in question and reported as much to the referee so inviting him to consider the incident. He had thought at first that there was contact between the Player's boot and S12's face but on review considered there was "lack of absolute clarity on the footage". The referee had been of the opinion that it was not clear and obvious and accordingly: "I did not press my recommendation for a red card and agreed with the referee that a yellow card was appropriate".

Having reviewed the footage since the match, the TMO believed the decision they had come to was wrong and that a red card would have been the correct decision.

### Medical evidence

The email from J.P. O'Reilly stated that no injuries were sustained by S12 and that he would not miss any games.

### Statement of S12

S12 said that he was stuck on the opposite side of the ruck and was unable to roll away. He had been stamped on three times, one of which was to the right side of his face below his eye.

### **Submissions on behalf of the Player**

The Judicial Officer invited Mr Dineen to address the hearing and to do so with the provisions of DR 6.7.32 in mind.

Mr Dineen's points made on behalf of the Player were:

- The offending by the Player had not been intentional but the reckless consequence of an attempt to perform a legitimate action, i.e. rucking for the ball.
- The Player had entered a plea of guilty at the first opportunity and had indicated as much in advance of the hearing in his response to the standing directions.
- The Player acknowledged his guilt and had apologised to S12 as soon as he possibly could following the game. He had tried to telephone S12 but Saracens had only provided him with an email address. He had therefore written to S12 setting out his apology and that email had been acknowledged and the apology accepted.
- S12 had suffered no injury and needed to receive no treatment.
- The Player has an excellent disciplinary record and had never been cited nor received a red card in the eleven years of his professional career. His only red card had been issued in New Zealand when he was playing as an amateur and that red card had been issued as a consequence of two yellow cards. This was the first occasion upon which he had been required to appear a disciplinary hearing.
- In light of the foregoing, Mr Dineen argued that the correct entry point was the low end entry point.

Mr Dineen then produced a copy of Connacht Rugby's fixture list which showed (and the Player confirmed) that the Player was not due to play another game of rugby until 9<sup>th</sup> February 2014 when Connacht was due to play Glasgow Warriors.

Before retiring to consider matters in private, the Judicial Officer asked the Player whether there was anything he wished to add. The Player said that Mr Dineen had covered the points he wished to make but added that he was disappointed at his actions and upset with himself that he had let his team down as well as spoiling what had been a clean disciplinary record.

## Decision as to Disposal

The Judicial Officer deliberated in private. He noted the contents of the various written reports presented at the hearing and made an assessment of the video evidence as follows:

- The ruck at which the incident occurred was formed as a consequence of C15 being tackled by S12.
- The dynamic of the tackle and the forming ruck caused S12 to be pinned on the floor on the Connacht side of the ruck and on his back with his head (from the Player's perspective) to the left and his face to the sky.
- The Player made to enter the ruck at the point opposite S12's torso.
- The Player made as though to clamber over S12 and in doing that the toe end of his right foot stamped down upon the right side of S12's chest area.
- The Player brought his foot down a second time and, again with the toe end of his boot, stamped on S12 – on that second occasion making contact with S12's upper right arm/shoulder.
- The Player brought his foot down a third time bringing the underneath of the toe end of his boot straight down, glancing onto the right cheek of the prone S12 with the studs of the boot passing perilously close to S12's right eye.

After the ruck broke up, S12 could be seen remonstrating with the referee and pointing to his face. After lengthy deliberation between the referee and the TMO, the referee issued a yellow card and the Player was ordered off the field for a period of 10 minutes.

The Judicial Officer noted the offence of stamping or trampling on another player was listed within the IRB 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 – 9+ weeks

Maximum Sanction – 52 weeks

The Judicial Officer considered the seriousness of the Player's conduct by reference to the factors as set out in DR 6.7.32 and concluded as follows:

- a. & b.        The Judicial Officer was prepared to accept that the first stamp perpetrated by the Player was the reckless consequence of an attempt to enter the ruck for the legitimate purpose of rucking the ball. However, there were two further stamps perpetrated on the prone body of S12 the presence of whom was now clearly known to the Player such that those stamps were executed in the knowledge of that presence. The Judicial Officer did, however, accept that the Player did not target S12's head.

- c. The Player used the underneath of the toe end of his boot to perform each of the three stamps and did so without particularly powerful force. But one of the stamps, although a glancing blow, was dangerously close to S12's eye.
- d. There were three stamps of not particularly forceful power with the underneath of the front end of the Player's boot.
- e., f. & g. There was no provocation, retaliation or self-defence present in the offending.
- h. There was no injury suffered by S12 and he played on without need for treatment either on the field or after the match.
- i. The effect on the Match was detrimental to the Player's team – Saracens scored 14 points during his absence.
- j. S12 was pinned on his back at the bottom of the ruck and was unable to do much if anything to defend himself.
- k. There was no premeditation but the Player participated fully in the offending.
- l. The Player's conduct was completed in the each of the three stamps.
- m. No other feature of the offending needed to be considered.

In the light of the above assessment, the Judicial Officer concluded that the correct entry point to reflect the seriousness of the offending was at the Mid Range which represents a period of suspension of 5 weeks.

In considering aggravating factors (as required by DR 6.7.34), the Judicial Officer concluded that there were no features aggravating of the offence and therefore no imperative to increase the period of suspension contemplated by the chosen entry point.

Turning to the mitigating features required to be considered under the provisions of DR 6.7.35, the Judicial Officer noted the Player's previous exemplary record and the fact that, in addition, the Player had treated the whole disciplinary process with proper respect and had indicated his acceptance of guilt at the earliest opportunity. Whilst it behoves judicial officers to be sceptical of apologies given post match, the Judicial Officer noted that S12 had accepted the apology. Further, the Judicial Officer was satisfied that the Player had demonstrated suitable remorse particularly in light of having sullied his previously unblemished record.

Taking all the mitigating factors into account, the Judicial Officer assessed that the Player was entitled to the maximum permissible level of mitigation – 50%. This would allow the period of 2 weeks to be deducted from the period of suspension recommended for a Mid Range offence.

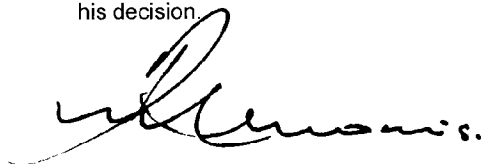
Accordingly, the Player would be suspended from playing the game of rugby for a period of 3 weeks.

The Judicial Officer then considered the provisions of DR 6.7.44 by reference to the Player's playing schedule and the fixture list of Connacht Rugby presented earlier in the hearing. The Judicial Officer noted that the Player was not due to play a game until 9<sup>th</sup> February 2014. Therefore, in order that the period of suspension was properly meaningful, it would not end until midnight on 23<sup>rd</sup> February 2014. The Player would be free to play again on 24<sup>th</sup> February 2014.

In addition, the Player would be required to pay one-half of the Judicial Officer's transport costs associated with the hearing.

The hearing was reconvened and the foregoing decisions relayed to the parties.

Finally, the Judicial Officer reminded the parties that the disciplinary rules afford them the right to appeal against his decision.

A handwritten signature in black ink, appearing to read 'R. Morris', with a stylized flourish at the end.

Roger Morris

31<sup>st</sup> January 2014