

Decision of the Independent Judicial Officer

ERC Heineken Cup 2012

Held by Skype video conference at Huguenot House, 35-38 St Stephen's Green, Dublin.

22 December 2011 at 2.30 pm.

In respect of

Francesco Minto of Benetton Treviso ("the Player")

And

The Ordering Off of the Player for an offence contrary to Law 10.4 (a) of the Laws of the Game in the match between Biarritz Olympique –v- Benetton Treviso played on 16 December 2011.

Judicial Officer appointed to hear the case:

Jeremy Summers (England) ("the Judicial Officer")

Decision of the Judicial Officer:

- (i) As the Player had accepted that the Referee was correct to order him off, the Judicial Officer had to determine what suspension or other sanction should be imposed upon the Player, if any;
- (ii) The Judicial Officer considered that there was no reason not to impose a suspension on the Player and as such the Player was suspended from taking part in the game of rugby up to and including 29 January 2011. This represents a 6 week suspension commencing on 16 December 2011.
- (iii) The Judicial Officer declared that each party would bear its own costs.

Introduction

1. The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the ERC's independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2011/2012.
2. The Judicial Officer was appointed to consider the Ordering Off of the Player in the match played between Biarritz and Treviso on 16 December 2011 in the Heineken Cup 2011/2012.
3. Peter Fitzgibbon was appointed as referee to this match and had ordered the Player off for an offence contrary to Law 10.4 (a) of the Laws of the Game, namely that he had struck an opponent with his head.
4. Present at the hearing in addition to the Judicial Officer were the following persons:-
 - The Player (by Skype).
 - Mr Vittorio Munari, CEO Benetton Treviso (by Skype).
 - Mr Roger O'Connor, ERC Disciplinary Officer ("the Disciplinary Officer").
 - Mr Max Duthie, Solicitor representing the Disciplinary Officer.
 - Mr Liam McTiernan, ERC Regulatory Officer.

Preliminary matters & procedure

5. At the commencement of the hearing the Judicial Officer noted the identities of all present and the offence for which the Player was Ordered Off, namely striking an opponent with the head contrary to Law 10.4 (a).
6. The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2011/2012 (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 proceed on that basis.
7. 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. This evidence was as follows:-
 - Referee's Report on Red Card dated 16 December 2011.
 - Medical Report (and translation) from Dr J-L Rebeyrol dated 20 December 2011.
 - Player's statement in compliance with the Standard Directions received by e-mail dated 20 December 2011.
 - Undated statement from Mr Munari (received by dated e-mail 20 December 2011).
 - The Disciplinary Officer's response the Player's statement in response to the Standard Directions by e-mail dated 21 December 2011.

- Match footage
8. The Judicial Officer noted the terms of the parties' responses to the Standing Directions found at Appendix Six DR ("the Directions") as follows:-

The Player:

- (a) *Mr Minto ("the Player") is the player who was shown the Red Card.*
- (b) *The Player will not argue any preliminary issues.*
- (c) *The Player accepts the Referee's report as being true and accurate.*
- (d) *The Player accepts that he committed the act of foul play identified by the Referee in his report.*
- (e) *The Player accepts that his actions warranted a red card.*
- (f) and (g) *The Player will not seek to show that the Referee's decision was wrong.*

The Disciplinary Officer:

- (a) *The Player has stated that he will not argue any preliminary matters.*
- (b) *The Player has stated that he accepts that he committed an act of foul play and that it warranted a red card. Accordingly, and pursuant to Disciplinary Rules 6.7.23, 6.7.28, 6.7.29 and 6.7.31, it will be for you as Judicial Officer to consider the evidence and determine the appropriate sanction in this case.*
- (c) *I am still waiting for an English translation of the report from Dr Rebeyrol on the injuries sustained by Mr Lesgourgues (I will circulate that as soon as I receive it). Other than that and the other documents that have already been exchanged, I do not intend to refer to any further evidence.*
- (d) *I will be attending the hearing, along with Liam McTiernan (ERC's Regulations Executive) and Max Duthie (lawyer).*

9. There were no preliminary issues that either party wished to raise.
10. In accordance with DR 6.2.2 the Judicial Officer reviewed the Ordering Off including the Referee's reasons for the Ordering Off. In accordance with DR 6.2.8 the Judicial Officer referred to the Official Report of the Referee which read:

"A ruck formed close to the Benetton Treviso 10m line from which Biarritz won possession. As the Biarritz number 9 attempted to retrieve the ball I saw the Benetton Treviso number 6 enter the ruck illegally (not from the hindmost foot) and strike the Biarritz number 9 with his head, making contact with his face."

11. The Player was asked whether he accepted the Official Report as a true and accurate account of the incident and the facts surrounding the incident and separately whether the Player accepted that he should have been Ordered Off. The Player stated that he accepted that he ought to have been Ordered Off and that he accepted the terms of Official Report.

12. In light of that position, the Judicial Officer confirmed that the purpose of the hearing was to determine what further sanction, if any, should be imposed and that the evidence would be considered to that end.

Evidence supporting Ordering Off

13. Pursuant to DR 6.2.9 the Judicial Officer directed that the video footage of the incident should be shown. The parties watched the video footage with the sound off. In advance of the hearing the Judicial Officer had prepared the following narrative describing what he considered the video showed. This was read to the parties during the hearing who both confirmed that they considered it to be an accurate summary of the incident as shown on the match footage:-

At a ruck on or about the Treviso 10m line, Biarritz had won possession and the ball could be seen on the floor at the back of the ruck.

B9 was standing over the ball marshalling the players in front of him and considering the next phase of attack.

B13 was in front of the ball. It was not possible to determine from the footage how he had arrived at that position. However the Player was attempting to dislodge B13 by using both hands to pull his shirt which was seen to come up B13's back.

At this point the Player was directly in front of B9 who was facing down looking at the ball. The Player's head was above that of B9, and although the player was looking down, given the height advantage B9 was in the Player's field of vision.

The Player then released his grip on B13's shirt. His right arm appeared to bend at the elbow and come across his right thigh. His left hand and arm went forward either onto or to the side of another Biarritz player.

The Player's head dropped to position level with or below that of B9's head. He then propelled himself forward, leading with his head. The left side of his forehead/temple made contact with B9's right cheek.

At no point did the Players' hands or arms come into contact with B9.

B9 was knocked backwards by the force of the impact and landed heavily on the floor. He lay prone for some time and required immediate medical attention.

Immediately following contact the Player stood up and made a gesture as if to question what he had done wrong. He then moved backwards and away from the breakdown area before being summoned back by the Referee to be dismissed.

14. The parties then considered the medical evidence submitted by Biarritz. In summary this disclosed that B9 had suffered a crano facial trauma to his right cheekbone and that it was suspected that he had lost consciousness for several second immediately after the impact. At the date of the hearing he continued to demonstrate symptoms consistent with concussion and underwent an MRI scan on 21 December, the results of which were not available to the Judicial Officer. However he had been signed off sick and prevented from even light training until at least 26 December 2011.

Player's position

15. The Judicial Officer asked the Player to explain his actions by reference to the video evidence. The Player indicated that he had been attempting to go for the ball and had not realised he was in an offside position. He had initially tried to dislodge B13 who he thought was lying over the ball. He claimed he was not looking at B9 but accepted he B9 would have been in his field of vision. He had not intended to strike B9 and apologised to the Judicial Officer both for his offending and the injury this had caused. He had moved forward in a fast and driving action and accepted he had done so dangerously.
16. In support of the Player Mr Munari submitted that the Player was not using his head to strike an opponent in an aggressive way such that it could be termed a "head butt". He thought that there were circumstances where a player could accidentally cause concussion through a contact with a head that was not foul play. He nevertheless accepted that the Player had committed an act of foul play but thought it was at the lower end of the seriousness with which such incidents should be viewed.
17. He noted that the Player is very young and motivated and in contention for national selection having already represented Italy A. He had not been selected for the corresponding fixture against Biarritz the week before which Treviso had won. He was therefore particularly keen to impress in what was a key game for the club. The match had been played in a strong wind. Biarritz were employing negative tactics to retain the ball whilst playing against the wind and the Player had been desperate to get the ball. He had not intended to strike B9 with his head but had been reckless as to that risk. There had been no other incident in the game and no reaction from any other Biarritz player to the Player's actions.
18. The Judicial Officer was informed that the Player is 24 and has been playing rugby for 14 years two of which as a professional player for Parma and now Treviso. As already indicated he has represented Italy A and in this respect the Judicial Officer noted that in February 2001

the Player received a 9 week suspension for contact with the eyes/eye area contrary to Law 10.4 (m) following an incident that occurred in a game against Scotland A. He had also received 10 yellow cards in the period 2004-2009.

19. Mr Munari commented that the Player was very down having been ordered off and was conscious of the risk that his record risked damaging his reputation. He is though regarded as a good person by the club and one who works hard, is very determined but yet humble. The Judicial Officer was told that the Player deeply regretted his actions.

Submissions on sanction

20. The Disciplinary Officer had no submissions as to sanction that he wished to make. Mr Munari reiterated the points already noted above which were also further articulated in the written statement he had submitted on 16 December 2011 to which the Judicial Officer was referred.

Decision as to disposal

21. The Judicial Officer retired to deliberate in private in respect of what, if any, sanction would be appropriate in the circumstances. The Judicial Officer was satisfied that the following had occurred in the incident:-

- Biarritz had lawfully won possession at a ruck and B9 was considering the next phase of attack.
- The Player had tried to dislodge B13 and then moved forward leading with his head in a dangerous way.
- At no point did the Player's arms come into contact with B9 either to attempt to grab him or, even if unlawfully, clear him out.
- B9 was looking down at the ball and would not have seen the Player come towards him until the very last moment.
- The Player's head made forceful contact with B9's face causing the injuries already noted above.
- B9 was unable to complete the match as a result of the injuries sustained and was unable to resume training for at least 10 days.

22. In turning to the question of sanction, the Judicial Officer considered the terms of the Disciplinary Rules including DR 6.7.29 through to DR 6.7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

23. The Judicial Officer noted that the offence of striking an opponent with the head in contravention of Law 10.4 (a) was listed within the IRB Recommended Sanctions for Offences Within the Playing Enclosure (found at Appendix Three of the Disciplinary Rules) as follows:-

- Lower End – 4 weeks.
- Mid Range – 8 weeks.
- Top End – 12+ weeks.
- Maximum Sanction – 104 weeks.

24. To decide upon the appropriate entry point the Judicial Officer assessed the seriousness of the Player's conduct by reference to the following factors as set out at DR 6.7.32:-

- The Player had deliberately used his head to make contact with an opponent. In this regard the Judicial Officer noted in particular the fact that the Player had not at any time used his arms to grab or otherwise make any contact with B9.
- The Player had not intended to cause injury but had plainly been reckless in the extreme as to that risk.
- The Player's actions consisted of single, but highly dangerous, lunge forward in consequence of which his head had struck the right hand side of B9's face.
- There was no provocation.
- B9 suffered a crano facial trauma and severe concussion.
- B9 was unable to complete the match but there was otherwise no effect to the match caused by the Player's actions.
- B9 was vulnerable as he would not have seen or anticipated the Player coming forward as he did.
- There was no premeditation.
- The conduct was complete.
- No other features constituted the offending.

25. In light of the same the Judicial Officer determined that the appropriate entry point for this matter was 8 weeks being the Mid Range of seriousness.

26. The Judicial Officer gave very careful consideration as to whether this offending should have been assessed at the top end of the scale of seriousness. Had the Judicial Officer concluded that the Player had intentionally struck B9 in a manner that could have been viewed as a head butt, that result would have inevitably have followed. In concluding that this was not the case, the Judicial Officer noted the lack of reaction by other Biarritz players who had a clear view of the incident. In the view of the Judicial Officer had those players perceived a malicious intent in the Player's actions a reaction would have been highly likely.

27. The Judicial Officer then considered the "off-field" issues and in doing so looked at whether there were any "aggravating" or "mitigating" factors.

28. The Judicial Officer considered that none of the off-field aggravating factors prescribed by DR

6.7.34 were relevant to the determination of the appropriate period of suspension.

29. The Judicial Officer considered that the following off-field mitigating factors as prescribed by DR 6.7.25 should properly be taken into account in determining the appropriate period of suspension:-

- The Player's plea and prompt acknowledgement of guilt.
- His conduct at the hearing.
- His clear remorse.

30. In light of these factors the Judicial Officer reduced the overall period of suspension by 25% i.e. by 2 weeks.

31. In all of the circumstances the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of 6 weeks commencing on the date of his dismissal being 16 December 2011 and ending on 29 January 2012 (inclusive).

32. The Player and the Disciplinary Officer are reminded that DR 7.1.1 provides for a right of appeal against this decision.

33. No order for costs was applied for and accordingly none was made. Each party will therefore bear their own costs.

Jeremy Summers

Jeremy Summers
Judicial Officer

Date: 24 December 2011