

Decision of the Independent Judicial Officer

ERC

Held at the ERC Headquarters, St. Stephens Green, Dublin

Thursday 12th April 2012

In respect of

John Afoa of Ulster (“the Player”)

And

The citing report of the citing commissioner P.J Larter (England) in respect of an act of foul play under Law 10.4(j) of the Laws of the Game, namely dangerous play by lifting a player from the ground and dropping or driving that player into the ground whilst that player’s feet are still off the ground such that the player’s head /or upper body come into contact with the ground, in the match between Munster Rugby and Ulster Rugby played on 8th April 2012 at the Thomond Park Stadium, Limerick.

Judicial Officer appointed to hear the case:

Jean Noel Couraud (France) (“The Judicial Officer”)

Decision of the Judicial Officer:

- (i) The Judicial Officer found that the Player had committed the alleged act of illegal and/or foul play and thus upheld the citing complaint.
- (ii) The Player is suspended from taking part in the game of rugby up to and including Sunday 6 May 2012. The Player is free to resume playing rugby on 7 May 2012. This represents a four week suspension.
- (iii) The Player and/or his club should bear the Disciplinary Officer’s reasonable costs of being represented at the hearing.

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, The Chairman of the ERC Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2011/2012.

The Judicial Officer was appointed to consider a citing complaint made by the citing commissioner, Mr P.J Larter, who the ERC appointed to act as a Citing Commissioner for the match between Munster Rugby and Ulster Rugby played on 8th April 2012 at the Thomond Park Stadium, Limerick.

The citing commissioner cited the Player for an act of foul play contrary to Law 10.4(j), namely dangerous play by lifting a player from the ground and dropping and driving that player into the ground whilst that player's feet were still off the ground such that the victim player's head and/or upper body came into contact with the ground.

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

- The Player
- Mr Donald Spring and Avalon Everett ,Solicitors of the Player
- Mr David Humpherys , Team Manager at Ulster Rugby
- Mr David Miller , Ulster Rugby
- Roger O'Connor, disciplinary officer, ERC ("the Disciplinary Officer")
- Max Duthie, Solicitor of ERC
- Liam McTiernan, ERC's Regulations Executive
- Ben Rutherford, Legal Counsel, IRB, as an observer

Preliminary matters & procedure

At the commencement of the hearing the Judicial Officer confirmed the identities of all present and narrated the complaint, reminding the parties that the Complaint was in respect of an allegation that the Player had committed an act of foul play contrary to Law 10.4(j).

The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceed on that basis.

The Judicial Officer established that there were no preliminary issues to be argued by either of the parties.

The Judicial Officer had noted the terms of the parties' responses to the Standing Directions found at Appendix Six of the Disciplinary Rules as follows:

For the Player:

- (a) *We confirm on behalf of Mr John Afoa that he is the Player named in the citing complaint;*
- (b) *The Player will not argue any preliminary matters;*
- (c) *The Player does not accept that the citing is a true and accurate account of the incident.*
- (d) *The Player does not accept that he committed an act of foul play as set out in the citing complaint.*
- (e) *The Player does not accept that the act warranted a red card.*
- (f) *The Player will argue that the Referee's decision of no yellow card or penalty was correct. The Player will rely on video evidence and his own oral statement.(..)*

The Disciplinary Officer:

- (a) *The Player has stated that he will not argue any preliminary matters.*
- (b) *The Player does not accept that he committed an act of foul play and (it follows) that he does not accept that his actions warranted a red card. Accordingly, and pursuant to Disciplinary Rule 6.7.11, it will be for you as Judicial Officer to determine whether or not the Player committed an act of foul play, and (if you do determine that he committed an act of foul play), pursuant to Disciplinary Rules 6.7.28, 6.7.29, 6.7.31 and 6.7.41, it will be for you as Judicial Officer to determine the appropriate sanction (if any) in this case. If you determine that his act of foul play did not warrant a red card, then pursuant to Disciplinary Rule 6.7.41, you will be entitled to impose no sanction. On 8 June 2009, the IRB Referee Manager and Judicial Panel Chairman circulated a memo on the subject of 'tackles involving a player being lifted off the ground and tipped horizontally and ... then either forced or dropped to the ground' (so-called 'tip tackles'). The memo gives guidance on the circumstances in which a 'tip tackle' will warrant a red card.*

In the event that you determine that you will impose a sanction, pursuant to Disciplinary Rule 6.7.34, when doing so, you will be required (among other things) to identify all relevant aggravating factors. Some comments in that regard:

- (i) *One such aggravating factor listed in the Disciplinary Rules is the need for a deterrent to combat a pattern of offending (see Disciplinary Rule 6.7.34(c)). The memo referred to above also states that despite the IRB previously issuing a ruling and advice to referees about the danger*

of such tackles, 'these tackles are still being made ... [and] they must be dealt with severely by referees and all those involved in the off-field disciplinary process'. Accordingly, the June 2009 memo might be treated by disciplinary tribunals as evidence, in effect, that according to the IRB there is a pattern of offending with respect to 'tip tackles' and that there is the need for a deterrent to combat that pattern of offending.

(ii) *Regardless of whether the June 2009 memo itself should be treated as evidence that there is a pattern of offending (such that there is the need for a deterrent to combat it), disciplinary tribunals might conclude in any event that given the significant number of cases involving 'tip tackles' that have been heard in recent months and years, there is indeed such a pattern of offending and the need for a deterrent to combat it. For example, ERC is aware of a total of **41** tip tackle cases that have been heard since the memo was circulated in June 2009. And since the start of this year's ERC competitions, ERC has itself had **five** cases (in addition to this case) in which the relevant player has been found guilty of such a tackle under law 10.4(j).*

(iii) *On a separate but related matter, it might also be of assistance if I respectfully draw to your attention Disciplinary Rule 6.7.36 which, among other things, provides that for acts of foul play categorised at the lower end of the scale of seriousness, there can be no reduction from the entry point suspension unless there are no aggravating factors and compelling mitigating factors. Accordingly, if you were to find in this case that there was an act of foul play that warranted a low end entry point and considered that there was the need for a deterrent under Disciplinary Rule 6.7.34(c), you would then not be entitled to reduce the sanction below the low end entry point due to the presence of an aggravating factor.*

I attach a copy of the memo, along with the decision of the Appeal Committee in the case of Shingler (which I might refer to -- among other cases -- should we get to discuss sanction at the hearing). I also attach a table that sets out details of the 41 tip tackle cases we are aware of since June 2009.

I hope you understand the purpose in my bringing these points to your attention. It is most certainly not to make an example of the Player or to encourage you to treat him differently from other players. In fact, it is

entirely the opposite: it is with a view to maintaining a consistent approach to the treatment of 'tip tackles' in rugby union's disciplinary regime.

- (c) Other than that which has already been exchanged, I do not intend to refer to any further evidence.

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.

Evidence supporting the Complaint

- Mr Duthie referred the Judicial Officer to the citing report. This report read as follows:

“The Munster number 11 fielded a high kick close to his left touch-line just inside the Ulster half of the field, and ran the ball back infield towards the Ulster try-line. When he was about 5 metres from the Ulster 22m line and almost centre field he try to offload the ball to the Munster number 15(Felix Jones)who was just to his right (timing on Sky DVD 44.44).Felix Jones was unable to take the pass, and the ball, and the ball went forwards. The Ulster number 3(John Afoa) had already committed to the tackle and was probably unaware that Felix Jones had been unable to take the pass.

However, in making the tackle Afoa's right shoulder made contact in the area of Jones' midriff, he then grabbed around Jones' right knee/right thigh with his left hand/arm and lifted him until he was beyond the horizontal .Both players then went to the ground with Jones' left elbow then left shoulder and right hand making contact with the ground before Afoa landed with his upper body/right shoulder in contact with Jones 'chest area (..)”

- He confirmed that the match officials had not seen the alleged incident.
- The referee stated in his report:

“At 44.45, 15 Munster lost the ball forward and I played an advantage for knock-on for Ulster. Then I followed the ball because a quick turn over was played by 14 Ulster and far from the 3 Ulster tackle. I paid attention to the ball and I could not see the tip tackle by 3 Ulster. I was about four meters from this act and could not see because of 1 Ulster was on my view. I got any report and play on.”

- Both of the assistant referees, Jerome Garces and Mathieu Raynal, stated in their reports that they did not witness the alleged act of foul play committed by the Player.
- Mr Felix Jones's statement read as follows:

“My recollection is as follows, I attempted to take a pass from Simon Zebo which I failed to catch. I was hit in my torso by the opposing player. I felt my legs being lifted and my upper body turned toward the ground. I felt the top side of my left shoulder making contact with the ground first. I felt a significant amount of pain in my left shoulder at that time and was briefly attended to by our physio. I continued to play and had the medical staff examine it post game, it remains painful but seems as though there is no long term damage”.

- The Judicial Officer viewed the video footage of the incident, which was played in real time, and slow motion.
- Mr Duthie confirmed that the burden lay with him to satisfy the Judicial Officer that an act of foul play had occurred and referred in the respect to the provisions of Law 10.4(j). In his submission the Player had lifted Mr Felix Jones off the ground, having done so, and whilst Mr Felix Jones's feet were still off the ground, Mr Felix Jones's head and / or upper body had then come into contact with the ground.
- He referred to the decision of the Judicial Officer in the case of Mr Ian Gough, when the Player did not accept that he drove Mr Felix Jones into the ground after he had lifted him.
- Mr Duthie considered that the offending warranted the issue of a red card.

Player's defence

- Mr Spring said that the Player was a fair player with an exemplary disciplinary record.
- His submission was that the Player had not committed an act of foul play. He confirmed that the Player did not accept that the act warranted a red card.
- Mr Spring reminded the Judicial Officer that the essential elements of Law 10.4(j) required *“lifting a player from the ground and dropping or driving that player whilst that player's feet were still off the ground”*. It was not accepted that the Player had dropped or driven Mr Felix Jones to the floor.
- He said that :
 - Mr Felix Jones tried to catch the ball and was over the horizontal before the tackle;
 - The Player was static when Mr Felix Jones got on contact;
 - the Player and Mr Felix Jones were fully attached at all relevant times. The Player did not drop and/or drive Mr Felix Jones into the ground.
- He considered that the referee clearly saw the action. He had not detected any improper contact had it occurred.
- Mr Spring referred the 6 Nation's disciplinary committee decision in the case of Mr Ferris. He said that like in the case of Mr Ferris the essential dynamic of the contact was primarily *“sideways”* and in the horizontal plane.

- He characterised the tackle as falling within the third category of the IRB Memorandum of 8th June 2009 for which a penalty or yellow card might have been deemed to be appropriate.

Findings

- The Judicial Officer having taken into account all of the submissions and a detailed consideration of the video footage could not accept the explanation of the Player as supported by the Player's representative.
- The Judicial Officer determined that the Player committed an act of foul play contrary to Law 10.4(j):
 - Mr Felix Jones was clearly lifted off the ground;
 - He was at a minimum driving into the ground by the effect of the lift and the weight of the player's upper body. The Judicial Officer referred to the decision in the case of Mr Ian Gough.
 - Mr Felix Jones upper body came into contact with the ground.
 - No attempt was made to bring the Munster player number 15 safely to the ground.

Decision as to disposal

- Having advised the Player of his findings the Judicial Officer upheld the Complaint. He thereafter invited Mr Duthie and the Player's representative to address him with their submissions as to sanction.
- Having considered the submissions of Mr Duthie for the disciplinary Officer and Mr Spring for the Player the Judicial Officer determined that:
 - (a) The offending was intentional.
 - (b) The offence was committed by the Player deliberately lifting Mr Felix Jones to a height and driving him on to the ground whilst his feet were off the ground.
 - (c) There was no provocation and the Player did not act in retaliation and in self defence.
 - (d) The victim player was not injured.
 - (e) There was no effect on the game.
 - (f) The tackled player was vulnerable.
 - (g) The offending was not premeditated, but was complete
- In these circumstances, this offending can be assessed as at the mid-range of the scale of seriousness.
- The entry point for mid-range offending under Law 10.4(j) is 6 weeks.

- The Judicial Officer then considered the "off field" issues and in doing so looked at whether there were any "aggravating" or "mitigating" factors.
- The Judicial Officer then considered the following to be an aggravating factor to take into account in determining the appropriate period of suspension.
- Having considered the nature and frequency of these types of offences, there is a clear pattern of offending for which there is a need for a deterrent.
- For these reason a period of one week is added to the entry point.
- The Judicial Officer considers that the following are mitigating circumstances to take into account in determining the appropriate period of suspension.
- The Player has an exemplary disciplinary record and a good character. He is 28 years old and has a lot of caps in his national team
- A period of three weeks was to be deducted by reason of these facts.
- In all the circumstances, the Judicial Officer determined that the appropriate sanction was the imposition of a period of suspension of four weeks ending on Sunday 6th May 2012 (inclusive). The Player is free to play from 7 May 2012.
- The Player and the Disciplinary Officer are reminded that DR 7.1.1 provides a right of appeal against this decision.

Costs

- The Judicial Officer ordered that the Player and/or his club should bear the Disciplinary Officer's reasonable costs of being represented at the hearing.

Jean Noel Couraud

Judicial Officer



16th April 2012