

Decision of the Independent Judicial Officer

ERC

Held at Huguenot House, 35-38, St Stephen's Green, Dublin 2

Thursday 19th January 2012 at 2:00pm

In respect of

Armand Batlle of USA Perpignan ("the Player")

And

A citing in respect of an offence **contrary to Law 10.4 (j) of the Laws of the Game of Rugby Union in the match between USA Perpignan –v- Newport Gwent Dragons played at Stade Aime Giral, Perpignan on 14th January 2012.**

Judicial Officer appointed to hear the case:

Simon Thomas, Wales ("the Judicial Officer")

Decision of the Judicial Officer:

- (i) The Player accepted that the citing complaint against the Player should be upheld. The Judicial Officer therefore found that the Player had committed an act of illegal and/or foul play as alleged in the citing complaint.
- (ii) The Player accepted that the act of illegal and/or foul play merited a red card. The Judicial Officer was therefore satisfied that the act of illegal and/or foul play merited the red card and that the Player should have been ordered off for the offence.
- (iii) The Player is suspended from taking part in the game of rugby up to and including Sunday 12th February 2012. This represents a four week suspension commencing on 19th January 2012.
- (iv) The Judicial Officer made an award of costs against the Player in relation to the Judicial Officer's travel expenses.

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 to the Amlin Challenge Cup 2011/2012. The Judicial Officer was appointed to consider the citing complaint ("the Complaint") against the Player in the match between USA Perpignan and Newport Gwent Dragons on 14th January 2012 in the Amlin Challenge Cup 2011/2012.
2. Mr Alberto Recaldini (Italy) was appointed Citing Commissioner to this match and had cited the Player for a dangerous tackle against Matthew Jones of Newport Gwent Dragons contrary to Law 10.4 (j).
3. Present at the hearing in Dublin in addition to the Judicial Officer were the following persons:-
 - (a) Mr Roger O'Connor - Disciplinary Officer, ERC.
 - (b) Mr Liam McTiernan - ERC's Regulations Executive.
 - (c) Mr John O'Donnell SC – Counsel for the Player.

The Player and his French representative Mr Pierre Becque appeared, at their request, by telephone from Perpignan. In light of the Player's response to the standing directions referred to below, and in the absence of any objection by the Disciplinary Officer, this had been approved by the Judicial Officer.

Preliminary Matters and Procedure:

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 executed a dangerous tip tackle against Matthew Jones of Newport Gwent Dragons by lifting Jones from the ground and dropping him onto the ground whilst his feet were still in the air. It was alleged that Jones' left shoulder came into contact with the ground first. This was contrary to Law 10.4 (j).
5. The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the participation agreement of the Amlin Challenge Cup 2011/2012 (the "Disciplinary Rules" and the "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.
6. 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

enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was as follows:-

- (a) The Notice of Hearing dated 17th January 2012 sent by Professor Crerar to the parties.
- (b) The letter from Mr O'Connor to Professor Crerar enclosing the Citing Complaint.
- (c) The Citing Complaint of Mr Alberto Recaldini.
- (d) The email containing the brief statements of the three match officials concerning the incident.
- (e) The Player's response to the standing directions found in Appendix 6 of the Disciplinary Rules ("the directions").
- (f) The Disciplinary Officer's response to (e) including a copy of the International Rugby Board memorandum dated 10th June 2009 in relation to "tip tackles".
- (g) Video evidence of the incident from several angles.
- (h) Medical evidence on Matthew Jones from the head physiotherapist of the Newport Gwent Dragons.

7. The Judicial Officer noted the terms of the parties' responses to the directions.

The Player's response to Standing Directions

- "1. I confirm that I am the player named in the Citing Complaint.*
- 2. I will not be arguing any preliminary matters.*
- 3. I accept that the Citing Complaint is a true and accurate account of the incident that resulted in the citing.*
- 4. I accept that I committed the act of foul play referred to in the Citing Complaint, though I wish to make it clear that I did so without any intent whatsoever to injure.*
- 5. I accept the act of foul play complained of warranted a red card in the circumstances.*
- 6. I will be attending the hearing by telephone, having been released from attending in person by the Judicial Officer. I will be represented at the hearing by John O'Donnell SC.*

Circumstances of the Incident:

Dragon's team had the ball in their own half and were counter-attacking. The ball came to Dragon's No. 10. I was the player opposite him for USAP for this movement. As the Dragon's No. 10 ran at me with the ball I prepared to tackle. I was fully engaged and committed to the tackle and I commenced the tackle as the Dragon's No. 10 passed the ball to his right (where there was an overlap). My memory is that the Dragon's No.10 was running far more quickly than me and I was in essentially a standing position. I recall tackling the Dragon's No.10 and driving him backwards; however, I was conscious that there was an overlap and that another

Dragon's player was attacking further up the field. I released the Dragon's No. 10 from the tackle and turned to follow back to cover.

I accept that that when driving the Dragon's No.10 backwards I also lifted him off the ground so that at one point his legs were horizontal or slightly more in the air. I did not "drive" or "dump" the Dragon's No. 10, though I accept in releasing him from the tackle the effect was that the Dragon's No.10 landed awkwardly on his shoulder. I wish to make it clear that this incident was as a result of a clumsy mis-execution tackle on my part. I am extremely sorry the incident in question occurred".

Further information about the Player's personal circumstances followed in the document about his good character and experience.

Disciplinary Officer's Response

8. The Disciplinary Officer's response to the directions was:-

"... (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 determine the appropriate sanction in this case. Pursuant to Disciplinary Rule 6.7.34, when determining sanction, the Judicial Officer is required (among other things) to identify all relevant aggravating factors. 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 following information might assist you when making your determination under Disciplinary Rule 6.7.34(c):

(i) 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. The memo 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 all those involved in the off-field disciplinary process'.

(ii) 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.

(iii) 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 the avoidance of doubt, since the start of this year's ERC competitions, we have had 4 such cases (in addition to this case) in which the relevant player has been found guilty of such a tackle, under law 10.4(j).

(iv) 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”.

The Disciplinary Officer had also commented in his response that notwithstanding the divergence of opinion between Judicial Officers as to whether there was a need for a deterrent to combat a pattern of offending the purpose of drawing these matters to the Judicial Officer's attention was not to make an example of our Mr Battle but rather to ensure a consistent approach to the treatment of tip tackles in rugby union disciplinary regimes.

The Plea

9. The Judicial Officer reviewed and narrated the complaint in full. This stated that:-

“At 57 minutes 34 seconds of the match there was a dangerous tackle (tip tackle) by [the Player] on the player number 10 of Newport (Matthew Jones). The Player lifted the adversary player from the ground and dropped him into the ground whilst his feet were in the air. His left shoulder came into contact with the ground first”.

The Judicial Officer asked the Player whether he accepted that:-

- (i) The Complaint was a true and accurate account of the incident and the facts surrounding the incident.
- (ii) The Complaint should be upheld (namely whether he had committed the alleged act of illegal and/or foul play); and
- (iii) The alleged act of illegal and/or foul play warranted a red card.

10. The Player responded through Mr O'Donnell that he accepted each of these three points.

Evidence Supporting the Complaint:

11. As the Player had accepted that the Complaint should be upheld, the Disciplinary Officer did not need to persuade the Judicial Officer that the Player had committed the act of illegal and/or foul play that would have warranted a red card and ordering off. Nevertheless, in order to dispose of the matter, the Judicial Officer required the Disciplinary Officer to present his evidence regarding the complaint in the form of:-

- (i) The video footage of the incident.
- (ii) The statement of Mr Matthew Jones.
- (iii) The reports of the match officials.
- (iv) The statement of Mr Ben Searle, the Newport Gwent Dragons physiotherapist.

12. The video was played and the Disciplinary Officer commented as to what could be seen. The detail of the incident will appear later in this judgement but in brief terms Perpignan kick the ball into the Dragon's 22 area. The ball is caught and passed to Matthew Jones (D10) by a fellow player. The tackle is effected in open play by the Player whereby D10 is lifted, taken above the horizontal and then dropped to the floor such that his shoulder impacts upon the floor first. He can be seen distressed on the ground. The referee calls in the touch judge and a yellow card is shown to the Player. There was also video footage from a second angle which is from behind the Dragon's end. This footage shows how the Player grasps D10 behind the thighs and knee area with both arms before being lifted. At the point that he impacts the ground D10's feet can be seen as almost vertical and there is no means of controlling himself. The Player's elbow can be seen raised to his own head height, D10 falls to the ground from a height of between 3 to 3 ½ feet. Mr O'Connor briefly commented that the lifting of D10 taking him, above the horizontal and then dropping him onto the floor such that his shoulder comes into the ground first is clearly in line with the IRB directive and merited a red card.

13. The other evidence which the Disciplinary Officer relied upon was the statement from Matthew Jones which read as follows:-

"After receiving a pass and then offloading to another team member I found myself being taken late and lifted up into the air by one of the Perpignan players. Then I was released in mid air and landed awkwardly on my left shoulder".

14. The match officials' evidence did not add anything as the incident had been observed by one of them only (Archie Maciually (AR2)) who had only caught a fleeting glance and who had thought it had been a dangerous shoulder charge.

15. Additionally there was the statement of the Dragon's physiotherapist, Ben Searle which read as follows:-

“Matthew landed directly on his left shoulder as he was dropped from the tackle, as a result he suffered significant bruising and pain and was diagnosed with a grade I AC joint injury. He has subsequently been limited in his training so far this week”.

16. That was the conclusion of the Disciplinary Officer's evidence.

The Player's Case:

17. Mr O'Donnell explained that the Player's evidence in chief was set out comprehensively in his reply to the directions and that he had fully and frankly admitted committing the act of foul play. There were, however, certain matters which Mr O'Donnell sought to draw to the Judicial Officer's attention. In particular the timing of the clock on the video showed that the ball was received by D10 at 57 minutes 32 seconds. At 57:33 D10 is in the process of passing the ball when the Player who is in almost a stationary position has committed himself to the tackle. The tackle commenced at 57:33 seconds and was not late. Accordingly the time from the D10 receiving the ball to the tackle being executed was one second only. Mr O'Donnell pointed out that the video showed that simultaneously with the execution of the tackle the Player had realised that the ball had been passed by D10 to the wing and his immediate reaction was to try and turn away from the tackle to follow the play and defend the overlap and that is why he did not shepherd D10 to the ground. He had two questions of the Player. The first was whether or not he, the Player, was stationary at the point of the tackle. The Player confirmed that he was stationary and had stopped running. Secondly he asked the relative sizes between he and Jones. He confirmed that he was the taller at 1 metre 88 centimetres. Jones, it was said, was much shorter, making Jones easier to lift.

18. There was no cross examination by the Disciplinary Officer.

19. Under questioning from the Judicial Officer the Player confirmed that he had grasped D10 around the back of both of his thighs. He confirmed that his intention merely had been to tackle the player as soon as he had received the ball so as to prevent an offload. He accepted that he did not execute the tackle correctly. At the moment that he let go of Jones he had not realised that D10 had been taken above the horizontal. He accepted that his actions were illegal but there had been no intention whatsoever to effect a dangerous tackle and certainly no intention to cause any injury to D10.

Submissions as to Sanction:

20. Once all the evidence had been heard on what occurred, the Judicial Officer invited the Player and the Disciplinary Officer to make submissions as to sanction.

21. The Disciplinary Officer's submissions were that ERC did not advocate a particular sanction for this offence. The entry point sanction for low end 10.4 (j) offences is 3 weeks, mid range is 6 weeks and top end is 10 plus. One has to have regard to the sanctioning regime under DR 6.7.32 (to determine entry point), 6.7.34 (to identify any aggravating factors) and 6.7.35 (to identify any mitigating factors).
22. The Disciplinary Officer pointed out that in the event that the Judicial Officer concluded that the offence was at the low end, DR 6.7.36 provides that there could be no reduction from the low entry point unless there were (i) no aggravating factors and (ii) compelling mitigating factors. The Disciplinary Officer's submission was that there was an aggravating factor in this case which was the need for a deterrent to combat a pattern of offending. He indicated that in this season alone more than 50% of the law 10.4 offences had been 10.4 (j) tackles (i.e. tip tackles). The case of Shingler which had been determined earlier in the season and concerned a tip tackle had been appealed and one of the appeal points was that the Judicial Officer in that case had erred in concluding that there was need for a deterrent to combat a pattern of offending. The appeal had been dismissed but the Judgement had not yet been released.
23. Finally the Disciplinary Officer thanked the Player and Perpignan for the way in which they had prepared their case in a clear, full, frank and timely manner in the direction statement which had greatly assisted the Disciplinary Officer in the presentation of his case and the overall administration of the hearing.
24. Mr O'Donnell replied to the "Shingler" point stating that he had not seen the appeal decision and as it had not yet been released the Judicial Officer could not assume anything from it on the issue of "deterrent/pattern of offending" The Judicial Officer confirmed that this was correct.
25. The Player's submissions were otherwise as follows. In dealing firstly with the entry point it was clear that the execution of the tackle in the manner in which it had developed was not intentional and that there had been no pre-meditation. No injury of any significance was caused. At worst the offence was reckless but was more akin to carelessness where the Player had been tackling from a standing position but at a critical moment had been distracted by the fact that the ball had been passed in the overlap causing the Player to change his mind. He had behaved carelessly in the course of the incident which had only taken one second. There was no question of provocation in this case. As to the effect on the victim player he did not receive any treatment to any extent on the field. Although he had had some bruising and pain there was no suggestion that he is unfit to continue playing this week and there is no evidence to indicate that his future ability to play was compromised. In terms of the incident's impact upon the match, any consequence was adverse to Perpignan because they had lost the Player for 10 minutes due to the yellow card. The Player accepted that D10 had been vulnerable. In his submission, this should be a "low entry" starting point of 3 weeks.

26. Mr O'Donnell submitted that there were no aggravating factors present in this case. There had been no lack of remorse as the Player had apologised to Matthew Jones immediately after the match as had Mr Becque who had spoken to the Dragon's Team Manager. Dealing specifically with mitigating factors the Player had shown considerable remorse. The Player was of good character and undertook social utility work for the town council involving coaching teenagers. Mr O'Donnell referred to the fact that ERC had been complimentary about the way in which his case had been presented and he invited the Judicial Officer to give the Player the benefit of all possible mitigation in the case.
27. Mr O'Donnell then addressed the Judicial Officer in relation to the question of whether or not a pattern of offending of this type was apparent in the game and whether this was an aggravating factor which required a need for a deterrent. He submitted that it was always difficult as a matter of principle to make an individual pay a penalty for offences committed by others. He indicated that Judicial Officers should carefully choose such cases where deterrents should be applied. Simply because the offences had occurred in the past does not of itself mean that there is automatically a pattern in the game. In some recent cases determined by senior rugby judiciary a deterrent factor had been identified, but in others it had not. Mr O'Donnell drew the Judicial Officer's attention to the recent ERC case of David Marty of November 2011 where the Judicial Officer had stated the following in his written Judgement having considered 20 cases recorded and reported since the IRB Judicial Memorandum was issued the following:-
- "On balance, I feel that there should be no aggravation of the Player's sentence in this case. I am supported in this conclusion by the observation that in the recent Rugby World Cup there were between 20th September 2011 and 17th October 2011 5 cases under Law 10.4 (j). In only one of those cases was one week added to the entry point and in that case it was found that not only was there a need for a deterrent, but that the disciplinary record was relevant. That is not the case here. If the most erudite of the IRB's judiciary apply deterrents as an aggravating factor in only one of five cases in their world cup, I do not feel disposed to apply it in the present case".*
28. Mr O'Donnell also drew attention to the fact that whereas some IRB memoranda refer to patterns of offending developing e.g. for stamping and contact with the eye or eye area, one has to consider that in each game of rugby hundreds of tackles occur and therefore the risk of such tackles occurring is far more prevalent.
29. His concluding submissions were that the Judicial Officer should proceed on the basis that the case was one of the low entry starting point of 3 weeks and then further find that there were no aggravating factors, accept there were compelling mitigating factors and reduce the entry point by 50% pursuant to DR 6.7.36.

Decision as to Sanction:

30. The Judicial Officer retired to deliberate in private in respect of what, if any, sanction should be appropriate in the circumstances. The Judicial Officer was satisfied that the following had occurred in the incident.
31. In the second half of the match when the clock showed 57:26 minutes the ball was kicked by Perpignan from inside their own 10 metre line into the Dragon's half. The video evidence shows that the ball is caught by Matthew Jones (D10) 3 metres outside his own 22 metre line who passes it to a teammate in support of him.
32. This teammate begins to run up field in a counter attack towards oncoming Perpignan players. He is carrying the ball in both hands and changes his angle of running to his right and in the direction of D10. At 57:32 minutes he passes the ball to D10. As the ball is passed the Player can be seen anticipating this and he is tracking towards D10. D10 is running in a straight line up field probably in an attempt to draw the Player into the tackle and then pass the ball out to his right wing, D14 who would then have space to make ground up field. The clock evidences that at the time of receipt of the ball by D10 he is tackled within a second by the Player head on. The Player is almost stationary and as contact is made he is crouched forward towards D10. At the point of impact the Player's knees are bent and he grasps D10 with both arms around his mid thighs. He straightens up and can be seen raising his left elbow to the level of his own head. At this point D10 is taken beyond the horizontal. The Player lets go of D10 completely when he is at his most vulnerable and lands from almost a vertical position on his left shoulder. As the Player drops D10 to the ground he (the Player) simultaneously begins to turn and run after the play as the counter attack by the Dragons continues. In fact the Player can be seen to turn and run back into defence even before D10 has fully fallen to the floor.
33. 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.
34. The Judicial Officer noted that the offence of a dangerous tackle in contravention of Law 10.4 (j) was listed within the IRB recommended sanctions for offences within the playing enclosure (found at appendix 3 of the Disciplinary Rules) as follows:-
- (a) Lower end – 3 weeks.
 - (b) Mid range – 6 weeks.
 - (c) Top end – 10 weeks plus.
 - (d) Maximum sanction – 52 weeks.

35. To decide upon the appropriate entry point the Judicial Officer assessed the seriousness of the Player's conduct by reference to the following on field factors:-

(a) The Judicial Officer considered that the Player did not intend to commit a dangerous tackle but did so recklessly in that he was or ought to have been aware that by lifting a player off his feet and taking him above the horizontal there was a high degree of risk that the Player could have fallen to the ground with his head or upper body impacting upon the ground first. The lack of any driving or "spearing" of D10 and the speed with which the incident occurred did not suggest there had been any intent.

(b) Insofar as the gravity of the Player's actions in relation to the offence was concerned the Judicial Officer noted that, in this instance both arms of the Player were around D10's thighs which when lifted above the horizontal would have given the Player very little ability to control D10's descent.

(c) The effect of the Player's actions on the victim were fortunately not serious but they were not insignificant either. He needed on field treatment and even though he was able to play on he suffered a grade I AC injury to his shoulder which had limited him in training during the course of the week. He had also suffered some pain.

(d) The effect of the Player's actions on the match were such that the victim player was able to play on however the Player was temporarily suspended from the match which could have had detrimental effect upon his own team.

(e) As to the vulnerability of the victim, including the part of the victim's body involved/affected, – the Judicial Officer concluded that D10 was extremely vulnerable to serious injury. He had no obvious means of protecting himself from the tackle and catastrophic injury could have been caused. Although this was not a case where the Player had attempted to drive D10 to the ground dropping him from almost a vertical position from a height of 3 ½ feet onto his head and/or upper body could result in very serious injury and the absence of such injury was fortunate.

(f) The offending had also been completed, not merely attempted.

On the basis of the above the Judicial Officer concluded that the entry point should be comfortably mid range and the starting point was a suspension of six weeks.

On the basis of the above The Judicial Officer concluded that the appropriate entry point for this offence should be mid-range i.e. 6 weeks.

The Judicial Officer then went on to consider whether there were any aggravating factors as set out under DR6.7.34. There had been no lack of remorse or contrition on the part of the Player. He was not an offender against the laws of the game however the Judicial Officer did consider that there was a need for a deterrent to combat a pattern of offending. The Judicial Officer agreed with the first instance ERC decision of Shingler dated 23rd November 2011 which, in essence, confirmed that a pattern of offending of these types of tackles exists within the game and is more than adequately illustrated by the frequency with which such cases have come before disciplinary tribunals. This is the second case within the ERC tournaments since the Shingler decision was produced less than two months before.

The Judicial Officer also adopted the reasoning in Shingler that there is a need for a deterrent because of the threat of catastrophic injury to players who are the victims of such tackles. Accordingly an additional period of 2 weeks suspension would be imposed to the entry point.

In dealing with mitigating factors under DR6.7.35, the Judicial Officer concluded as follows:-

- (a) The Player had indicated his acknowledgement of culpability/guilt at the earliest opportunity and this had also been acknowledged by the Disciplinary Officer.
- (b) The Player had a clean record and was of positively good character undertaking voluntary work in the community with youths as part of his role as a USA Perpignan player.
- (c) The Player's conduct prior to and at the hearing was perfectly satisfactory.
- (d) The Player had demonstrated genuine remorse for his actions and the victim and had apologised to Matthew Jones shortly after the match which was important.

36. In all of the circumstances, particularly the full, frank and apologetic way in which this case had been presented the Judicial Officer concluded that he was entitled to maximum credit permitted under DR 6.7.37 of 50% thus reducing the period of suspension to 4 weeks.

37. Accordingly 4 weeks suspension represents the period up to and including Sunday 12th February 2012 which means that the Player is free to play on Monday 13th February 2012.

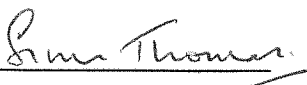
Costs:

38. The Judicial Officer did not seek an order for costs other than the travel expenses of the Judicial Officer. The Judicial Officer awarded these costs to ERC.

Appeal:

39. The Player was reminded of his right of appeal under DR 7.

Dated 30th January 2012



Simon Thomas

Judicial Officer.