

EUROPEAN RUGBY CUP
DECISION OF DISCIPLINE COMMITTEE
HELD AT BUSWELLS HOTEL, DUBLIN, IRELAND
24th January 2008

IN RESPECT OF:-

Jerry Flannery (“the Player”)

AND

A citing complaint brought by Achille Reali (FIR), the independent Citing Commissioner in respect of infringements of Law 10(4)(b) in the Heineken Cup match between ASM Clermont Auvergne and Munster Rugby played on the 13th of January 2008 at Stade Marcel Michelin, Clermont-Ferrand, France.

MEMBERS OF THE DISCIPLINE COMMITTEE:- (“the Committee”)

Christopher Quinlan (Chairman) (RFU)

Roger Morris (WRU)

John Doubleday (RFU)

DECISION OF THE COMMITTEE:

- (i) The Committee found the Player committed the act of foul play namely stamping contrary to Law 10(4)(b) and upheld the citing complaint.
 - (ii) The Committee suspended the Player from taking part in the game of rugby union for a period of eight weeks from 24th January up to and including 19th March 2008.
 - (iii) The Committee determined that the Player should pay the costs of the hearing.
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INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel pursuant to the ERC Heineken Cup Disciplinary Rules 2007-08 (“the Rules”) in respect of a citing complaint made by Mr Achille Reali, the independent Citing Commissioner. The citing complaint concerned the conduct of the Player during a fifth round Heineken Cup match played between ASM Clermont Auvergne (“ASM”) and Munster Rugby (“Munster”) played on the 13th of January 2008 at Stade Marcel Michelin, Clermont-Ferrand, France. The citing complaint alleged that the Player stamped or trampled on the head of the ASM No. 6 Julien Bonnaire.

Present at the hearing on 24th January 2008, in addition to the members of the Committee were:-

Roger O’Connor ERC Disciplinary Officer
Max Duthie, Solicitor instructed by ERC
John Glackin (IRFU, observing)

The Player
Declan Kidney, Munster Coach
Donal Spring, Solicitor, representing the Player
Jane O’Sullivan, Daniel Spring & Co.

HEARING

Introduction and Preliminaries

At the commencement of the hearing the Chairman confirmed the identities of all present and established that the Player was before the Committee to answer the said citing complaint. The Chairman outlined the procedure to be adopted by the Committee for the hearing and that the provisions of the Rules would apply.

The Chairman confirmed that all present had in their possession all relevant written materials and the relevant video footage which had been provided to him in connection with the citing complaint.

In advance of the hearing the Player complied with the relevant parts of the standing directions as set out in Appendix 6 to the Rules.

Citing Complaint

At the commencement of the hearing, the Chairman put the allegation of foul play and (consistent with the response to the standing directions) the Player denied it.

The citing report & DVD

Mr Duthie invited the Committee to the citing report prepared by S. Reali. The incident occurred in the 30th second of the second half of the match. In his report, S. Reali states,

“During a scrum near the 22 metres line of the yellow team [ASM] the player N.6 yellow, Julien Bonnaire is on the ground and his head is outside of the scrum near the player N. 2 red, Jerry Flannery, who stamps with his left foot on the head of the player N.6 yellow”

We viewed two clips of DVD footage of the incident. One, a close up of the incident, from two different angles and the other, the live broadcast feed (without sound). The incident occurred at a ruck, not scrum. The ball was taken into the ruck by ASM. The ruck, which was formed just outside ASM’s twenty-two, followed immediately from another ruck. The Player was standing on the Munster side of the ruck, in a central position. The ball is in the process of being recycled back by ASM. The Player had his hand or hands on the back of an ASM player on top of the ruck, appearing to look at the ASM side, no doubt (as he told us) looking for the ball. M. Bonnaire was wearing a white coloured scrum cap. He was at the bottom of the ruck, his head on the Munster side, a little clear of the ruck. It can clearly be seen. Mr Flannery told us that he was intent on moving to the ‘pillar’ position on the right side of the ruck. His left leg was being held, behind the knee, by an ASM player flanker Alexandre Audebert. The Player’s left leg moves laterally, from left to right causing the side of his calf to bump into the side of M

Bonnaire's head. His left leg is then lifted, and moves laterally from left to right and so over that head. At the moment the Player's left thigh is parallel to the ground and his foot over the head, he can be seen to be looking down. The foot then moves down onto M Bonnaire's face, appearing to land on the left hand side. At that time, the Player's leg was still being held behind the knee.

An email from the match referee Rob Debney (08.35, 16th January) stated that the match officials did not witness the incident.

Medical evidence

In the said report, S. Reali observes that M. Bonnaire received treatment on the pitch. He was bleeding from a wound "near the left eye".

We were provided with two letters from Dr Patrice Pillet, the ASM club doctor. The more detailed letter dated 21st January records that M. Bonnaire suffered

- 1....a traumatism to the left orbital area of the eye, with an impact related haematoma.
2. A cut to the upper left eyelid.
3. Bleeding to the interiors of the left eye, giving problems with vision.
4. [he] did not require stitching.
5. [his] injury did not prevent him from playing the following weekend."

The medical evidence was not challenged and causation was not in issue.

The player's case

In summary, the Player's case was that he was intending to move to the pillar position on the right hand side of the ruck. Had M. Audebert not held him he would have been able to move unimpeded to that position. The fact that his left leg was being held caused it to brush or come into contact with Julien Bonnaire's head. He said he was pulling his leg to "get it over" so he could take up the intended position. He did not see M. Bonnaire's head and was not aware of it being there, until he said, his foot made contact with it. He denied deliberately stamping down, on the head or otherwise. He denied acting recklessly.

Questioned by M Duthie and the Committee, he agreed he was shown to look down at the moment before his foot came down. He agreed he did that but was certain that he was not looking at M. Bonnaire's head. He could not recall what he was looking at. He was trying to get his leg free; at all times he insisted, "pulling laterally". He said in answer to questions from the Committee, that his "leg came up over the object". At that point he said he was standing on one leg and off balanced, leaning to his right. Asked why his leg came down in the way shown on the footage, he said it was a "reaction to it being pulled down". Mr Spring enlarged on that, submitting that the Player's left leg was being pulled and directed by M. Audebert.

The Player has been a professional for ten years. An email (21st January, 12.28) from Gordon Black, Rugby Administration Manager, IRFU records that "there is no disciplinary record of disciplinary sanctions against Jerry Flannery". We were told there are none. He described the allegation as a "slur on [his] character".

Mr Kidney spoke in glowing terms of the Player's record and character. He said he had never seen the Player commit any act of foul play. He said he would not have selected him for the sixth round Wasps game had he thought this was an act of foul play. He informed us that Munster do not tolerate foul play.

Submissions

Mr Duthie made it clear that the ERC was not advancing a positive case that the alleged stamp or trampling was intentional or reckless, submitting that was a factual issue for us to resolve. In other words, the ERC advanced no positive case either way.

Mr Spring spoke to the DVD clips, including one produced by Munster designed to put the incident into context. In summary, and we emphasise that, he made a number of points. He said this was not trampling since it was a single act. He asked his to note the Player was not looking down at the time his foot was raised. The only action Mr Flannery intended he said was to "move across, to free himself". His case was that the Player's leg was being directed by M. Audebert. The bringing down of his leg was in effect involuntary. He submitted that it was impossible for Mr Flannery to "prevent his foot going where it landed". The Player's conduct he continued did not warrant a red or

yellow card and at the “most” was perhaps “deserving of caution to be more careful with his feet”.

Mr Spring condemned the Irish media reporting of the incident, which he said had caused the Player and his family distress. In fact until he mentioned it, none of the Committee was aware of that reporting. We assured the Player we would put out of our minds (and we did) what his representative told us of that reporting. Mr Spring invited us to do what he described as “the brave thing” and not uphold the citing. To uphold the citing would be a “severe black mark on his career” and submitted it “does not get more serious than stamping on someone’s head”.

Decision

Following those submissions, the Committee retired to deliberate in private in respect of whether the Player had committed an act of Foul Play. The Committee considered all of the evidence and submissions summarised above. It is not a question of judicial courage or cowardice, but reaching factual conclusions, following an objective and impartial assessment of the evidence. We concluded on the balance of probabilities that –

- (i) The Player was aware of the presence of Julien Bonnaire.
- (ii) The flanker Alexandre Audebert was holding the Player’s left leg, which hold impeded the Player’s movement.
- (iii) In an effort to move, the Player pulled his leg up and across
- (iv) When his left foot was raised, his left thigh parallel to the ground, he looked down and (we were satisfied) must have seen Julien Bonnaire.
- (v) He then deliberately brought down his leg.
- (vi) It amounted to a deliberate stamp and an act of foul play contrary to Law 10(4)(b).

We rejected the Player’s case that he was not aware of the presence of M. Bonanire. Further we rejected his contention that M. Audebert lifted his leg and in some way brought it down onto M. Bonnaire’s face. We rejected the contention that movement of the Player’s leg was in some way involuntary and being directed by M. Audebert. In our judgment, this was a deliberate act by the Player to free himself from the hold.

In light of our findings, we concluded the Player stamped on Julien Bonnaire contrary to Law 10(4)(b). Accordingly we upheld the citing complaint.

Sanction

We heard submissions as to sanction, from Mr Spring. It is unnecessary to set them out in any detail. In relation to the stamp he invited us to conclude it merited a low end entry point, arguing that the Player did not intend to stamp. He reminded us of the Player good record (he is an international who has played the game at the highest level for a number of years) and his character.

The Committee considered what, if any, sanction would be appropriate in the circumstances. In this regard we took into account the evidence and submissions and considered the terms of Rules 6.7.31 – 6.7.42 and Appendix 3.

The Rules provide for three entry points based on the seriousness of the player's offending. In assessing the seriousness of the foul play we considered the provisions of Rule 6.7.32 and concluded that

- (1) In light of our factual findings, recorded above, it was a deliberate stamp.
- (2) The victim was vulnerable in that he could not see what was coming nor was he in a position to defend himself.
- (3) It was stamp on an exposed, vulnerable part of the person, namely the head.
- (4) It caused injury that resulted in the player receiving treatment.
- (5) It was a completed act of foul play.

This was a deliberate stamp. It did not have any noticeable effect on the game and was not premeditated. However, a deliberate stamp, which makes contact with an opposing player's head or face, is serious (as Mr Spring recognised) and in our view warranted a top end starting point.

We then considered the appropriate starting point within that top range (nine to fifty-two weeks), as required by Rule 6.7.33. We noted that M. Bonnaire played on and was available to play in ASM's sixth round match against Llanelli Scarlets. Mercifully, the injury was modest. It was an intemperate and petulant reaction to his being held. That

does not excuse it, of course, but it does out the offending into some proper context. In light of those factors, we concluded that the appropriate starting point was a period of suspension of nine weeks.

The Committee considered there were no aggravating circumstances (*per* Rule 6.7.34).

Thereafter the Committee considered the following the mitigating circumstances (*per* Rule 6.7.35). In this regard we gave him credit for his age and experience and for his good disciplinary record. The Committee resolved that the Player was entitled to credit for those matters, which we assessed at one week. In all the circumstances the Committee determined that an appropriate sanction was the imposition of a period of suspension of eight weeks (i.e. nine minus one). That suspension commences with immediate effect. Accordingly he suspended from playing rugby union for a period of eight weeks (fifty-six days) commencing on 24th January 2008, up to and including the 19th March 2008. He is free to play on 20th March 2008.

The Disciplinary Officer made an application against the Player for the costs of holding the hearing. Mr Spring resisted this application arguing that in a recent case in which he appeared and the citing was not upheld, costs did not “follow the event”. That argument ignored the provisions of Rule 6.7.47 and we rejected it. The citing being upheld, there was no good reason not to award costs against the Player pursuant to Rule 6.7.45. We so determined.

The Player was informed of his right of appeal against this decision, as provided by Rule 7.

Christopher Quinlan

26th January 2008

Christopher Quinlan (Chairman)

Roger Morris (WRU)

John Doubleday (RFU)