

EUROPEAN RUGBY CUP

DECISION OF DISCIPLINE COMMITTEE

HELD AT

Buswells Hotel, Molesworth Street, Dublin

On

Thursday the 24th January 2008 at 10am

IN RESPECT OF

RAFAEL IBANEZ (the Player)

AND

A Citing Complaint from Peter C Brown concerning the citing of the Player for an infringement of Law 10.4.(b) in the Round 5 match of the Heineken Cup between London Wasps and Llanelli Starlets at Adams Park on the 13th day of January 2008

MEMBERS OF THE DISCIPLINARY COMMITTEE: (The Committee)

Mark McParland (Chairman)(IRFU)

Simon Thomas (WRU)

Hugh Logan (IRFU)

DECISION OF THE COMMITTEE:

- (i) The Committee found that the Player had committed an act of illegal and/or foul play.
- (ii) The Player is suspended from taking part in the game of Rugby up to and including Thursday the 21st February 2008. This represents a four week suspension commencing on the 24th day of January 2008.
- (iii) The Committee made an award of costs against the Player in the sum of €500.

INTRODUCTION

The Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel, pursuant to the Disciplinary Rules 2007/08 of the ERC in respect of a Citing Complaint made by Peter C Brown, the Citing Commissioner. The Citing Complaint concerned the conduct of the Player during a match played between London Wasps and Llanelli Starlets on the 13th day of January 2008 at Adams Park, High Wycombe, England. The Citing Complaint alleged that the Player tramped on the unprotected lower genital area of the Llanelli Number 7 before he could roll away from a ruck.

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

1. Rafael Ibanez - the Player, London Wasps
2. Ian McGeechan - Director of Rugby, London Wasps
3. Mark Vinall - Counsel for the Player
4. Roger O'Connor - Disciplinary Officer ERC
5. Max Duthie - Solicitor, Bird & Bird, Counsel to the Disciplinary Officer
6. John Glackin - IRFU - observed the proceedings

HEARING

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 Citing Complaint. The Chairman outlined the procedure to be adopted by the Committee for the hearing and the provisions of the ERC Disciplinary Rules 2007/08 would apply. The Player and all present agreed to proceed on such basis.

The Chairman established what evidence had been placed before the Committee prior to the hearing and all confirmed that the evidence had been received in good time. It was noted that the standing directions as required by Appendix Six Section B of the Disciplinary Rules 2007/2008 had been complied with by all parties. It was noted that the Player confirmed that he was the player named in the Complaint and that no preliminary matters required to be decided by the Committee.

Prior to the commencement of evidence, the Chairman invited the Player and his representatives to confirm how the Player wished to plead in relation to the Citing Complaint and the allegation that he had committed an act of illegal and/or foul play, the Player's responses to the standing directions being unclear in this regard.

The Committee noted that the Player accepted that he had committed an act of foul play in breach of Law 16.3.(f) but the Citing Complaint concerned an act of foul play in contravention of Law 10.4.(b). The ruling of the IRB of April 2005 in response to queries raised by the IRFU in relation to Law 16 - Ruck was noted as were the earlier Taylor and Williams decisions and the Player's Counsel accepted that a contravention of Law 16.3.(f) involving stamping or trampling must of necessity involve an offence under Law 10.4.(b) and in such

circumstances the Player admitted that he had committed an act of illegal and/or foul play but contested the gravity of the incident as set out in the Citing Commissioner's Report.

THE EVIDENCE

The Citing Report was taken as read and it was noted that neither the Match Referee nor Touch Judges had sight of the incident.

The video clip was played and Mr Duthie commented that the Llanelli Starlets No. 7 ("the Opponent") tackled the London Wasps No. 22. At the time, the Player was on the ground from an earlier ruck. As he rose to his feet, he bound on two of his team mates and while looking downwards, with no obstruction of his view, stamped his right foot down towards the genitals of the Opponent. Following this incident, the Player de-bound from his team mates, stopped momentarily and then rejoined the ruck. The video showed that at the next breakdown, the Opponent remonstrated with the Player.

The Player, in commenting on the video, stated that it was an hour into the match in a game which was fair with no issues on discipline. The Referee had warned the Opponent on a number of occasions, particularly in the first half, about slowing down the ball and being on the wrong side. At half time, his team mates spoke of the need for quick ruck ball and to clean out opposing players from the contact area so they could continue to play in a positive manner as they had done in the first half. On getting up from the proceeding ruck, he was focused on joining the next ruck. He saw the Opponent on the pathway between the ball and himself and he stamped on the Opponent to move him out of the pathway. In doing so, he had expected the Opponent to roll away and had no intention of making contact in the area of the Opponent's genitals. The Player said it was a question of timing and as soon as he realised his wrongdoing he stopped play momentarily as he felt something wrong had happened and only after two or three seconds did he rejoin the ruck which had formed. He acknowledged that he had taken the law into his own hands.

Mr McGeechan in coaching his team emphasised the importance of keeping the pathway clear and of moving people away from the pathway so that his team could step through and over the ball. He said that it was clear that the Player had pulled his foot away when he saw his Opponent caught and that he had no intention of doing damage. In reply to questions from Mr Vinall, the Player acknowledged that he instinctively knew there was a problem whereupon he tried to release pressure from his Opponent. He stated that the Opponent was pretty angry at the incident and made reference to an incident of retaliation later in the match. At the end of the match, the Player and the Opponent spoke to each other, shook hands and acknowledged their respective roles in the match.

In answering questions from Mr Duthie, the Player said that there were no other incidents between him and the Opponent during the match or indeed during their respective playing careers and that they had played many times against each other. The Player acknowledged his Opponent's ability as a flanker in slowing down the ball and stated that this was one of his best qualities. The Referee had spoken to the Opponent on a number of occasions and the Player

confirmed that the Referee had spoken to the Opponent as a player rather than in his role as Captain of the team. The Player again acknowledged that he intended to make contact with the Opponent but not around his genital area. The Player went on to state that he expected his Opponent to continue to roll away in which event, the contact he made would have been to his flanks. He stated forwards tend to go for flanks as the marks on his own body would show and that this often happened.

The Player did not apologise to the Opponent at the time of the incident or later. He had not had contact with the Opponent since but pointed to the fact that they had shaken hands following the game and he regarded the incident as closed and forgotten and while he had received the Citing Complaint in the following week, London Wasps were preparing for a very important match with Munster in Round 6 of the Heineken Cup.

Following a brief deliberation, the Committee concluded that it would not exercise the discretion available to it under Rule 6.7.41 and requested Mr Duthie to address the Committee on sanction.

SUBMISSIONS

Mr Duthie said that from the video evidence the Player made obvious contact with the Opponent in a situation where the Opponent was nowhere near the ball and there was no issue regarding his vision. Mr Duthie referred the Committee to the IRB recommended sanctions and noted the entry points for the offence as follows;

- low level - two weeks
- mid range - five weeks
- top end - nine weeks plus

He suggested that the Player's offending was intentional and while he commended the Player for his honesty, he suggested that, at best, the Player was careless in where his intended contact was made on his Opponent. Mr Duthie stated that the contact was clearly between the Opponent's legs, close to his genitals and while the Player may have thought he was going to roll away, in making contact with the Opponent, the Player accepted the risk involved and was reckless as to where the contact took place. The issues of self-defence or provocation were not relevant. While there was no evidence of injury, this was fortunate having regard to the Player's use of the boot at a time where the Opponent was extremely vulnerable. While the offence may not have been premeditated, the Player clearly knew the identity of the Opponent and the blow was not a glancing blow and the action had clearly been completed.

In addressing the Player's prior conduct, the Committee was advised that in a long and illustrious career, the Player had only one matter of record involving a similar offence during the Rugby World Cup Tournament in France in October 2007 when he was suspended from the game for one week.

In reply, Mr Vinall acknowledged that the Player's contact with the Opponent was intentional but again questioned details of the Citing Commissioner's Report.

The fact that the Opponent was rolling away and then stopped was consistent with the Player's version of events and while he accepted that the Player was careless, he stated that his client was not consciously aware of the particular risk involved. Mr Vinall stated that the Player's absence of intention to injure was clearly shown by the fact that he stopped and released the pressure on the Opponent as soon as he realised what had happened. He asked the Committee to bear in mind the manner in which the action had been committed and the speed of the overall passage of play. He requested the Committee to accept the Player's evidence which was frank and honestly given although not helpful to his case. In particular, he stressed the Player's lack of intent to cause serious injury and while the incident was regrettable, it was not a particularly remarkable event of foul play and while it was not to be condoned, it should be categorised at the lower end. In mitigation, Mr Vinall stated that the Player had set out his position at the first available opportunity. He had a distinguished career as a player who started to play at the highest level in 1991 and had been capped 98 times for France, many as Captain. He stated that the Player deeply regretted both the event and the outcome and urged the Committee to find that the offence was at the low end of the range of offending.

Mr McGeechan stated that the Player was an outstanding example of what a professional player should be and that he was privileged to have the opportunity to coach him. He was a tremendous example both to his team mates and in particular the younger players in the Club particularly in inculcating in them the correct values of Rugby. He suggested that the Player had added greatly to the game of Rugby football.

DECISION

The Committee considered the evidence before it and found that the Player's act was an intentional act. Although it accepted that he did not intend to make contact with the Opponent in the genital area, the Committee found that the Player gave little, if any, thought as to the outcome of his action which could have had serious consequences for the Opponent at a time when he was vulnerable with limited opportunity to move away. Based on this, the Committee fixed at an entry point of mid range.

The Committee considered the evidence given on behalf of the Player regarding sanction, the aggravating and mitigating factors and, in acknowledging, the Player's standing and record in the game and his conduct at and before the hearing, could not ignore the fact that the Player had been suspended for the same offence four months earlier.

In all the circumstances, the Committee determined that an appropriate sanction was the imposition of the period of suspension of four weeks commencing on the 24th day of January 2008 and ending on the 21st day of February 2008 (inclusive).

COSTS

The parties made representations to the Committee regarding the costs of the proceedings. In the absence of definitive figures, it was noted that legal, travel and accommodation expenses had been incurred but no definitive figures were available. Other hearings were taking place on the same date and venue and in such circumstances, the Committee directed that the Player make a contribution of €500 towards the costs of the proceedings.

Both parties were advised of their right to appeal as provided in Section 7 of the Disciplinary Rules.

Mark McParland
Chairman
Disciplinary Committee

Dated the 29th day of January 2008