

**DECISION OF THE INDEPENDENT JUDICIAL OFFICER
The European Rugby Challenge Cup, Season 2016/2017**

Held at by telephone conference call on 22 December at 7pm

In respect of:

Sam Betty (“the Player”)

and

An Ordering Off for a breach of Law 10.4(a) of the Laws of the Game, namely “Punching or Striking” in the European Rugby Challenge Cup Round 4 Match between Newport Gwent Dragons and Worcester played at Rodney Parade on 17 December 2016 (“the Match”).

Judicial Officer appointed to hear the case:

Rod McKenzie (Scotland) (“the Judicial Officer”)

Decision of the Judicial Officer:

(i) The player having accepted that he had committed the alleged act of foul play and that his act warranted the issue of a red card, the Judicial Officer was satisfied that further action should be taken.

(ii) The Player is suspended from taking part in the game of rugby for a period of two weeks, that is, up and to including midnight on 1 January 2017. The Player is free to resume playing rugby on 2 January 2017

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the European Rugby Independent Disciplinary Panel pursuant to the Disciplinary Rules in the Participation Agreement of the European Rugby Challenge Cup 2016/2017.

The Parties at the Hearing

Present at the hearing in addition to the Judicial Officer were the following persons:

- The Player
- Sam Jones, Guidhall Chambers, the Player's representative
- Mr Liam McTiernan, EPCR Disciplinary Officer
- Mr Danny Rumble, EPCR Regulations & Compliance Executive
- Ms Jennifer Rae – Clerk to the Disciplinary Panel

At the commencement of the hearing, the Judicial Officer noted the identities of all present and narrated the contents of Red Card report reminding the Player that he had been ordered off in the contravention of Law 10.4(a).

The Judicial Officer reminded all parties that the EPRC Disciplinary Rules found in the Participation Agreement of the Challenge Cup 2016/2017. (“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 proceeding on that basis.

The Judicial Officer established what evidence was placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented.

The evidence for consideration comprised of the following:

- Letter from Liam McTiernan to Professor Lorne Crerar, dated 18th December 2016;
- Red Card Report issued by David Wilkinson (Referee), pertaining to an act of foul play by Sam Betty of Worcester Warriors;
- Statement of the assistant referee, Kieran Barry;
- Statement of the assistant referee, Oisin Quinn;
- Statement of Nick Crosswell, Newport Gwent Dragons No.6;
- Statement from Chris Jenkins (Head Physio, Newport Gwent Dragons);

The Judicial Officer noted the terms of the Player's responses to the letter convening the hearing were that he accepted Foul Play took place and he accepted that the Foul Play would have warranted a red card. The Judicial Officer asked whether that was still the

Player's position and the Player confirmed that it was.

In those circumstances, the Judicial Officer indicated to the Player that the purpose of the hearing was to determine what sanction, if any, was to be imposed upon the Player.

In reaching his decision the Judicial Officer took full account of all of the evidence before him, both in written form and oral, and the submissions, written and oral, made on behalf of the Disciplinary Officer and the Player. Only the evidence and those submissions relevant to the Judicial Officer's decision are referred to in this written decision.

Evidence Supporting the Ordering Off

Video Evidence

The relevant excerpts from video of the Match were viewed at the hearing. Video of the incident was provided in the form of a section of the broadcast footage.

Match Official Reports

The Referee's report states:

"At a ruck, the Worcester Number 6, enter from the side and pushed an opponent. I immediately penalized the players at which point the two players started to wrestle with each other. Worcester Number 6 then punched his opponent twice to the head/face area. After the punch both sets of players got involved in pushing and shoving. I separated both teams and penalized Worcester Number 6 for the punches and issued him with a red card."

Assistant Referee 1 Report states:

"

I was positioned on the near touchline to where the Red Card incident took place. From my position I saw David penalise the Worcester No.6. The Worcester No. 6 and the Dragons No.6 grabbed each other and began to push one another. Players from both sides became involved in pushing and grabbing one another. I then observed the Worcester No.6 throw a punch which connected forcibly with the face of the Dragons player. This was followed by more pushing and grabbing by players from both sides. Once we had separated both teams, David brought both myself and AR1 in. David led

the conversation and described that he had saw the Worcester No.6 throw a punch which connected to the face of a Dragons player and asked had we anything further to add to what he had observed. I had nothing further to add. David then issued a red card to the Worcester No.6.

Assistant Referee 2 Report states:

"I was positioned on the far touchline to where the Red Card incident took place. From my viewpoint I saw the Worcester No.6 and the Dragons No.6 pushing and shoving each other at the breakdown. David penalised the Worcester No.6 for an infringement not foul play related. I then witnessed numerous players from both sides coming together pushing, grabbing and shoving each other. I saw the Worcester No.6 raise his arm and swing it towards a Dragons player, from my position I did not see him connect with any player. We then separated the teams and David brought AR2 and myself towards him. David lead the conversation and described what he had seen, asked us if we had seen anything else, I had nothing to add. He informed us that based on what he had seen he was issuing a Red Card to the Worcester No.6."

Evidence from Nick Crosswell (the Victim Player)

Mr Crosswell's email of 19 December 2016 states:

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Number 6 was holding me at the front of the ruck therefore I tried to free myself. He then checked me and stood in front of me. As he was obstructing me as an "A" defender I attempted to check him out of the way in towards the ruck. After the whistle he shoved me in the chest therefore I moved forward to grab him. He then punched me twice in the side of my face making contact twice with my upper jaw. I'm not sure what happened after this as people ran in from all angles. There was no immediate apology and has not been one since.

Evidence from Chris Jenkins, Head of Physiotherapist

Mr Jenkins's email states:

"Nick Crosswell was involved in an incident during the game where he received blows to the face. On review post game and review of him today, he is non complaining of

any injuries to his face or head. He has no lacerations, no facial pain and no obvious head injury on assessment. He will be in full training this week and available for selection"

Evidence from the Player

Mr Jones on behalf of the player accepted that he had thrown two punches which had connected with the victim player's face. Mr Jones confirmed that the contents of the red card report were not disputed. However, the Player had attempted to get away from the incident and could be seen to be stepping back in the video of the incident. The Player could not be seen to be pursuing Mr Crosswell. Mr Jones explained an example where a victim player could be said to be vulnerable would be when the player was on the ground or unable to free himself or in a ruck or a maul and this incident should be viewed in contrast and in that context.

Submissions

Mr McTiernan submitted that his view was that the offending was intentional, but, that he had no submission to make with regards to entry point. The offending was complete. The incident has caused the melee to continue for short while. However a melee was already in progress when the incident had occurred. Mr McTiernan advised that he was not inviting the Judicial Officer to make any specific findings beyond that fact that the conduct was completed and intentional.

Mr Jones advised that it was his principal submission that the offending described should be categorised as Low End. Mr Jones, whilst acknowledging that the offending was intentional and there had been two punches to the head of Mr Crosswell, submitted that the Player could be seen on the video as being pursued by Mr Crosswell, further the Player could be seen to be attempting to retreat from the incident.

Mr Jones explained, on behalf of the Player, that he was 30, he had one previous sending off in 2008 for a striking and had received two yellow cards this season – one for dangerous tackling, in that it was a 'no arms' tackle.

The strikes were with the fist rather than with knee or a boot and that the low entry point in the World Rugby Table of Sanctions was 'the tariff' the Judicial Officer should consider appropriate.

There was on injury caused. The incident had occurred in the context of a melee. However, the effect was to the detriment of the Player's team as the team had been required to play with 14 Players and had lost the match.

The victim player was not in vulnerable position, his arms were up and he had been pushing Mr Betty. This was not an example where the victim player was vulnerable, perhaps that could be found when the victim was on the ground and being punched or kicked.

Mr Jones explained that the Player was remorseful but had not yet apologised directly to the victim player as he had been given advice, by someone, other than Mr Jones, not speak to the victim player until the disciplinary process was over. Mr Jones undertook on behalf of the Player that the Player would apologise to Mr Crosswell as soon as this hearing was over. The Judicial Officer was subsequently provided with a copy of that apology.

Mr Jones also submitted that a the Player had been sent off so early in the game, that could be considered as the equivalent of having already served a one week ban and he knew of this approach having been applied in one RFU case.

Discussion

The Judicial Officer retired to consider his decision on sanction.

The Judicial Officer agreed with Mr Jones that the Video showed the Player stepping back and attempting to retreat from the confrontation with Mr Crosswell and that Mr Crosswell in effect pursued the Player for a few steps, pushing the Player backwards. The video did not appear to show the Player pushing Mr Crosswell but rather Mr Crosswell pushing the Player. However, the referee's report and Mr Crosswell were quite clear that two punches had been landed by the Player on Mr Crosswell. The offending was intentional and completed. The Player was fully engaged in the offending and the part of the body used was his fist. Mr Crosswell was confronting the Player and was not particularly vulnerable. There was no material injury sustained by Mr Crosswell and the only effect on the Match was that the Player was removed from it reducing his team to 14 players for the duration of the remainder of the Match. Whilst it could be said that the punches were thrown as a defensive response to the aggression of Mr Crosswell they were an excessive response in the circumstances, the Player could simply have pushed back to the chest of the opposing player, and the Player's conduct did not constitute reasonable self-defence. The Player was significantly

provoked and there was an element of retaliation in the punches which went beyond what was required to defend himself from what was not particularly forceful pushing by Mr Crosswell.

The Judicial Officer was satisfied that the offending should be categorised as low end. It was considered whether the offending should be categorised as mid-range, since the Player threw 2 punches and landed them. However, the Judicial Officer considered that since the Player was retreating and was being pushed and that he had struck out without causing significant injury in response to that pushing whilst being provoked that a low end entry point was appropriate.

The Judicial Officer did not consider that there were any aggravating factors present.

The Judicial Officer was satisfied that the Player should be afforded significant mitigation, particularly having regard to his compliance with the standing directions, early acknowledgement of culpability and that his offending warranted a red card; however he does not have an unblemished disciplinary record and does have an analogous defence, albeit this was 8 years ago. Further, the Judicial Officer was told the Player had a yellow card for an incident of Foul Play from this season, although greater weight attached to the previous suspension as it was for an analogous offence.

The Judicial Officer could not wholly overlook that Mr Betty had not yet expressed remorse for his actions directly to the victim player but accepted that he was, in fact, remorseful. The Judicial officer noted that the Player undertook that he would communicate his remorse to the victim player following the hearing and a confirmatory copy email was subsequently received. In the circumstances the Player was given full credit for the remorse displayed.

The Judicial Officer considered Mr Jones's submission that an early sending off should be considered the equivalent of the Player already served a one week ban. The criteria in terms of DR 7.8.32 for the Judicial Officer to determine sanction was the seriousness of the offending with no indication that in doing so the Judicial Officer should have regard to the timing of the offending during the relevant match. Further, timing of the offending was not considered in DR 7.8.35 nor could it be included in DR 7.8.32 (f) as timing of the offending could not be considered an off-field mitigating factor. As such, the Judicial Officer did not consider that the timing of the offending during the relevant match could be a relevant factor in determining the seriousness of the conduct, the extent of any mitigation to be applied and the ultimate sanction imposed. If the timing of the offending was to be considered relevant it

was unclear how the particular time during a match at which a player received a red card could be translated into a tangible effect on the period of any sanction imposed. Since periods of suspension are measured in weeks there seemed no rational basis on which it could be determined how early in a match a sending off had to take place for a week of suspension to be deducted from the sanction which would otherwise be imposed. In any event the period of suspension is the same whether pursuant to a citing complaint or a red card. There is no reason in principle why such periods should be differentiated in some red card cases linked to the timing of the red card. The sending off during the relevant match is a particular sanction peculiar to the giving of the red card and is about the removal from that particular match of a player who has committed a very serious transgression of the Laws of the Game during and bearing on that match.

In all of the circumstances the Judicial Officer considered that mitigation of the entry point sanction of 40% was appropriate.

Decision as to Disposal

The low end entry point being two weeks for this type of offending and the 40% mitigation being applied that takes the sanction to 1.2 weeks, which must be rounded up to two weeks

The Judicial Officer was given details of the Player's fixture schedule and commitments over the next period of weeks and in the circumstances, the Player is suspended for 2 weeks, ending on midnight on 1 January 2017. The Player is free to play on and from 2 January 2017.

Rod McKenzie
Judicial Officer
1 February 2017