

EPRC CHAMPIONS CUP

Decision of Independent Disciplinary Committee

Hearing Held by Skype Conference Call

14 December 2016

IN RESPECT OF:

Mat Luamanu ("the Player"), Harlequins

and

The ordering off ("the Red Card") of the Player by the referee, Thoms Charabas ("the Referee") in the match played between Harlequins and Timisoara Saracens at The Stoop Ground, Twickenham on 17 December 2016 ("the Match") alleging that during the Match the Player committed an act of foul play contrary to Law 10.4(g) of the Laws of the Game, dangerous charging.

The Disciplinary Committee ("the Committee"):

Roger Morris (Wales) (Chair)

Tommy Dalton (Ireland)

Becky Essex (England)

Decision

- (i) The Committee found that the Player had committed an act of foul play of sufficient seriousness to have warranted the issue of the Red Card.
- (ii) The Player is suspended from playing the game until midnight on 8 January 2017 (3 weeks)

Introduction

The Committee was convened by Professor Lorne D Crerar, Chairman of the EPRC Disciplinary Panel, to consider the Red Card issued to the Player for his alleged offending in the Match played in the EPRC Champions Cup ("the Tournament"). The Red Card was issued by the Referee to the Player for an alleged breach of Law 10.4(g) of the Laws of the Game – dangerous charging.

In addition to the Committee the following were present at the Hearing:

- The Player
- John Kingston – Harlequins' Director of Rugby
- Graeme Bowerbank – Harlequins' Director of Rugby Operations
- Chris Smith – Solicitor representing the Player
- Liam McTiernan- the Tournament's disciplinary officer ("the Disciplinary Officer")

- Danny Rumble – assisting the Disciplinary Officer
- Jennifer Rae – Clerk to the Committee

The parties agreed that the Hearing would be conducted in accordance with the provisions of the Tournament's Disciplinary Rules applicable to Season 2016/2017 ("The Disciplinary Rules" in the plural and "DR" in the singular).

The materials distributed to the parties in preparation for the Hearing comprised:

- Referee's Report re Red Card
- Assistant Referee's Report re Red Card
- Letter from the Disciplinary Officer to Professor Crerar informing him of the Red Card
- Notice of Hearing dated 20 December 2016
- Player's responses to the standing directions issued under the Rules
- Personal statement made by the Player
- Statement from Mr Kingston
- Statement from Pieter Kruger
- Character reference from Dan Leo
- Translation to English of conversation between Referee and others on the field
- Photograph of injury to the head of the Player
- Series of freeze frame photographs of incident in question
- Copy decision of disciplinary committee in case involving Sam Cane
- Video clips of the alleged incident of foul play

The Chair confirmed with Mr Smith and the Disciplinary Officer that there were no preliminary issues either party wished to raise.

THE HEARING

The Chair noted the Player's responses to the Standing Directions issued under the Rules and in particular that the Player disputed he had committed foul play as alleged or at all and therefore that he should not have been sanctioned by the Red Card. The Player confirmed that remained his position. That being the case the parties agreed that the first task for the Hearing was to consider the evidence to determine whether or not the Player had committed an act of foul play and, if so, whether the act warranted the Red Card.

Video Evidence:

Before asking the Player and his Harlequin colleagues to comment on the video footage, Mr Smith wished to give some context to the issue before the Hearing to help the Committee in making their assessment of what would be seen.

The Player's decision to challenge the Red Card had not been an easy one for him to make. In some ways it would be easier to accept the position than to challenge it but in the light of a recent period of suspension he had served and the reasons for that suspension, he had begun seriously to question if he had a place in the game and to feel that he was being penalised for his physique.

He was brought up in Wellington, New Zealand where he learned his rugby. He had represented New Zealand through all the various age grades and at Under 20 level. He had subsequently played senior

rugby for a number of teams including The Blues, for a club in Japan, in Italy (Benetton Treviso) and now in England with Harlequins. He is 28 years of age and until this year has had no disciplinary issues whatsoever.

Suddenly, however, he feels at odds with the game. He was suspended first for a shoulder charge against Sale. That allegation he accepted and "put his hands up" to. More recently he was suspended for five weeks for a high tackle against Exeter Chiefs since when (because of the way he perceived the game was developing an attitude to the high tackle that meant an erstwhile legitimate tackle is now considered so close to or susceptible to being illegitimate) he had concentrated, with his coaches, on learning and deploying a different method of tackling which involved focussing on the opponent's hip line and tackling low.

Mr Smith asked that the Committee bear these submissions in mind as the video recording was watched.

After first watching the video in silence Mr Smith and the Player were invited to play it again, freezing and frame by frame as they required, and to comment upon and explain from the Player's point of view what had occurred.

- Harlequins had executed a box kick which was collected, passed to TS14 who had run it back at Harlequins. As TS14 ran the Player started preparing himself for the possibility that he might have to tackle him.
- H4 was in front of the Player and the first line of defence against TS14.
- The Player set himself low, focussing on TS14's hips as the point on TS14 where he would aim to collide in order to tackle him and that was the tackle he intended to execute.
- TS14 swerved infield of H4 but nevertheless H4 got his arm to TS14's legs such that TS14 fell into the path of the Player's intended trajectory of tackle but now, because of H4's tackle, with head and body low.
- As a consequence, the Player already committed to a low tackle and too late to do anything about it, collided head to head with TS14. He had tried to grasp TS14 in his efforts to make the tackle but because of the changed dynamic caused by TS14 falling, he had failed to do so.
- The collision had stunned the Player and he failed the Head Injury Assessment (HIA) carried out after the Match.
- The Referee had called the Player over and said that the collision was Player's shoulder to TS14's head but he knew that was wrong because he had felt a head to head collision – a collision which was the accidental consequence of him having attempted to perform a legitimate tackle.
- The photograph of the Player's head showed the damage caused to him in the collision.

Mr Kingston was then invited by Mr Smith to comment on the Player's explanation and what could be seen on the video. The synthesis of what he said was as follows:

- After the Player had been suspended for the consequences of a high tackle in the match against Exeter he was told by the Harlequins' coaching staff that he should concentrate on tackling opponents around their hips
- This necessitated changing the Player's style of tackling and that is what the coaching staff had been working on through the last six weeks
- This required the Player to focus his eyes and attention on the hip area of an approaching opponent, get into a low position and perform the tackle by getting his head to one side of the opponent and grasping him around the hips
- He said, pointing to the video, that the Player was in a technically good position as he prepared for the tackle
- In such a technically good position the Player's move towards TS14 was also technically good but the Player could not have expected that H4 would make a tackle in advance of him and so

cause TS14 to fall into his path. The Player, therefore, found himself accidentally making contact with the opponent's head rather than the hips he had first aimed at. If Mr Kingston was conducting a team debriefing he would have awarded the Player eight and a half out of ten for the tackle as performed.

- Having done the right thing by what he had been told, the Player, an exemplary member of the Harlequin's squad now found himself at odds with what the game expected of him.

Match Officials' Reports.

The written reports of the Referee and his Assistant were considered in conjunction with the translations, provided by Harlequins, of the conversations that had taken place at the time between the match officials, the Player and the Harlequins' captain.

It was the Assistant Referee, said Mr Smith, who had seen what had happened and when he spoke to the Referee he had referred to a "no arms tackle" and a collision shoulder to head. The on field conversations maintained that assessment of the position which led the Referee to issue the Red Card.

It was only after the Match when it became clear that the collision had been head to head that the Referee's report changed the reason for the Red Card to an illegal charge causing a clash of heads.

This inconsistency, in Mr Smith's submission, questioned the validity and correctness of the Red Card that had been awarded.

Report from Prof Pieter Kruger

Mr Smith placed before the Hearing a report from Prof Pieter Kruger, Head of Psychology for Harlequins. He spoke of the level of commitment and conscientiousness with which the Player had sought to address perceived problems with his technique and offered the opinion that what had happened was the unfortunate and accidental consequence of the unanticipated tackle by H4 after the Player had already made the decision to perform a tackle which he could not in the dynamic of the situation pull out of.

There were no other items of evidence to be considered in relation to the Committee's decision as to whether there had been an act of foul play that warranted the Red Card and so the Hearing was adjourned for the Committee to consider matters in private.

Decision as to foul play and Red Card

The Committee reminded itself that the applicable standard of proof is the balance of probabilities and reviewed the video of the incident and considered carefully all that they had heard and read.

The Player and his representatives had urged the Committee to accept that what had happened was the accidental consequence of a legitimate tackle correctly executed but thwarted by the unanticipated downwards movement of TS14, a movement so sudden that the Player could do nothing to avoid the collision that occurred. In terms, once the Player had made his choice the outcome was inevitable but accidental.

The Committee was prepared to accept that as events initially began to unfold, the Player prepared himself to make the low tackle he had been tutored and had been practising in the preceding weeks although the Committee could not avoid feeling there was a certain incongruity about a 28 year old professional rugby player who had grown up and learned his rugby at a high level in New Zealand needing to be taught a technique as universally basic to the game as a low tackle.

What the Committee did not accept, however, was that the Player did not have a choice. In the Committee's view not only did he have the choice of what tackle to make but also of whether to make a tackle at all. What happened in front of him (TS14 being tackled by H4) was not unforeseeable. On the contrary, it was the sort of situation that regularly presents itself on the field and which needs to be factored into players' decisions all the time. This situation was not so different that it might excuse the commission of an act of foul play.

In the Committee's assessment, the Player had set himself to tackle an opponent whose body position might predictably have changed as the result of an intervening tackle. When the Player propelled himself towards the opponent he did so leading with his right shoulder and did not display any discernible attempt to grasp TS14. The Committee accepted that the element of charging within the offence was committed with that leading shoulder and not with the head of the Player and that the clash of heads was the unintentional result of what happened.

In all of these circumstances the Committee was satisfied that the act of foul play alleged had been committed by the Player, that it was an act contrary to Law 10.4.(g) of the Laws of the Game and that the Red Card was justified.

The Hearing was reconvened and the Committee's decision relayed to the parties who were then invited to address the issue of sanction.

Submissions as to sanction

Mr Smith addressed the Committee by reference to the relevant provisions of the Rules and suggested the Lower End entry point as the appropriate level of sanction in this case. He did so on the basis that this was, in terms of the Rules, a reckless act and that the gravity of an act should not be weighed by the seriousness of the injury it might cause but by the nature of the act itself.

He further urged the Committee to assess there to be no aggravating factors. On the other hand there were significant mitigating factors not least the Player's good character as attested to by the glowing testimony of Messrs Kingston and Leo.

The Disciplinary Officer had no submissions he wished to make and so the Committee retired again to consider matters in private.

Sanction

The Committee reminded itself that Appendix 3 of World Rugby's Regulation 17 sets the entry levels for an offence contrary to Law 10.4(g) of the Laws of the Game as: Lower End – 2 weeks; Mid Range – 5 weeks and Top End – 10+ weeks.

The Committee then assessed the offending by reference to Rule 7.8.32 and the criteria set out in that Rule. That assessment was as follows:

(a) & (b) - The Committee accepted there was no intention to commit a foul and that in the terms of this Rule, the foul was reckless. The recklessness amounted to a clumsy attempt to perform a tackle inappropriate to the context of the match at that moment.

(c) - The Committee noted the injury suffered to both players from the clash of heads but noted too that the illegal charge was not perpetrated by the Player's head that made contact with TS14 but by the Player's shoulder which did not make contact with the opponent's head.

- (d) - The offence was committed as the result of a clumsy attempt to perform a legitimate action at the wrong time and by means of charging with a leading right shoulder.
- (e)(f) & (g) There were no elements of provocation, retaliation or self defence.
- (h) - TS14 was injured but the clash of heads that caused it was not caused by the principal offending.
- (i) - The Match was a one sided contest in any event and there was no adverse effect on the conduct of either team
- (j) - The victim was falling towards the collision and therefore vulnerable
- (k) - There was no premeditation but the level of participation was full
- (l) - The conduct was completed
- (m) - There were no other features to be taken into account.

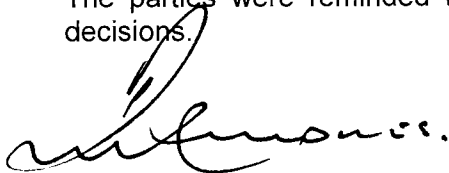
In the light of the above assessments the Committee considered earnestly whether the Mid Range Entry point was the correct starting place but had a certain sympathy with the notion that the Player's actions had been clumsy as opposed to the sort of reckless action that blatantly has no concern for the potential damage it might cause. In the final analysis the Committee gave the Player the benefit of its doubt and decided the Lower End entry point was appropriate in all the circumstances. This meant a starting point for the calculation of sanction of two weeks.

In examining aggravating factors the Committee felt unable to ignore the fact that this was the Player's third similar transgression within a short period of time and therefore added a week to the period of suspension to be imposed.

In terms of mitigating factors, the Committee acknowledged there were compelling features to be weighed in the Player's favour but the fact that he had contested the Red Card meant that the Committee could not award the 50% from the Entry Point sanction that was required to reduce his sanction below three weeks.

The Hearing was further reconvened and the Player told that he was suspended from playing the Game up to and including Sunday 8 January 2017.

The parties were reminded that the Rules afford them the right to appeal against the Committee's decisions.



Roger Morris

24 December 2016