

DECISION OF THE INDEPENDENT DISCIPLINARY COMMITTEE
The European Rugby Challenge Cup, Season 2016/2017

Held at Sofitel, Terminal 5, Heathrow on Wednesday 14 December 2016 ("the Hearing")

In respect of:

James Davies ("the Player")

and

A citing complaint in respect of an alleged act of Foul Play contrary to Law 10.4(m) of the Laws of the Game, namely an "Act Contrary to Good Sportsmanship" in the European Rugby Champions Cup Match between RC Toulon and Scarlets played at the Felix Mayol Stadium on 11 December 2016 ("the Match").

Disciplinary Committee appointed to hear the case:

Rod McKenzie (Scotland) ("the Chairman")

Bonike Erinle (England)

John Doubleday (England)

("the Disciplinary Committee")

Decision of the Disciplinary Committee:

The Player admitted both the Citing Complaint and that his act of Foul Play warranted a red card. Accordingly, the Disciplinary Committee upheld the Citing Complaint and determined that the act of Foul Play contrary to Law 10.4(m) of an "Act Contrary to Good Sportsmanship" had merited an ordering off.

The Player is suspended from taking part in the Game of Rugby up to and including 1 January 2017. The Player is free to play on 2 January 2017. This represents three week's suspension commencing 11 December 2016.

Introduction

The Disciplinary Committee 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 Disciplinary Committee was appointed to consider the citing complaint relating to the Player in the Match. The Player was cited for an alleged offence of an act contrary to good sportsmanship in contravention of Law 10.4(m). The citing complaint incident details were as follows:-

"In the 27th minute of the first half the ball was kicked high into the Toulon half. Scarlets 14 followed the ball and jumped up knocking it forward with his right hand. The ball travelled forward and the Referee called "advantage knock on". As the ball spills forward Scarlets 7 drops on the ball, and the Referee seeing no advantage is possible, blows his whistle to award a scrum to Toulon. After the Referee had blown his whistle Scarlets 7 says " oh fuck off".(fact of verbal content confirmed with CC and Referee after the game) The Referee, Mr Greg Garner , calls the Scarlets 7 , Mr James Davies to his position along with his Captain and speaks to him about the incident. Mr Garner (Ref) said to Mr Davies (S7), "if you use that language again on the pitch I will send you off". The Scarlets Captain then confirms it was a penalty against S7 for "bad language". As James Davies (S7) walked away from the Referee with his back to him he made an offensive gesture several times with his left hand. (Commonly I believe known as a sign to indicate someone/something is a Wanker.) Mr Davies then looked over his left shoulder, continued walking, and repeated the same obscene gesture several times yet again. Given that Mr Davies (S7) had just previously in the last minute, had received a final warning about bad language from the Referee, to repeat this action twice and so clearly was a flagrant disregard to the Referees final warning. Whoever the gesture was aimed at was an "act contrary to good sportsmanship", and I therefore issue a full citing against Mr James Davies, Scarlets 7, under Law 10.4(m). This was a round 3 group game between Toulon and Scarlets that was televised live across Europe."

The Hearing

In addition to the Disciplinary Committee the following persons were present at the hearing:

- The Player
- Mr Mark Taylor, Scarlets Team Manager – representing the Player
- Mr Liam McTiernan, Disciplinary Officer, EPCR
- Ms Jennifer Rae, Solicitor, Clerk to the Disciplinary Panel
- Mr Danny Rumble, Regulations and Compliance Executive, EPCR

At the commencement of the hearing, the Chairman noted the identities of all present and narrated the contents of the citing commissioner's report, reminding the Player that he had been cited for an alleged contravention of Law 10.4(m).

The Chairman reminded all parties that the European Rugby Champions Cup Disciplinary Rules found in the Participation Agreement ("the Disciplinary Rules" and "DR" in the singular) would apply.

The Player advised the Disciplinary Committee that he admitted having committed the act of Foul Play for which he had been cited. The Chairman outlined the procedure to be followed to determine the citing complaint and advised that the Disciplinary Committee would move to consider what sanction, if any, should be imposed. The Player and all present agreed to proceed on the basis outlined and that it had warranted a red card.

The Chairman ascertained that there were no preliminary matters or issues which either party wished to raise. The Chairman advised he had a preliminary matter to raise with the Disciplinary Officer. The Chairman asked if there was to be any amendment to the World Rugby sanctioning table in relation to this offence as the Chairman has noted that the section of the table in relation to Law 10.4(m) for contact with the eye/eye area was to change. The Disciplinary Officer confirmed that whilst the sanctions in relation to law 10.4(m) for contact with the eye/eye area were to change on 3 January 2017, he knew of no such changes to any other section of the table in relation to law 10.4(m)

The Chairman then established what evidence had been made available to the Committee and Player prior to the hearing and enquired as to whether all present had received copies of same in good time. The documentary and other evidence and written submissions presented for consideration was as follows:

- Citing Commissioner Citing Report, dated 11 December 2016
- Video of the Incident that was the subject of the Citing Report

- Referee Report in respect of the incident
- A copy of the Disciplinary Record from the WRU for James Davies
- A written statement from Wayne Pivac (Scarlets Head Coach) as a character reference for James Davies
- A copy of the press release from James Davies and the Scarlets following the incident
- Schedule of playing commitments for the remainder of the 2016/17 season, a rough guide to the pre-season 2017/18, and the likely start date of the 2017/18 season.

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

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. The video evidence was wholly consistent with the description of the incident as set out in the citing commissioner's report.

Match Official Reports

The Match Official confirmed that none of them had seen the incident.

Evidence from the Player

The Player advised that there were a few decisions before the incident that has caused him to become frustrated. In relation to this incident, the Player explained he had picked the ball up and heard the whistle go. He said he immediately thought that the decision had gone against him for trying to pick the ball up. What had actually happened is that the whistle was blown by the referee for an infringement, by another player in the Player's team, before the Player picked up the ball.

The Player explained that when he thought the whistle applied to him he was irritated by it since he had understood the ball 'to be dead', that he was simply assisting with 'moving the

game along' and it was only later that he learned that this was in relation to an earlier knock on and that advantage had gone to the opposing team. He had already been irritated by other incidents and believing that he had been treated unfairly he reacted as he did. He acknowledged that both the words spoken by him to the referee and the gestures made by him were wholly inappropriate. The Player advised he had apologised to the referee after the game for what he had done. The Player told the Disciplinary Committee that he simply just did not think about what he was doing or saying that he had not been acting rationally and was very embarrassed about the events that had taken place.

The Chairman advised he was finding it difficult to understand the Player's behaviour. The Player went on to explain that this was the biggest game European game he had been involved in. The Player explained that the incident happened in the 27th minute and at that point the score was 17-6 and he and his team were under significant playing pressure. The eventual result was 31-13 to Toulon. His team (Scarlets) were involved in a hostile atmosphere as they were away to Toulon which, by its standards, had had a poor start to the tournament. In the last few games they had taken away 19 points and as such the Player went into the game thinking Scarlets had prospects to win the Match and had been frustrated by the way the Match had started. However, it was not an explanation or an excuse for his behaviour. The Player went on to say that he had disgraced his club and his family, himself and his teammates.

The Player advised he was not at the Hearing to make excuses and could only describe to the Disciplinary Committee the way in which he had gone about things. He had never behaved like this before and that it was just because he was so tightly wound by the stage in the Match that the incident has occurred and his behaviour had been a heat of the moment reaction. The Player told the Disciplinary Committee that within 20 seconds of the incident he realised what he had done and went out of his way to say sorry. He explained that the incident had definitely hindered his performance throughout the game. The Player reiterated he had not come the Hearing to make excuses and realised that he realised his actions were disgraceful especially when contrasted with his achievements this year. He advised he accepted he was a role model for youngsters and that this had tarnished the image of the game and that he would do everything within his power to bring his image back to the standard appropriate to rugby.

Mr Doubleday enquired whether the Player had been spoken to by the referee in the game about anything else beyond what was in the citing report. The Player confirmed that he had not been spoken to about anything else.

The Chairman enquired how often has a decision been made against the Player which he disagreed with and whether the Player would you normally expect in any match to at least have one decision go against him with which he disagreed? The Player acknowledged that yes, there would usually be a decision against him in a match with which he disagreed and that he would generally not express disagreement in any form, far less in the forms on this occasion. He said he would usually just put the ball down and get back into position.

Submissions

Mr McTiernan advised in relation to entry point, he did not think the issue of recklessness arose and that it would be his submission that the Disciplinary Committee should conclude that the action was intentional.

Mr McTiernan stated that the tournament had been greatly assisted by the Player's admission and that the Player had not sought to argue that the gesture was to somebody else.

In terms of the gravity the Player's actions, Mr McTiernan did accept that the Player's gesture was discrete; however, it had been picked up by the television cameras as narrated in the Citing Commissioner's report. Mr McTiernan advised the nature of the action could be seen from the video.

Mr McTiernan submitted that provocation or retaliation were not relevant. The victim (the referee, Mr Garner) was not vulnerable and had not been aware of what happened.

The conduct had been completed and the incident had no effect on the game. In Mr McTiernan's view there were no other relevant features.

Mr McTiernan advised the Disciplinary Committee that he was not aware of World Rugby alerting tournaments to a pattern of verbal abuse in the game. In terms of any analogous cases, there had been an EPCR case, Mareitino Nemani, from a previous season where a low entry point was determined. In that case, it had been determined that Mr Nemani had said "*Fuck your shit*" to the referee. Mr McTiernan advised he would not seek to persuade the Disciplinary Committee that there were any aggravating factors in this case.

In terms of mitigation, Mr McTiernan went on to confirm that the presence and timing of the

apology to the referee for The Player's conduct and his acknowledgement of culpability were as early as possible and that the tournament had been assisted by Scarlets and the Player in their response to matters.

In terms of previous disciplinary conduct, the Player had been charged for a striking with the knee, however, this appeared to bear little relation to this event and did not seem to be a pattern of previous serious Foul Play by the Player. Mr McTiernan confirmed that the Player received 3 weeks suspension on that occasion.

Mr Taylor assisted the Disciplinary Committee in confirming that was when the Player was in the semi-professional game and that the Player had accepted the 3 weeks on that occasion, as such there had been no requirement for a disciplinary hearing. In terms of the timing of the incident this had taken place in 2014. Mr Taylor advised he had the video if parties wished to consider it. The Chairman confirmed that that was not necessary but simply recorded that the Player had received a single red card and 3 weeks suspension for striking an opponent with the knee in 2014. The Chairman enquired whether sanctions include the red card that Mr Taylor had already referred to was also included 7s. The Player confirmed that he had never been sanctioned at 7s. Mr Taylor advised that although the Player had received a red card before and the subsequent three week ban, it should not be treated by the Disciplinary Committee as evidence of the Player's bad character. In his submission, it was just simply a young player getting to grips with what was required in the modern game.

Mr Taylor asked the Disciplinary Committee to find that the Player had good conduct at the Hearing and had demonstrated remorse. Mr Taylor went on to say that the behaviour was completely out of character for the Player. The Player was an important player to Scarlets.

The Player was 26 and had been within Scarlets' youth rugby system since he was 23, when he had started playing for Scarlets Carmarthen Quins. He had played a lot of 7s for 2 years and World Series circuits and was in the Great Britain team for the Olympics. Mr Taylor stated the Player had not followed the usual rugby route and was a bit of a late developer in that sense. The Player had attended university to study business and was recognised for his rugby talent there. The Player had then worked hard and had refused to give up on his dream of being in a professional game and it had been a big year for him, especially with the Olympics. He advised the Player was pushing forward in terms of national recognition and might get on the Welsh tour in June. He explained the Player is very highly rated, but, he was not capped at 15s.

The Player was a community player and undertook a lot of community and commercial work for the club and that the club were able to promote to young players the Player's 'alternative story' as to how he had progressed in the game due and that it was possible to become a successful professional with a later start in rugby.

Mr Taylor went on to explain that the Player's conduct in this matter was completely out of character, that the Scarlets understood the gravity of matters and that they would take further action on this once this disciplinary process had ended. However, they had already publically condemned this behaviour in the media.

Mr Taylor went on to say that the written reference provided and considered in detail by the Committee was only the second reference Mr Pivac (Scarlets Head Coach) has given for a player and that it was not something that was done for just anyone. Mr Taylor said that they feel strongly about the issue and Scarlets trying to express, privately and publicly, how dimly a view Scarlets took of this action, however it was out of character for the Player.

Discussion

The Disciplinary Committee retired to consider matters. The Disciplinary Committee noted that the Player had already been sanctioned by the referee for stating "*fuck off*" earlier in the game, however that had been dealt with, and whilst not irrelevant to the causation of the incident, it is not a matter for the Disciplinary Committee to consider in terms of the offending for which the Disciplinary Committee has been asked to determine what sanction, in any, should be given to the Player.

In terms of the gesture the Player performed, it was noted by the panel that this did not 'fit into' the verbal abuse 10.4(m) category in the sanctioning table and the Disciplinary Committee was therefore required to consider which section this should fit into. After considering the table, the Committee determine that the offence should be categorised as "any other act contrary to good sportsmanship". The Disciplinary Committee unanimously agreed that it was not the case that the gesture the Player performed was verbal abuse and as such fitted it fall into the 'any other acts' category. It seemed to the Committee that this outcome, although necessary on the wording, was a little unfortunate and that consideration should be given to including something along the lines of 'lewd, offensive and disrespectful gesture' in the same category in the sanction table as 'offensive remarks' since they are of the same order and effect or that another category is created if it is considered that the level of sanctioning should be different.

The Disciplinary Committee in considering the entry level agreed that this was low end offence. The Foul Play had been surreptitious and not demonstrative and it appeared to be almost a way of the Player outwardly manifesting his frustrations to himself and those of his team mates who had a view of the gestures. However, the gestures were disrespectful, made in the face of a specific warning from the referee and demonstrated a poor role model to younger players. The Player's slightly older entry into this level of the game was not matched by an expected higher level of maturity having regard to his conduct.

However, the Committee decided that the short duration of the incident and the absence of any demonstrated disagreement directly to the referee and therefore no significant effect on the Match resulted in a low end entry point being appropriate.

The Disciplinary Committee did not consider that there were any aggravating factors present.

In terms of mitigation, it could not be said that the Player had a clean record; however, the Disciplinary Committee noted that the previous incident has occurred when the Player was not yet in senior rugby. In the circumstances, as he had expressed culpability and wrong doing at the earliest possible time, was relatively inexperienced despite his achievements this year, he had shown good conduct the Hearing and gave very frank assessment of himself and demonstrated remorse, the Disciplinary Committee considered that all of this should be recognised in 40% mitigation.

The entry point for a low end law 10.4(m) "any other acts" was 4 weeks. That takes the sanction to a suspension period of between 2 and 3 weeks which must on the current Disciplinary Rules, be rounded up to three weeks.

The Player provided details of his fixturing commitments and confirmed that he was fit to play if selected . If he was not suspended he would have participated in fixtures in the EPCR next round on 18 December 2016 and the Guinness Pro12 competition on 27 December 2016 and 1 January 2017.To ensure a period of three weeks suspension, covers three substantive competitive matches, the Player is suspended up to and including midnight on 1 January 2017. This will effectively include the above mentioned fixtures.

The Chairman reminded the parties that the Disciplinary Rules afforded them the right to appeal the Disciplinary Committees decision.

Rod McKenzie

Chairman of the Disciplinary Committee

13 February 2017