

Decision of the Independent Judicial Officer

ERC

Held at Ca'd'oro Building, 45 Gordon Street, Glasgow, Scotland by way of telephone conference call
Tuesday 19th January 2010 at 11.30am

In respect of

Jerome Schuster of USA Perpignan ("the Player")

And

A citing in respect of an alleged contravention by the Player of Law 10.4(a) dangerous play and misconduct – striking an opponent and specifically "it can be seen from slow motion DVD evidence that Jerome Schuster, in fact struck Denis Leamy on the head with his head whilst himself on the ground causing Denis Leamy to be treated before continuing play. Leamy had pulled Schuster to the ground away from the tackle area causing Schuster to react violently. Whilst getting to his knees Schuster launched himself forward and struck Leamy on the head with his head"

Judicial Officer appointed to hear the case:

Professor Lorne D Crerar, Scotland

Decision of the Judicial Officer:

- (i) The Judicial Officer found that the Player had committed an act of Illegal and/or Foul Play as alleged in the Citing Complaint
- (ii) The Judicial Officer was satisfied that the act of Illegal and/or Foul Play merited a "red card" and that the Player should have been Ordered Off for the offence.
- (iii) The Player is suspended from taking part in the game of rugby up to and including 1 February 2010. This represents a 2 week suspension commencing on 19 January 2010.
- (iv) The Judicial Officer made an award of costs against the Player.

Introduction

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the ERC's independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2009/2010. The Judicial Officer was appointed to consider the citing complaint ("the Complaint") against the Player in the match played between Munster and USA Perpignan on 20 December 2009 in the Heineken Cup 2009/2010.

Alan Mansell. RFU was appointed as Citing Commissioner to this match and had cited the Player for :

A contravention of law 10.4(a) dangerous play and misconduct: Striking an opponent namely:

"A yellow card had been given to Jerome Schuster for striking Denis Leamy on the ground following a ruck. The act of foul play had been signalled by Andrew Small, the Assistant Referee. It can be seen from slow motion DVD evidence that Jerome Schuster, in fact struck Denis Leamy on the head with his head whilst himself on the ground causing Denis Leamy to be treated before continuing play. Leamy had pulled Schuster to the ground away from the tackle area causing Schuster to react violently. Whilst getting to his knees Schuster launched himself forward and struck Leamy on the head with his head".

Present at the hearing by way of telephone conference call in addition to the Judicial Officer were the following persons:-

- Mr Roger O'Connor, Disciplinary Officer, ERC
- Max Duthie, Solicitor, Bird & Bird
- The Player
- Pierre Becque, Legal Advisor to the Player

Preliminary matters & procedure

At the commencement of the telephone conference hearing the Judicial Officer noted the identities of all attending and asked whether they were all aware of the full narrative of the complaint. All confirmed that they did and the Judicial Officer reminded the Player that the complaint was in respect of an allegation that the Player had breached law 10.4(a).

The Judicial Officer further reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2009/2010 (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 had been 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 before him. The evidence for consideration was as follows:-

- Citing complaint form by Alan Mansell of RFU in respect of the alleged act of foul play
- Letters of intimation regarding rearranged dates of the hearing
- Letter from Pierre Becque responding to the Standing Directions
- Letter from Anthony Coole, Head Physiotherapist, Munster Rugby confirming there was no injury to the Opposition Player Denis Leamy ("the Opposition Player")
- Short statement from the Opposition Player dated 11 January 2010
- Exchange of emails culminating in an email of 23 December between the Match Officials and the Disciplinary Officer

The Judicial Officer noted the terms of the Player's responses to the Standing Directions found at Appendix Six of the Disciplinary Rules ("the Directions") as follows:-

- The Player was Jerome Schuster as named on the Citing Complaint
- The Player would not argue any preliminary matters
- The Player did not accept the description of the facts in the Citing Complaint
- The Player did not accept that he had committed an act of foul play
- In particular the Player argued that "in Minute 47, a ruck was forming, J. Schuster was running to enter the ruck but he was stopped before entering the ruck by Munster No.8 Leamy and was pushed and fell on the pitch. This act could have been cause of penalty against Mr Leamy. When he was standing up, he pushed LEAMY out, with his shoulder, not his head. If possibly, the player's heads chocked, it was by accident and not by Schuster's decision. The referee David PEARSON says that from his angle, he saw the struck with the shoulder Andrew SMALL, who stood at 6 meters on the same side of the ruck, saw the result (heads shock) but he probably appreciated it as a result unwanted by SCHUSTER, and indeed recommended a yellow card, what has been considered as a sufficient penalty. This situation is visible on the DVD, if the facts are considered during 1 minute before and 2 minutes after, with the comments of the referee".
- The Legal Representative of the Player is Pierre Becque

The Judicial Officer invited the Player and Disciplinary Officer to confirm whether or not they had any preliminary issues that they wished to raise. No Preliminary issues were raised.

The Judicial Officer reviewed the Complaint in full and the Official Reports from the Match Officials. The Judicial Officer asked the Player whether he accepted that:

- the Complaint was a true and accurate account of the incident and the facts surrounding the incident;
- the Complaint should be upheld (namely whether he had committed the alleged act(s) of Illegal and/or Foul Play); and
- the alleged act(s) of Illegal and/or Foul Play warranted a red card.

The Player responded that he wished to contest the complaint because it was an involuntary act on his part and thereby there was no intention to commit an act of foul play.

Evidence supporting the Complaint

In terms of the Disciplinary Rules it is for the Disciplinary Officer to demonstrate to the Judicial Officer's satisfaction that the Complaint should be upheld. To do this he must demonstrate on the balance of probabilities that the Player committed the act or acts of Illegal and/or Foul Play complained of in the Complaint.

The Disciplinary Officer presented his evidence regarding the Complaint in the form of:-

- The video footage of the incident; and
- At the request of the Judicial Officer, Mr Duthie explained the ERC Disciplinary Officer's explanations of the events by explaining frame by frame both video clips that were available. He explained that the Player had been obstructed by the Opposition Player and both Players went to ground. While the Opposition Player was still on the ground the Player got to his feet and leading with his left hand which was close to the Opposition Player's head with the Player's right hand outstretched at a right angle to his body. There was a slight cocking of the Player's head close to the Opposition Player's head with a subsequent head on head collision. It is clear that there was a head on head collision from the video clips.

Player's defence

The Player's submissions were:-

- After reflection the Player's representative advised that the Player accepted that there was an act of foul play namely that as a reaction to being taken out by the Opposition Player, the Player sought to respond by taking the Opposition Player out of further participation in a ruck or subsequent maul. There was no intention to harm and the intention was for the Player to connect with shoulders first rather than with the head.

After questioning of the Player it was accepted that:

- There was an act of foul play; and
- There was an unintentional contact between the head of the Player and the Opposition Player.

Submission on whether to uphold the Complaint

Once all of the evidence had been heard on the question of whether the Complaint should be upheld or not, the Judicial Officer upheld the Complaint as the Player had accepted an act of foul play had been committed.

Decision as to disposal

As the Complaint was upheld, the Judicial Officer, heard representations from the Disciplinary Officer and Player as to sanction.

In relation to 6.7.32, the Disciplinary Officer's submissions were:-

- He had already made representations that the alleged act of foul play was intentional;
- The issue of recklessness did not apply;
- It was accepted that the Player had been provoked by the Opposition Player; and
- Although there was some treatment to the Player there was no injury. The Opposition Player was in a vulnerable position and "didn't see it coming". Contact by the Player's head was with the side of the Opposition Player's head.

In relation to 6.7.34. Mr Duthie explained there were no aggravating factors and understood the Player had no Disciplinary record.

In relation to 6.7.32, the Player's submissions were:-

- The Offending was accidental and there was no intention of committing the offence;
- Recklessness was not a factor to be considered;
- The Player had been provoked and had acted in response to the act of foul play of the Opposition Player;
- There was no injury to the Opposition Player;
- There was no effect upon the game by the actions of the Player;
- The Opposition Player was not vulnerable as he had instigated the original offence immediately before this alleged act of foul play and had provoked "the Player";
- The act of foul play had followed immediately the provocation by the Opposition Player and there was no aspect of premeditation;
- The Player accepts he had committed an act of foul play on sight of the DVD evidence and that his head had come in contact with the head of the Opposition Player;

In relation to DR 6.7.34

- a) The Player had an unblemished disciplinary record. The Player was aged 24.

In relation to DR 6.7.35

- a) The Player had acknowledged at the Hearing the commission of the act of foul play.
- b) The Player had an unblemished character and no disciplinary record.
- c) The Player was aged 24.
- d) There were no other mitigating factors.

The Judicial Officer retired to deliberate in private in respect of what, if any, sanction would be appropriate in the circumstances. In this regard the Judicial Officer considered the terms of the Disciplinary Rules including DR 6.7.29 through to DR 6.7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

The Judicial Officer noted that the offence of striking the opponent with the head of in contravention of Law 10.4(a) was listed within the IRB Recommended Sanctions for Offences Within the Playing Enclosure (found at Appendix Three of the Disciplinary Rules) as follows:-

- Lower End – 4
- Mid Range – 8
- Top End – 12+
- Maximum Sanction – 104 weeks

To decide upon the appropriate entry point the Judicial Officer assessed the seriousness of the Player's conduct by reference to the following "on-field" issues:-

- From the evidence available to the Judicial Officer he considered that the reaction of the Player was immediately following the provocation of the Opposition Player and the Player lunged at the Opposition Player in a full body manner leading with the head, knocking the Opposition Player to the ground with the Player ending up on top of him. The Judicial Officer was of the view that there was no intention to strike with the head but rather it was a reckless act;
- The Player threw his full body upon that of the Opposition Player rather than simply trying to connect head to head;
- The Player had been provoked by the Opposition Player by being obstructed prior to the act of foul play;
- The Opposition Player was not injured and was wearing a scrum cap;
- The Player's actions did not affect the game;
- It is unclear from the DVD whether or not the Opposition Player could see the approach of the Player, but in any event the act of foul play immediately followed the provocation by the Opposition Player;
- There was no premeditation of the act of foul play; and
- The act was completed.

The Judicial Officer determined that the appropriate entry point for this matter was 4 weeks being the Lower End entry point.

The Judicial Officer considered that there were no off-field aggravating factors.

The Judicial Officer considered that the following were off-field mitigating factors to be taken into account in determining the appropriate period of suspension:-

- The Player had admitted he had committed an act of foul play and that his head came in contact with the Opposition Player's head;
- The Player had a good record and was of good character;
- The Player was aged 24;
- The Player conducted himself well at the Hearing; and
- There were no other off-field mitigating factors.

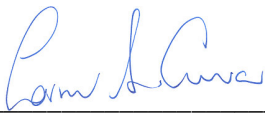
A period of 2 weeks was to be deducted (50% of the Entry Point) to accommodate these significant mitigating features.

In all of the circumstances the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of 2 weeks commencing on 19 January 2010 and ending on 1 February 2010 (inclusive).

The Player and the Disciplinary Officer are reminded that DR 7.1.1 provides for a right of appeal against this decision.

Costs

Having heard submissions from Mr Duthie and Mr Becque regarding costs and in particular because the Player had denied the facts of the Citing Complaint and that he had committed an act of foul play further to the response to the pre-hearing directions and further to Disciplinary Regulation 6.7.45, and 6.7.47, the Judicial Officer awarded costs in favour of ERC.



Professor Lorne D Crerar
Judicial Officer

20 January 2010