ERC

V

Gareth Thomas

Decision on the factual basis for sanction

Mr Thomas has pleaded guilty to a charge of misconduct on the limited basis that his only action was that he gesticulated with his middle finger to the crowd. ERC do not accept this limited basis of plea and allege that he also engaged in aggressive exchanges with spectators and attempted to enter one of the seating areas of the stadium.

We have read statements of two witnesses who could not attend the hearing and could not thus be cross examined and we therefore accord them little weight. We have also seen two photographs taken at the time of the alleged incident and heard evidence from four live witnesses (two by telephone link) and from Mr Thomas himself. Having assessed all of the evidence we have come to the following factual conclusions.

Mr Brennan came to the dugout and told Mr Thomas that an incident had just occurred when he, Mr Brennan, had gone into the crowd. Shortly after Mr Brennan was told by the Toulouse coach to go onto the pitch and immediately there was a lineout near where the previous incident had occurred. Mr Thomas was aware that the crowd were agitated and he heard them shouting and chanting at Mr Brennan. He believed that he could calm down the crowd and/or prevent Mr Brennan from reacting adversely to what was being said, so he left the dugout and went to the pitch side where the agitation appeared to be. Initially his demeanour was calm and he tried to engage the crowd – by his own admission he said things like "guys, what the f**k is going on, leave it alone, just f**king get on with it." Some of the crowd then shouted abuse at him and, in our view, at that point his temper snapped and he lost reason. We accept that he was provoked by what they said, no doubt already having a view of that section of the crowd because of what he had been told by Mr Brennan.

He then gesticulated towards the crowd, using his middle finger and there was some reaction back. He then immediately lunged towards the fence and started to climb onto or over it. We are certain of this fact because of the clear evidence of two credible witnesses who described him lifting his leg onto the top of the wall so that they could see the studs on the bottom of his boot. We also take account of the two photographs which have been exhibited – and find that the first in time was the photograph showing him gesticulating and the second showing him being restrained.

The reaction of the crowd in the second photograph, and particularly of a woman appearing to gesticulate that he should move back, corroborates the evidence which we have heard.

We took account of Mr Thomas's own evidence, his good character and his frankness. However, we do not accept his version of events that he was pulled back by Toulouse officials and that he simply held onto the top of the wall as an automatic reaction to that. We suspect that at that point he had become so angry that he had lost reason and that his recollection of the detail of those few seconds cannot be relied upon.

In all the circumstances, therefore, we are satisfied on the balance of probability that Mr Thomas is guilty of misconduct contrary to ERC Discipline Rule 3.2 in that he:

- aggressively attempted to enter one of the seating areas of the stadium; and
- made an offensive hand gesture (namely a raised middle finger) toward spectators (by his own admission).

We are not satisfied that he engaged in aggressive exchanges with spectators because his temper snapped before he had made any abusive remarks and any aggression is encompassed in the two limbs of the charge found above. No direct evidence supporting this limb was adduced by ERC – none of the witnesses were able to say what Mr Thomas said immediately preceding his gesticulation and the only evidence was from Mr Thomas himself which we accept. We therefore find him not guilty of engaging in aggressive exchanges.

Decision as to sanction

Mitigation

Mr Williams, acting on behalf of Mr Thomas, presented the panel with testimony as to good character from Matt Dawson (former player), Gareth Jenkins (Welsh coach), Stephen Jones (Journalist), Alistair Campbell (PR director to the British Lions 2005), Bill Beaumont (Manager British Lions 2005), Stephen Hansen (All Blacks Assistant Coach) and Professor John Williams. They testified about Mr Thomas's excellent contribution to rugby generally, to the development of youth and to his outstanding contribution to the Game over a long period. Professor Williams also stated that Mr Thomas suffered from transient hemiparesis following an injury in February 2006 and this led to experience a significant period of lethargy, tiredness and mood swings. Although he has successfully rehabilitated, he does become significantly anxious and tense before games.

Mr Williams urged the panel to take into account Mr Thomas's early admission of guilt in relation to the gesticulation, his good character – he only having one Yellow Card against his name for his whole professional career – his genuine remorse and the fact that his professional life until this incident has been beyond reproach. He indicated that this was the last international season before retirement for Mr Thomas – his last 6N tournament and World Cup – and, implicitly, any suspension would

therefore have a more dramatic effect. He suggested that Mr Thomas is highly respected and drew the panel's attention to the testimony of one of ERC's witness to fact who made a voluntary statement to that effect after he had described the events.

Mr Williams therefore suggested to the panel that the appropriate sanction, which would reflect the seriousness of the misconduct and send out a clear message to the Game whilst giving Mr Thomas the significant credit his long and illustrious career deserved, would be a financial penalty.

Decision as to Sanction

In assessing the appropriate sanction ERC have helpfully drawn our attention to sanctions for similar offences in other sports. They suggest that the starting point for a sanction may be the same as had the offence been match official abuse.

Mr Thomas's action was extraordinary and entirely out of character. The panel found it almost beyond comprehension that someone of Mr Thomas's stature and experience should have put himself into the position he did.

The panel accepts that this is completely different from, and much less serious than, the allegations against Mr Brennan, but an aggravating feature is that, knowing something of what occurred before, Mr Thomas still walked out of the dugout to confront an agitated section of the crowd. In trying to understand why Mr Thomas took this extraordinary action they note the report of Professor Williams which may explain his mental state at the time, particularly after the provocative shouts which some of the crowd directed at him.

The panel takes into account and gives credit for all that has been said and written on Mr Thomas's behalf. We accept that his remorse is genuine and that he is truly sorry for the damage he may have caused to the game he treasures.

However it is important that our sanction sends a clear message to the Game at large that this sort of behaviour is entirely unacceptable. We believe that an appropriate sanction is a combination of a fine and a suspension – the former to mark the fact that this was entirely unprofessional behaviour and the latter to mark the opprobrium of the Game.

The starting point for the suspension is 12 weeks based on our assessment that this would equate to offending behaviour somewhere between the mid range for verbal abuse of other players and the top end of verbal abuse of match officials. We have reduced that by 2/3 to reflect all the matters stated above, noting that this will mean Mr Thomas will miss three 6N internationals and not earn match fees of at least £2000 (approx Euros 3000) per game.

He is therefore suspended for 4 weeks from 1 – 28 February and may play again on 1 March 2007. Having taken his financial means into account we also fine him Euros 7500 (approx £5000) to be paid within 28 days.

Costs

There has been no application for costs – they lie where they fall.

Appeal

Mr Thomas is reminded of his right of appeal under paragraph 8 of the ERC Disciplinary Rules

HHJ Jeff Blackett
Chairman

1 February 2007

Members:

R McKenzie
A Realie