

DISCIPLINARY DECISION



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| Match | Connacht Rugby v Toyota Cheetahs | | |
| Player's Club | Toyota Cheetahs | Competition | Guinness PRO14 |
| Date of match | 15/02/2019 | Match venue | The Sportsground, Galway |
| Rules to apply | Guinness PRO14 Disciplinary Rules | | |

| PARTICULARS OF OFFENCE | | | |
|------------------------|---|--|--|
| Player's surname | Lee | | |
| Forename(s) | Nico | | |
| Referee Name | Nigel Owens | Plea | <input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted |
| Offence | Law 9.27 - A Player must not do anything that is against the spirit of good sportsmanship | SELECT: Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other <input type="checkbox"/> | If "Other" selected, please specify: |
| Summary of Sanction | 13 weeks | | |

| HEARING DETAILS | | | |
|--|---|---|---|
| Hearing date | 20/02/2019 | Hearing venue | The Vale Resort, Hensol, Vale of Glamorgan, CF727JY, Wales |
| Chair | Owain Rhys James (Wales) | | |
| Other Members of Disciplinary Committee | Richard Cole (Wales) Nigel Williams (Wales) | | |
| Appearance Player | YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> | Appearance Club | YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> |
| Player's Representative(s) | Ashwell Rafferty, Team Manager, Toyota Cheetahs | Disciplinary Officer and/or other attendees | Amy Monaghan, Tournament Manager, PRO14 Rugby |
| List of documents/materials provided to Player in advance of hearing | Hawk-Eye Footage Letter notifying the Player Citing Commissioners Report Player Statements from Colby Fainga'a, Connacht Rugby | | |

SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/MATCH FOOTAGE

The Citing Commissioner's Report notes that at 63.37 minutes the Player, whilst in a crouched position, moved his head to his right, placed his right hand on the right side of his nose and discharged the contents of his nose onto the face of Colby Fainga'a.

The act was not detected by the match officials. However, the report notes that video footage and a player victim statement supported the allegation of foul play.

The Report concludes that the act amounted to an act contrary to the spirit of good sportsmanship and was a Red Card.

The Panel had the benefit of reviewing the match footage from a number of different angles and at various speeds. The incident can be clearly seen. The above description by the citing commissioner is accurate and, in any event, accepted by the Player.

ESSENTIAL ELEMENTS OF OTHER EVIDENCE (e.g. medical reports)

There was a statement provided by Colby Fainga'a. It set out the allegation that at approximately 63.27 minutes into the game, whilst involved in a breakdown, the Player lent over him, looked him in the eye and "cleared his nose directly onto my face."

He goes on to confirm that on Sunday 17 February 2019 the Player called him to apologise for "blowing his nose" and said that it was out of character but that he was angry.

Mr Fainga'a goes on to note that the incident was "the worst thing that has ever happened to [him] on the field" in his career.

SUMMARY OF PLAYER'S EVIDENCE

There was no statement from the Player. However, in response to the Standing Directions the Player:

- (a) Accepted that he was the Player named in the citing complaint;
- (b) That there were no preliminary matters
- (c) That the citing complaint was accepted as a true and accurate account of the incident;
- (d) That it was accepted that an act of Foul Play had been committed; and
- (e) That it was accepted that the act warranted a red card.

At the hearing the Panel, together with the Player and the Team Manager, reviewed the footage at full speed. When invited to comment the Team Manager took a realistic view and indicated that there was no benefit in re-watching the footage as it was accepted. We commend that approach in the circumstances. As below, it is indicative of the very sensible and mature approach taken by the Player in response to this citing complaint.

In response to questions from the Panel the Player explained that he was angry at the time but he did not specify any particular reason for his anger. There had been no issue with Colby Fainga'a previously and this was not a retaliatory act. It was out of character and he "was not thinking at the time".

The Player confirmed that he had called Mr Fainga'a the following day to apologise. That was before the citing complaint had been made.

We note that the Player answered our questions openly, honestly and with clear regret about the situation.

FINDINGS OF FACT

Given that the citing report is accepted, we may dispose of the factual matters relatively briefly.

We are satisfied that the Player intentionally cleared his nose onto the face of Colby Fainga'a. The active part of the ruck had been completed. The Player saw the victim player on the floor. He was vulnerable and had no way of avoiding the nasal discharge which followed. The Player moved his head to his right, placed his right hand on the right side of his nose and discharged the contents of his nose onto the face of Colby Fainga'a.

We note that there was some retaliation on the part of Colby Fainga'a in that he grabbed hold of the Player's shirt. There then follows a minor disagreement. It is to Mr Fainga'a's credit, in particular, that the incident did not escalate further. Thankfully there was no impact upon the match.

DECISION

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| Breach admitted <input checked="" type="checkbox"/> | Proven <input type="checkbox"/> | Not proven <input type="checkbox"/> | Other disposal (please state) <input type="checkbox"/> |
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SANCTIONING PROCESS

ASSESSMENT OF SERIOUSNESS

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| Assessment of Intent – R 17.19.2(a)-(b) (or equivalent Tournament rule) |
| Intentional/deliberate <input checked="" type="checkbox"/> Reckless <input type="checkbox"/> |
| State Reasons |
| In the light of the Player's admission we are satisfied that this was a deliberate act. He saw the victim player on the floor and proceeded to discharge his nose in the direction of his face. |
| Gravity of player's actions – R 17.19.2(c) (or equivalent Tournament rule) |
| The act is a serious act of foul play which is contrary to the values of the game and of sport generally. Though the risk of injury is slight, the gravity of the offence is governed by its nature more so than by its effect. |
| Nature of actions – R 17.19.2(d) (or equivalent Tournament rule) |
| The Player's actions are an act of foul play. They have no place in the game. This is not a case of over-exuberance, or an act which is within the rules of the game going awry. It follows that by its nature this act is one that is deserving of punishment. It is contrary to the spirit of sport |
| Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule) |
| There was no provocation. |
| Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule) |
| There was minor retaliation. Thankfully it did not escalate. In the circumstances the event which follows do not affect out assessment. |
| Self-defence – R 17.19.2(g) (or equivalent Tournament rule) |
| This was not an act of self-defence. |

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| Effect on victim – R 17.19.2(h) (or equivalent Tournament rule) |
| The effect on the victim player was understandably serious. There is no expectation, and there ought never be an expectation, that an opposing player would discharge the contents of their nose. We acknowledge that assessment of the effect in this case is not based upon any injury being suffered. However, the laws of the game are as much to protect the integrity of the game as it is to prevent physical injury. The Panel accept Mr Fainga’a’s comments that this is the worst thing that has happened to him during his playing career. That is a telling statement. |
| Effect on match – R 17.19.2(i) (or equivalent Tournament rule) |
| There was no effect on the match. |
| Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule) |
| The victim player was on the floor, facing up and unable to defend himself. He was in a vulnerable position. We acknowledge that vulnerability in the face of a nasal discharge is different to vulnerability in the face of a physical act of foul play: however, the vulnerability enabled the Player to discharge his nose in the manner that he did. |
| Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule) |
| This was a premeditated act. There was no reason for the Player to act as he did when he did. It was an act taken intentionally to cause harm or distress to the victim player. |
| Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule) |
| The act of foul play was completed. |
| Other features of player’s conduct – R 17.19.2(m) (or equivalent Tournament rule) |
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ASSESSMENT OF SERIOUSNESS CONTINUED

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| Entry point | | | | | |
| <u>Top end*</u> | <u>Weeks</u> | <u>Mid-range</u> | <u>Weeks</u> | <u>Low-end</u> | <u>Weeks</u> |
| <input checked="" type="checkbox"/> | 26 | <input type="checkbox"/> | | <input type="checkbox"/> | |

*If Top End, the JO or Panel should identify, if appropriate, an entry point between the Top End and the maximum sanction and provide the reasons for selecting this entry point, below.

In making this assessment, the JO/Committee should consider World Rugby Regulations 17.19.2(a), 17.19.2(h), and 17.19.2(i) or the equivalent provisions within the Tournament Rules referred to above.

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| Reasons for selecting Entry Point above Top End |
| The Panel find that this was an intentional and unnecessary act of foul play. Any element of anger on the part of the Player that lead him to act as he did provides no sensible or reasonable explanation for his actions. This offence falls into the “other” category of rule 9.27. However, we note that there are similarities with the separate offence of spitting. We put that similarity to the Player and set out our intention to approach this citing by analogy. That was accepted. It is difficult to imagine how an act of foul play of this sort could be worse, save for repeated acts or where actual injury is caused. This was an unprovoked and pre-meditated act which is contrary to the values of rugby and of sport generally. It has no place on any rugby field. It is for others to determine the range of sanctions open to us, but working on the basis that the maximum sanction is 52 weeks we were satisfied that a starting point in the middle of the sanction band of 26 weeks is proper. |

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ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

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| Player's status as an offender of the Laws of the Game – R 17.19.4(a) (or equivalent Tournament rule) |
| None. |
| Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule) |
| The Panel considered whether there was a need for a deterrence. We were of the vie that the severity of the sanction table, as compared with other acts of foul play, was sufficient by way of deterrence. |
| Any other off-field aggravating factors – R 17.19.4(c) (or equivalent Tournament rule) |
| None |

Number of additional weeks:

26

RELEVANT OFF-FIELD MITIGATING FACTORS

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| Acknowledgement of guilt and timing – R 17.19.5(a) (or equivalent Tournament rule) | Player's disciplinary record/good character – R 17.19.5(b) (or equivalent Tournament rule) |
| The Player accepted the alleged conduct and the citing complaint immediately. There was no issue as to the factual basis of the citing complaint. The admission of guilt was unqualified. We accept that this conduct was out of character. | The player has an impeccable disciplinary record. We were told of a single yellow card arising from a tackle. |
| Youth and inexperience of player – R 17.19.5(c) (or equivalent Tournament rule) | Conduct prior to and at hearing – R 17.19.5(d) (or equivalent Tournament rule) |
| The Player is young. | The Player's approach to the hearing and his conduct throughout it was mature, sensible and considered. It was apparent that there was regret and an element of embarrassment about the situation. The Player was courteous at all times. There is no suggestion that he was anything other than courteous in his apology to Mr Fainga'a. |

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| Remorse and timing of remorse – R 17.19.5(e) (or equivalent Tournament rule) | Other off-field mitigation – R 17.19.5(f) (or equivalent Tournament rule) |
| The Player was clearly remorseful. This was, on his case, a thoughtless act. He had contacted the victim player to apologise on the day following the match. That was before the citing complaint had been made. | There was no off-field mitigation. |

Number of weeks deducted:

13

Summary of reason for number of weeks deducted:
The Panel felt that the Player ought to be awarded the full discount of 50%.

SANCTION

NOTE: PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 17.14.5(f) (or equivalent Tournament rule)

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| Total sanction | 13 weeks | Sending off sufficient <input type="checkbox"/> |
| Sanction commences | | |
| Sanction concludes | 21 July 2019 | |
| Matches/tournaments included in sanction | <p>The Pro14 season Conference games come to an end for the Toyota Cheetahs on 27 April 2019. Depending upon their position with the conference there may be further knock-out matches to follow. Any such match is to be counted for the purpose of the sanction.</p> <p>During the hearing Mr Rafferty, the Team Manager, noted that he was unable to contact the Cheetah’s coach. Following the hearing it was confirmed by e-mail that the Player would be eligible for selection and available for all Supersport Challenge Cup and Currie Cup matches.</p> <p>On that basis, subject to any Pro14 knock out games, the sanction will conclude on 21 July 2019.</p> | |

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| Costs | |
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| Signature (Chair) | OWAIN RHYS JAMES | Date | 20.ii.2019 |
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NOTE: YOU HAVE 48 HOURS FROM NOTIFICATION OF THE DECISION OF THE CHAIR TO LODGE AN APPEAL WITH THE TOURNAMENT DIRECTOR – DISCIPLINARY RULES 8.1 (PAGE 4-32)

[Standard Appeal Directions to appear on this page]