Decision of the Independent Judicial Officer

ERC
Held at IRB Conference Room, Hugenot House, Dublin
On 17th January 2013

In respect of

Ronan O'Gara, Munster ("the Player")

And

The citing complaint that the Player kicked an opponent in the 64th minute of the match Edinburgh –v- Munster at Murayfield on 13 January 2013

Judicial Officer appointed to hear the case:

His Honour Judge Jeff Blackett (England) (the Judicial Officer)

Decision of the Judicial Officer:

(i) The Judicial Officer upheld the citing complaint.

(ii) The Player was suspended from taking part in the game of rugby up to and including 27 January 2013. This represents a 1-week suspension commencing on 14 January 2013. The Player is free to play again on or after 21 January 2013.

(iii) The Judicial Officer made an award of all reasonable costs incurred by ERC. Those relate only to the travel and subsistence costs of the Judicial Officer which are to be assessed and served on the Player within 14 days.

Introduction

1. 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 2012/2013. The Judicial Officer was appointed to consider the Citing complaint made by Alberto Recaldini (Italy) against the Player in the match played between Edinburgh and Munster on 13 January 2013 in the Heineken Cup 2012/2013.

2. Present at the hearing in addition to the Judicial Officer were the following persons:-

- Mr Roger O'Connor, Disciplinary Officer, ERC
- Mr Liam McTiernan, ERC
- The Player
- Mr Garrett Fitzgerald, CEO Munster
- Mr Niall O'Donovan, Munster Team Manager

3. The Player complied with the standard pre hearing directions and did not raise any preliminary matters. He accepted the validity of the citing complaint and that his offence merited a red card.

The citing complaint

4. The citing report stated:

> "At 64'.03", time of the match, number 10 of Munster, Ronan O'Gara, kicked from behind number 5 of Edinburgh, Sean Cox."

5. Sean Cox, by way of a written statement accepted by the Player, stated that the Player had kicked the ball through on the ground. He continued: "On turning away I felt a contact on my right shin causing me to fall to the ground. I did not sustain any injury to my shin. After the game Ronan O'Gara shook my hand an apologised to me". None of the match officials saw the incident.

6. The match footage corroborated the citing report. As the Player fly hacked the ball along the ground, Sean Cox impeded his progress by running into him leading with his shoulder. The Player checked but did not fall. Cox turned to run away and the Player followed him and within two or three paces kicked him in the right leg from behind with his right foot. The force of the kick caused Cox right leg to move sideways behind his left leg and he fell over. This led to an altercation between a number of players which died down fairly quickly. Cox was clearly very upset by the incident.

7. The Player agreed with the analysis in paragraph 6 above. He said although he was cited for a kick, he actually intended to trip Cox up. He said that had he had meant to kick him he was sure that he would have hurt him, but he made contact between his instep and Cox's shin, when Cox's leg was in the air, in such a way as to cause him to trip – which is what he intended. He said he was extremely disappointed at himself for doing this and he accepted responsibility. He said he was targeted – and normally when he is targeted he just rolls with the punches but on this occasion the red mist descended and he let his frustration get the better of him.

Mitigation

8. Mr O'Donovan said that the Player had said all that needed to be said about the offending. He reminded the Judicial Officer that the Player has played over 400 games at the top level (including Munster, Ireland and the Lions) over a period of nearly 15 years. He believed that this should be taken into account when considering whether any sanction would be wholly disproportionate. He also submitted that this offending should be properly cited as a trip rather than a kick. Mr Fitzgerald said that this is a unique case. The Player immediately knew he had done made a mistake and apologise to Cox at the earliest opportunity. Further he has an exemplary record and character and that should be taken into account. In all the circumstances he believed there should be no sanction.

ERC Submission on sanctioning

9. Mr O'Connor said that the action was properly cited as a kick. He said that to reduce the sanction below 50% of the Low End entry point the Judicial Officer would have to be satisfied that the sanction was not just disproportionate but wholly disproportionate. That should not take account of the Player's mitigation but only what occurred on the pitch.

Decision as to Sanction

10. I first made an assessment of the seriousness of the offending by reference to Disciplinary Rule 6.7.32. I determined that:

a. The offending was deliberate – the Player reacted to what he considered to be a block by Sean Cox and intentionally followed him and kicked him

b. The action was not particularly grave as contact was not hard but it caused Cox to trip over his own leg. I accept that the Player did not intend to hurt Cox and that he intended to force one leg behind the other to trip him up – and that is what occurred. However, an action which may be classified as a trip would be thrusting a leg out in front of an opponent. In this case there was a kicking motion in that the Player swung his right leg so that his instep made contact with his opponent. This is properly classified as a kick.

c. There was significant provocation from Cox in that after the Player fly hacked the ball forward he carried on and intentionally body-checked the Player.

d. There was no damage to the victim, although the action riled him.

e. There was some effect on the game because this incident boiled over into a general melee which became unseemly, and obscenities uttered by players were broadcast.

f. The victim, Cox, was vulnerable in that he did not see the kick coming from behind and it took him completely off guard.

g. There was some premeditation in that the Player determined to take retaliatory action against a player who had body-checked him.

11. This was a petulant act by a very senior and highly respected player who should have known better, even though he was provoked. I accept that it was entirely out of character but it does represent a stain on his otherwise impeccable reputation. This did nothing for the image of the game. I took account of the decision of the Appeal Committee in the case of Flannery (2010) which I chaired in which we gave general guidance that a deliberate kick with no injury would merit an assessment of Mid Range on the scale of seriousness. However, this is an exceptional case in that the action was the cross between kick and trip and the intention of the Player was to trip. It was the most minor kick which would merit the award of a red card and, exceptionally, can be classified as Low End and not Mid Range. **In those circumstances the appropriate classification for this offence is Low End on the scale of seriousness.**

12. The Low End entry point for a kick is four (4) weeks. There are no aggravating features in this case which would justify an increase from the entry point. There is, however, significant mitigation. The Player apologised to Cox after the match and, as soon as he received the citing complaint, he admitted guilt. He was completely co-operative with the disciplinary process. He has an exceptional record both for his Province and Country. He is, therefore, entitled to the 50% reduction from the entry point under the Heineken Cup 2012/13 disciplinary rule 6.7.37 as amended following the change to IRB Regulation 17.19.6 and 17.19.7 in November 2012. In those circumstances the appropriate sanction is a suspension of two (2) weeks.

13. I then considered whether a sanction of two weeks would be wholly disproportionate. In so doing I took account of the following:

a. The Player was "taken out" by Sean Cox who body-checked him. Those who play and administer the game have often expressed concern in cases of retaliation that the original perpetrator of an insidious act (which itself is foul play) goes unpunished while the person who commits subsequent foul play out of frustration feels the full force of the disciplinary process. While a player must not take the law into his own hands, this is a factor which might be relevant when considering a proportionate sanction.

b. The Player intended to trip an opponent and that is what he did. Whether an act may be a trip or a kick is not just a matter of semantics because the sanctions are more severe for a kick than a trip. In this case I accept the Player intended to trip his opponent albeit to achieve that result he had to kick him in the shin.

c. The kick was committed with the instep of the boot to an opponent's let which was in the air and would move sideways rather than receive the full force were

that movement not possible. This was in such a way that injury was unlikely to result and, indeed, did not result.

14. For these reasons, I consider that a sanction of two weeks would be wholly disproportionate to the level and type of offending. A more appropriate sanction would be 50% of the Low End entry point for a trip. That would reflect the significant provocation and the Player's intention. I considered whether this was sufficient to reduce the sanction to nothing, but I believe that to do so would send out the wrong message that Player's who act in retaliation would not be sanctioned. This would undermine the core principles of rugby and tarnish the image of the Game. There must be some sanction, and a suspension of one week would reflect all the matters considered above while making the point that this type of behaviour is not acceptable.

14. The Player is suspended for 1 week from 14 January (the date of the citing complaint) to 20 January 2013. He may play again on or after 21 January.

Right of Appeal

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

Costs

16. All reasonable costs of this hearing are awarded in favour of ERC. Those relate only to the travel and subsistence costs of the Judicial Officer which are to be assessed and served on the defence within 14 days.

His Honour Judge Jeff Blackett
Judicial Officer

17 January 2013