

Decision of the Independent Judicial Officer

ERC
Held at Huguenot House, Dublin
17 December 2009

In respect of

Tommy Bowe of Ospreys (“The Player”)

And

A citing in respect of **dangerous tackling by lifting a player and dropping him to the ground contrary to Law 10.4(i)**

Judicial Officer appointed to hear the case:

HHJ Jeff Blackett, England (“The Judicial Officer”)

Decision of the Judicial Officer:

- (i) The Judicial Officer found that the Player had committed an act of Illegal and/or Foul Play although he directed that the offending was contrary to Law 10.4(e) and not 10.4(i)
- (ii) The Judicial Officer determined that the act of Foul Play did not warrant a red card.
- (iii) The Judicial Officer considered that no suspension should be imposed on the Player.
- (iv) The Judicial Officer declared that each party to the proceedings should bear its own costs.

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 2009/2010. The Judicial Officer was appointed to consider the citing complaint ("the Complaint") against the Player in the match played between Viadana and Ospreys on 12 December 2009 in the Heineken Cup 2009/2010.

2. Mr Iain Goodall was appointed as citing commissioner to this match and had cited the Player for a dangerous tackle by picking up an opponent beyond the horizontal and putting him on the ground contrary to Law 10.4(i).

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

- Mr Roger O'Connor, Disciplinary Officer, ERC
- Mr Max Duthie, Counsel for ERC
- Miss Stephanie Seymour, Counsel for the Player
- The Player
- Mr Scott Johnson, Coach Ospreys

Preliminary matters & procedure

4. At the commencement of the hearing the Judicial Officer noted the identities of all present and narrated the Complaint reminding the Player that the Complaint was in respect of an allegation that the Player had dangerously tackled an opponent by lifting a player and dropping him to the ground contrary to Law 10.4(i).

5. The Judicial Officer 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.

6. Having viewed the DVD recording of the incident the Judicial Officer asked both Counsel whether the offending had been properly categorised. Law 10.4(i) states that: “Lifting a player from the ground and dropping or driving that player into the ground whilst that player’s feet are still of the ground such that the player’s head and/or upper body come into contact with the ground first is dangerous play.” Having heard submissions the Judicial Officer ruled that Law 10.4(i) had been introduced to address offences where tackled players landed on their head or shoulders. The term “upper body” means “shoulders”. In this case the player landed on his back – with his lower back hitting the ground first – so there was no breach of Law 10.4(i). Nevertheless, the tackle was dangerous because the victim was lifted into the air and dropped from a height contrary to Law 10.4(e).

7. The Player admitted foul play in that he had tackled an opponent dangerously, but he said that the conduct merited no more than the Yellow Card which was awarded by the referee.

Evidence supporting the Complaint

8. The citing complaint read:

“Viadana no 14 counter attacked down the right hand side of the pitch. As he crossed the half way line, Ospreys No 14 picked him up beyond the horizontal and put him to the ground. The Viadana no 14 made contact with his upper body. He was not injured.”

9. The referee saw the incident and awarded a Yellow Card. He said, in a written statement:

“In my view and during the game, the 14 Ospreys player tackled his opponent without danger but during his tackle he dropped the opponent player who was in a horizontal position. It was more reckless than dangerous and he didn’t drive him to the ground.”

10. The DVD evidence showed Viadana No 14, Kane Robertson, running at pace. As he approached the Player he began to slow down. The Player tackled him by driving from low upwards into his midriff. At the same time he lifted Robertson's left leg with his right hand and grabbed Robertson's right buttock with his left hand. The combination of these actions caused the Player to lift Robertson into the air so that he was horizontal and about four or five feet in the air. Robertson fell to the ground with the Player holding him on the way down – he did not let go until he was about one foot from the ground, and Robertson did not attempt to break his own fall. The first point of contact was the lower back before Robertson fell completely to the ground. He was not injured and there was no reaction from him or other players.

Player's position

11. The Player said that he had executed the tackle as coached, but Robertson was much lighter than him and he was driving forward at the point of contact. As soon as he realised Robertson was in the air he realised that he was responsible for his safety and he neither dropped him nor drove him into the ground. He accepted that this was dangerous – even though he had not intended it to be so – but stated that the appropriate sanction was the Yellow Card which was awarded against him.

Determination

12. The Judicial Officer was referred to the IRB guidelines on dangerous tackles issued by Paddy O'Brien on 8 June 2009. They state:

“To summarise, the possible scenarios when a tackler horizontally lifts a player off the ground:

- The player is lifted and then forced or “speared” into the ground. A red card should be issued for this type of tackle.

- The lifted player is dropped to the ground from a height with no regard to the player's safety. A red card should be issued for this type of tackle.
- For all other types of dangerous lifting tackles, it may be considered a penalty or yellow card is sufficient.”

13. In my view this tackle properly reflects the third bullet. The Player did lift an opponent to the horizontally, although he did not intend to do so. Once he realised what he did he became concerned for his opponent's safety and held onto him for most of the descent. As a result the victim player did not feel the need to break his own fall and he suffered no injury – there was no evidence that he was even winded. In those circumstances the referee was correct to award a yellow card.

14. In my opinion this act of foul play would not have warranted a red card and I impose no suspension on the Player. He is free to play with immediate effect.

15. I make no criticism of the citing officer for making this complaint. Having taken account of the IRB directive on dangerous tackles he erred on the side of safety in bringing this offending to the attention of a Judicial Officer. Given the power vested by ERC in Judicial Officers under Disciplinary Regulation 6.7.41 to apply no sanction in where offences are admitted it is appropriate to cite if the Citing officer has any doubt about the seriousness of any particular conduct.

Costs

16. There is no order for costs which lie where they fall.

HHJ Jeff Blackett
Judicial Officer

17 December 2009

Date