

# Decision of the Independent Judicial Officer

EPCR Challenge Cup 2014-15

Held by Skype video conference at the offices of Slater & Gordon, Chancery Lane, London.

18 December 2014 at 11am.

In respect of

**David Odiete of Zebre (“the Player”)**

And

**The Ordering Off of the Player for an offence contrary to Law 10.4 (i) of the Laws of the Game in the match between Gloucester and Zebre played on 13 December 2014.**

Judicial Officer appointed to hear the case:

**Jeremy Summers (England) (“the Judicial Officer”)**

## **Decision of the Judicial Officer:**

- (i) As the Player had accepted that the Referee was correct to order him off, the Judicial Officer had to determine what suspension or other sanction should be imposed upon the Player, if any.
- (ii) The Judicial Officer considered that there was no reason not to impose a suspension on the Player and as such the Player was suspended from taking part in the game of rugby up to and including 28 December 2014. This represents a 2 week suspension commencing on 13 December 2014.
- (iii) The Judicial Officer made no order as to costs.

## **Introduction**

1. The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the EPCR's independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the European Rugby Challenge Cup 2014/2015.
2. The Judicial Officer was appointed to consider the Ordering Off of the Player in the match played between Gloucester and Zebre on 13 December 2014.
3. Neil Paterson was appointed as Referee to this match and had ordered the Player off for an offence contrary to Law 10.4 (i) of the Laws of the Game.
4. Present at the hearing by Skype in addition to the Judicial Officer were the following persons:-
  - The Player.
  - Mr Andrea De Rossi, Team Manager Zebre.
  - Ms Alessandra Mazina, Translator.
  - Mr Liam McTiernan, representing the EPCR Disciplinary Officer.
  - Mr Roger O'Connor, EPCR Disciplinary Officer (Observing).

## **Preliminary matters & procedure**

5. At the commencement of the hearing the Judicial Officer noted the identities of all present and the offence for which the Player was Ordered Off, namely tackling, tapping, pushing or pulling an opponent jumping for the ball in a lineout or in open play contrary to Law 10.4 (i).
6. The Judicial Officer reminded all parties that the EPCR Disciplinary Rules found in the Participation Agreement for the European Rugby Challenge Cup 2014/2015 (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 proceed on that basis.
7. The Judicial Officer established what evidence had been placed before him prior to the hearing and confirmed that all present had received the same in good time. This evidence was as follows:-
  - Referee's Report on Red Card dated 13 December 2014.
  - Reports from the Assistant Referees received by e-mail dated 16 and 17 December 2014.
  - An e-mail dated 16 December 2014 from Mr De Rossi, which Mr McTiernan indicated he was content to stand in place of a formal response to the EPCR Standing Directions found at Appendix Six DR.
  - The match footage.

8. There were no preliminary issues that either party wished to raise.

### **Evidence supporting Ordering Off**

9. In accordance with DR 7.2.2 the Judicial Officer reviewed the Ordering Off including the Referee's reasons for the Ordering Off and pursuant to DR 7.2.8 he read out the Official Report of the Referee as follows:

*"Z22 made contact with G15 in the air. G15 tipped upside down and would've landed on his head and neck without the placement of his hands."*

10. The Judicial Officer also read out the e-mail reports from the Assistant Referees which read as follows:

*AR1: The incident happened about 15m infield near the halfway. Z22 kicked ball in air, G15 jumped to catch ball at which point Z22 took him out in the air. He made no attempt to jump for the ball and didn't even have his eyes on the player/ball. G15 tipped in the air, way above the horizontal, nearer 180 degrees and fell to the floor. Had he not put his hands out to stop his landing he would have landed on his head! ref put time off, Neil led the conversation and I confirmed the G player would have landed on his head had to not put his hands out in front.*

*Ref called Z captain and player, Z22 accepted the decision. No player/coaching staff disputed the call post match.*

*AR2: The incident occurred on the opposite side of the pitch, close to the touch line, therefore I was located approximately 45 metres away. From my viewpoint the Zebre player made contact in the air, and did not appear to be directly attempting to catch the ball. As the Gloucester player came down his legs were clearly above his body. I did not see clearly how the player landed due to the number of bodies obscuring my view.*

*Once Neil had blown the whistle the players separated. The offending Zebre player appeared to acknowledge his mistake, and the resultant red card without disputing the decision. I was not aware of any other reaction from the Zebre players, including the captain.*

11. The Player was asked whether he accepted the reports from the Match Officials as a true and accurate account of the incident and the facts surrounding the incident and separately whether he accepted that he should have been Ordered Off. The Player stated that he accepted that he ought to have been Ordered Off and that he accepted the terms of the reports.
12. In light of that position, the Judicial Officer confirmed that the purpose of the hearing was to determine what further sanction, if any, should be imposed and that the evidence would be considered to that end.

13. Pursuant to DR 7.2.9 the Judicial Officer directed that the video footage of the incident should be shown. The parties watched the video footage with the sound off. In advance of the hearing the Judicial Officer had prepared the following narrative describing what he considered the footage showed. This was read to the parties during the hearing who confirmed that they considered it to be an accurate summary of the incident as shown on the match footage:-

*Zebre have possession of the ball at the base of a defensive ruck some 10m outside of their 22 and about 10m in from the left touch line.*

*Z9 effects a box kick the flight of which takes the ball close to the half way line and about 5m in field from touch.*

*The Player who was on the left wing makes a chasing run which arcs in slightly from the right to where the ball is likely to land.*

*As he does so he makes brief contact with the left side of G14 who is covering back to defend the kick. At the point of contact with G14 the Player's body has turned side on so that his back is facing the touch line. The contact with G14 renders the Player off balance and he appears to fall forward.*

*Almost instantaneously G15 effects a jump taking off just before the half way line in an attempt to field the kick. The Player is already heading downwards towards G15 and his head and/or left shoulder comes into contact with G15's upper thigh/buttock area whilst he is still off the ground.*

*This causes G15 to flip over the Player losing control of the ball as he does so. G15 lands on his head and or the back of shoulders with his legs still in a vertical position above him as he makes contact with the ground.*

*The Referee immediately signals foul play and having consulted with his nearside AR issues a Red Card to the Player.*

14. The Judicial Officer was advised by Mr McTiernan that he had spoken to Gloucester who had indicated that G15 had sustained no injury, had played on after the incident and had been able to resume normal training.<sup>1</sup>

### **Player's position**

15. The Judicial Officer asked the Player to explain his actions by reference to the video evidence. The Player stated that he had been chasing Z9's kick and had been focussing solely on the ball. The only time he had not been concentrating on the ball was when he had collided with G14, and he had then tried to coordinate himself again to get the ball. He had lost balance as a result of the collision with G14. The action had been frenetic but he had still been trying to keep his attention on the ball. His focussing purely on the ball had led to the contact with G15 which had been totally unintentional.

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<sup>1</sup> This was confirmed in an e-mail from Gloucester received after the hearing had been held.

16. In response to questions from the Judicial Officer the Player stated that he had tried to push G14 away with his arms but that both players had then collided. He could not remember if he had made heavier contact with G14 or vice versa but thought that contact had been around the lower thigh or knee area. He had been running at full speed at the point of impact and the collision had therefore been forceful and sufficiently strong to cause to him to lose balance. He confirmed that he had not been paying attention to G15 and did not even know he had been approaching to take the ball. In the dynamics of the incident he had not focussed on the arrival of G15 for which he was sorry. He had been entirely focussed on the ball.
17. In answer to questions from Mr McTiernan he said that he had been intending to take a clean catch and not wait for a Gloucester player to field the ball before tackling him. He had not been aware of G15 coming in or that he was about to catch the ball. He had not in fact realised there was any Gloucester player in front of him other than G14.
18. In support of the Player Mr De Rossi advised that the Player had previously enjoyed an unblemished disciplinary record, which fact was confirmed by Mr McTiernan. He referred again to his e-mail sent to EPCR dated 16 December 2014. This confirmed that the Player was not challenging the Red Card but noted that the Player was highly disciplined as an individual. He had only been on the pitch for a few minutes before his dismissal and the Player was sorry for his actions both on a personal level and for the effect it had had on the team.
19. The Player had not intended G15 to fall badly and this had happened as a result of trying to move G14 out of the way which caused him to lose balance. Mr De Rossi had been close to the incident when it happened and at the time had felt it to have been serious. However having seen the footage subsequently and spoken to the Player he believed that there had been no intention to cause G15 to fall as he did. In his view it would have been impossible for the Player to have avoided the contact having lost his balance.
20. The Player is 21 years of age and in his third season as a professional player at Zebre. He has represented Emerging Italy and Italy U.20's. As noted he has a previously unblemished disciplinary record.

### **Submissions on sanction**

21. The Judicial Officer reviewed with the parties the provisions of DR 7.8.32 (entry point criteria), 7.8.34 (aggravating factors) and 7.8.35 (mitigating factors) advising of his preliminary view on the points he would have to consider and inviting submissions thereon.
22. Mr De Rossi again urged that the Player had not acted intentionally but accepted that he could have imagined that an opponent would have competed for the ball. The Player now realises that he should have appreciated that risk and will try not cause a similar incident

again. In Mr De Rossi's submission the offending should be found to be at the low end of the scale of seriousness.

23. The Judicial Officer also reviewed DR 7.8.37 which confers the potential power to reduce sanction below 50% of the low end entry point and even impose no sanction. Mr De Rossi confirmed that the Player accepted responsibility for his actions and that the club fully respected the disciplinary process. In his view though the appropriate sanction would be a one week ban not least because any lengthier ban would result in the Player missing the important derby match with Treviso just after Christmas. Mr McTiernan noted the EPCR was of the view that DR 7.8 37 would normally be appropriate only in exceptional circumstances where the offending was so benign as to render a sanction totally out of kilter with the offending.

### **Decision as to disposal**

24. The Judicial Officer retired to deliberate in private in respect of what, if any, sanction would be appropriate in the circumstances. The Judicial Officer was satisfied that the following had occurred in the incident:-

- The Player had chased a well executed box kick from Z9.
- The Player had collided with G14 before making contact with G15, and it was accepted that this contributed to the dynamic of the incident in a way that, in part, reduced the Player's culpability.
- At the point the Player made contact with him, G15 was in the air attempting to field Z9's kick.
- That contact caused G15 to fall over the Player going through close to 180 degrees before landing in a dangerous position on his head/neck/shoulder.
- There had been no injury.

25. Whilst the earlier collision with G14 was of significance and did result in the Player losing his balance this fact did not, in the view of the Judicial Officer, absolve the Player from all blame and indeed such was not argued on behalf of the Player.

26. The Judicial Officer noted that the offence of tackling, tapping, pushing or pulling an opponent jumping for the ball in a lineout or in open play in contravention of Law 10.4 (i) was listed within the IRB Recommended Sanctions for Offences Within the Playing Enclosure (found at Appendix Three DR) as follows:-

- Lower End – 3 weeks.
- Mid Range – 6 weeks.

- Top End – 12+ weeks.
- Maximum Sanction – 52 weeks.

27. To decide upon the appropriate entry point the Judicial Officer assessed the seriousness of the Player's conduct by reference to the following factors as set out at DR 7.8.32:-

- a) The Player had not acted deliberately or intentionally;
- b) The Player had however acted recklessly. As was conceded he had not shown regard to the likely presence of an opponent trying to catch the ball. The Player should, at least, have known that there was a risk of the present offending given the dynamics of a box kick into a defended area;
- c) The gravity of the Player's action is reflected in the inherent danger that a player who is taken out in the air will be at risk of serious injury;
- d) The offending was as set out at paragraph 13 above;
- e) There was no provocation;
- f) The offending was not retaliatory;
- g) There was no element of self-defence;
- h) There was no injury to G15;
- i) There was no effect on the match;
- j) A player in the air is inherently vulnerable being unable to control the fall;
- k) There was no premeditation;
- l) The conduct was completed;
- m) There were no other features of the Player's conduct in relation to or connected with the offending.

28. In light of the same the Judicial Officer determined that the offending should be assessed as being at the LOW END of the scale of seriousness. As noted the low end entry point for this offence is a suspension of 3 weeks.

29. The Judicial Officer then considered the off-field issues and in doing so looked at whether there were any aggravating or mitigating factors.

30. The Judicial Officer considered that none of the off-field aggravating factors prescribed by DR 7.8.34 were present and that accordingly an increase in the entry point was not required.

31. The Judicial Officer considered that the following off-field mitigating factors as prescribed by DR 7.8.35 should properly be taken into account in determining the appropriate period of suspension:-

- The Player's plea and prompt acknowledgement of guilt.
- His conduct at the hearing.

- His remorse.

32. In light of these factors the Judicial Officer reduced the overall period of suspension by maximum permitted 50% which in the present instance equated to a reduction of 1 week, the reduction being required to be rounded down.

33. In all the circumstances the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of 2 weeks commencing on the date of his dismissal being 13 December 2014 and ending at midnight on Sunday 28 December 2014. He is free to play again on Monday 29 December 2014.

34. The Judicial Officer considered whether a further reduction in the entry point was justified given that the earlier collision with G14 had impacted on the subsequent contact with G15. However, on the Player's own evidence he had concentrated solely on the ball and had not had any regard to the obvious possibility that a Gloucester player would also compete for the ball. It was that failure which was the gravamen of the offending. In the view of the Judicial Officer a sanction of 2 weeks could not be viewed as wholly disproportionate to the offending. As noted it was not advanced on behalf of the Player that no sanction should be imposed.

35. The Judicial Officer was informed that Zebre has Pro 12 fixtures against Newport and Treviso on 21 and 28 December 2014 respectively and was satisfied that such fixtures represented a meaningful period of suspension.

### **Costs**

36. No order for costs was applied for and accordingly none was made. Each party will therefore bear their own costs.

### **Appeal**

37. The Player and the Disciplinary Officer are reminded that DR 8.1.1 provides for a right of appeal against this decision.

Jeremy Summers

Jeremy Summers

**Judicial Officer**

Date: 19 December 2014