

EPCR DISCIPLINARY DECISION

Match	Stade Toulousain	vs	Bordeaux Bègles
Club's Country	France	Competition	European Rugby Champions Cup
Date of match	1 st May 2021	Match venue	Stade Ernest-Wallon, Toulouse
Rules to apply	EPCR Disciplinary Rules 2020/2021		

PARTICULARS OF OFFENCE

Player's surname	Marchand	Date of birth	10 May 1995
Forename(s)	Julien	Plea	Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name	Stade Toulousain		
SELECT:	Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	Law 9.13 – A dangerous tackle		
Summary of Sanction	Suspension of four weeks up to and including 30 May 2021		

HEARING DETAILS

Hearing date	12 th May 2021	Hearing venue	Various - Via video link
Chairman/JO	Simon Thomas (Wales)	Panel member 1	Gareth Graham (England)
Panel member 2	Anthony Wheat (Ireland)	Disciplinary Officer	Liam McTiernan, EPCR
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):

Other attendees:

Neil Robertson, Avocat of Bignon Lebray, Paris	Didier Lacroix, President of Stade Toulousain Ugo Mola, Head Coach, Stade Toulousain Dr Johan Merbalh, University of Toulon Maria Gyolcsos, EPCR Regulations Executive Danny Rumble, EPCR Regulations Manager
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List of documents/materials provided to player in advance of hearing:

<ol style="list-style-type: none"> 1. Citing complaint. 2. Video footage. 3. Referee's report and Assistant Referees' reports. 4. Television Match Official report. 5. Video recording of interview between Citing Commissioner and Roman Buros, Bordeaux-Bègles number 14 (B14). 6. Player's response to standing directions. 7. Player's written statement. 8. Documentary evidence confirming player's clean disciplinary record. 9. PowerPoint report by Dr Merbalh. 10. Player's schedule of forthcoming matches. 11. Transcript of interview between B14 and Citing Commissioner. 12. Handwritten letter of B14. 13. Disciplinary Officer's response to Player's response. 14. Previous disciplinary judgments of cases of Flannery, Leo, Ashton. 15. World Rugby's Head Contact Process document.

INTRODUCTION AND SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/FOOTAGE

Introduction

The disciplinary committee ("the Committee") had been appointed by Mr Mike Hamlin, the EPCR Independent Judicial Panel Chairman, to hear the case relating to Julien Marchand of Stade Toulousain ("the Player"), following the citing of the Player for an alleged act of foul play during the match played between Stade Toulousain ("Toulouse") and Bordeaux-Bègles ("Bordeaux") on 1st May 2021 in Toulouse, France ("the Match").

The Rules applicable to the hearing were contained in Schedule 4 to the Participation Agreement of the European Professional Club Rugby Competition ("the Rules"). As part of the Participation Agreement, each participating team and player of a team agrees to be bound by the Rules.

Pursuant to the Rules, at a disciplinary hearing following the lodging of a citing complaint, a hearing is convened before a disciplinary committee to consider the matter. At that hearing, a cited player is required to confirm whether they accept they committed the alleged act of foul play specified in the citing complaint and whether they accept that the foul play warranted the issuing of a red card. If they so accept, the committee then hears the evidence in the case and decides what sanction, if any, ought to be imposed in accordance with the three-stage sanctioning process as described under Rules 7.8.32 to 7.8.35 and the table of sanctions found at Appendix 3 to the Rules.¹

In the event a player denies the alleged act of foul play, or denies that the act of foul play warranted a red card, a committee's function is firstly to determine whether an act of foul play occurred which had warranted a red card. Pursuant to Rule 7.11, the burden is on a player to demonstrate to the satisfaction of the committee, on the balance of probabilities, that the citing complaint should not be upheld.

If a player discharges this burden, the citing complaint is ordinarily dismissed, and that is the end of the matter. Alternatively, if the citing complaint is upheld, the committee proceeds to consider sanction, as referred to above.

In accordance with Rules, all factual determinations made by disciplinary committees are to be made on the balance of probabilities.

This written judgment is the unanimous decision of the Committee following consideration of all the evidence it had seen and heard and following oral submissions by the Player's legal representative at a hearing on 12 May 2021. It is not intended to be an exhaustive record of all the evidence presented at the hearing and the absence of a reference to some evidence or submission is not to suggest that such evidence or submission was not taken into account by the Committee at the hearing.

The Hearing

At the commencement of the hearing, the chairman of the Committee identified himself and his fellow panel members and all of the participants present at the hearing. He reminded the parties that the hearing would be conducted in accordance with the EPCR Disciplinary Rules 2020/2021 and outlined the procedure to be followed.

Citing Complaint/Report

The Citing Commissioner, Ed Kenny (Ireland), had cited the Player for committing an act of foul play contrary to Law 9.13 of the Laws of Rugby Union which forbids a player to tackle another player dangerously. Law 9.13 reads as follows:

"A player must not tackle an opponent early, late or dangerously. Dangerous tackling includes, but is not limited to, tackling or attempting to tackle an opponent above the line of the shoulders even if the tackle starts below the line of the shoulders."

The citing report stated that the incident had occurred in the second half of the Match with 57:40 minutes of time having elapsed when the score was Toulouse 11, Bordeaux 6.

The narrative of the report stated the following:

Bordeaux had possession of the ball close to the touchline and just outside the Toulouse 22. Bordeaux 10 (B10) passes the ball infield to Bordeaux 14 (B14). The ball hits the right shoulder of B14 and pops upwards. Before he has a chance to regather he is legally tackled from behind by Toulouse 3 (T3) and from his left side by Toulouse 20 (T20).

¹ Appendix 3 incorporates World Rugby's sanctions table for foul play

Toulouse 2 (T2, Julien Marchand) is in front and slightly to the right of B14. T2 is upright and moves towards B14. His left arm extends in a wrapping action around B14. The right arm of T2 does not wrap. His upper forearm makes initial contact to the head of his team mate T20 with T2 continuing the movement resulting in his right shoulder making direct contact to the face of B14:

- I believe that this was an act of foul play which was (i) the fault of T2 and (ii) avoidable
- T2 has a clear line of sight to B14
- B14 is in a vulnerable position as he has reached up for the ball but he is not carrying the ball
- B14 is in an upright position at the time of the tackle from T2
- The right arm of T2 does not legally wrap
- As T2 moves forward to tackle B14 he moves his right shoulder forwards
- The contact from the right shoulder of T2 to the face of B14 is with sufficient force to lead to a high degree of danger

In summary there is (i) head contact, (ii) an act of foul play from T2 and (iii) a high degree of danger. There is no change in direction from B14 and no sudden/significant drop in height. T2 has the power of choice and he does not wrap his right arm. I also considered the actions of both T3 and T20, and I do not believe their involvement provides sufficient mitigation.

I believe the actions of Toulouse 2 (Julien Marchand) meet the red card threshold and I therefore cite Toulouse 2 under Law 9.13 for a dangerous tackle on Bordeaux 14

The Plea

The Chairman put the citing complaint to the Player. The Player denied that he had committed an act of foul play as alleged in the citing complaint and that it had warranted a red card.

Evidence Supporting the Citing Complaint

The Chairman invited Mr McTiernan to present the evidence supporting the complaint.

Match Footage

The match footage which had been circulated prior to the hearing depicted the incident from a number of angles in real time and in slow motion.

In summary, the footage demonstrated that near the Toulouse 22-metre line and to the Bordeaux right-hand touchline. A Bordeaux player (B10) is seen in possession of the ball and is tackled. The ball is passed a short distance infield to a Bordeaux-Bègles player, Roman Buros (B14). The ball bounces off his right shoulder up into the air, and as he attempts to regather it, he is tackled from behind by Toulouse No. 3 (T3). As he does this, Toulouse 20 (T20) executes a legitimate tackle from the left-hand side of B14. T20 attempts to wrap B14 with his arms and T20's head is in front of B14's lower chest as he attempts to execute a side tackle.

Immediately before the ball had been passed by B10 to B14, the Player had been in a position to try and tackle B10. As the ball is passed to B14, the Player moves in a relatively upright position to his right towards B14. He extends his left arm in an attempt to wrap B14. His right arm, however, is not extended in the same way but, rather, is bent at the elbow, with his hand close to his body in a lower position.

As he moves towards B14, the Player appears to move his right elbow and his torso in a slight rotational motion from his right to left, and in so doing, his crooked right arm makes contact with T20's head. In the same movement with what appears to be him leading with his right shoulder, the Player's right shoulder makes contact with the lower right side of the face of B14. B14's skin is crumpled and B14's head is seen recoiling backwards.

Whilst B14 is impacted by all three tacklers he is knocked backwards and sideways landing on the ground still held by T3. He appears to be dazed for a period and receives attention from the medical personnel from his team. He remains on the ground for approximately 17 seconds before getting up and walking back into the defensive line whilst a scrum is set.

Mr McTiernan played the footage on a frame-by-frame basis and highlighted what he considered the following salient points. These were:

1. T3 legally tackles B14.
2. T20 legally tackles B14.
3. The Player's left hand is extended approaching the tackle area, but his right arm is tucked in what was described by Mr McTiernan as a "chicken wing".
4. The Player's "chicken wing" contacts with the face of T20 which, of itself, was an act of foul play.
5. B14 approaches the tackle area at full height.
6. T2 is upright and is driving upright.
7. The Player's shoulder makes contact with the face of B14.

8. The video footage evidences this contact by ripples to the facial contours of B14.
9. B14's head is then seen to recoil.

During the course of the playing of the various match footage from different angles, Mr McTiernan emphasised the height and the stance of the Player in that he was in an upright position.

In playing the reverse angle footage, Mr McTiernan referred to the left arm of the Player seen wrapped around B14 and that the Player could be seen driving in an upright position. Mr McTiernan commented that the footage showed the Player's approach in the tackle was not passive, but rather was an attempt to execute a dominant tackle.

Match Official's Evidence

The match official evidence was comprised of an email from Mr Wayne Barnes who stated that he did not see the incident either live or on replay and that following the incident and a stoppage in play, he was asked by the Bordeaux captain whether B14 had been tackled without the ball. He said that he had not looked at the alleged offence later referred to in the Citing Commissioner's report.

The other Assistant Referees' reports of Christophe Ridley and Adam Leal stated that neither of them had seen the incident live or on replay and were unaware of the alleged offence whilst at the stadium.

Television Match Official's Report

Mr Tom Foley (England) was the television match official in the Match.

His statement was read in full by Mr McTiernan, however, a summary of his evidence was that when he had examined the footage at the time, he had observed the Player coming into contact with the head of his own teammate, but that his focus was on the ball and T20, so did not see the subsequent contact with the ball carrier.

This concluded the evidence presented by the Disciplinary Officer.

Player's Case

Player's Response to Standing Directions

In advance of the hearing, the Player had provided his responses to the allegation which had been considered by the Committee. The responses were as follows:

- a) *“he confirms he is the Player named in the citing complaint*
- b) *there are no preliminary matters that he wishes to argue*
- c) *he accepts that the citing complaint is a true and accurate account of the incident that resulted in the citing, save for the following points:*
 - *it is not correct to say that T2 is upright. At the beginning of the action, T2 is crouched (as shown by the photographs in the report of Mr Merbalh attached)*
 - *it is not correct to say that T2 moves towards B14; he is static as B14 comes towards him*
 - *it is not correct to say that T2's right shoulder makes direct contact with the face of B14. T2's shoulder ultimately makes contact with the face of B14 (having initially struck T20's head) principally as a result of the downwards movement of B14, who is tackled simultaneously by T3 from behind, and by T20 from the side, with the result that he reduces significantly in height.*
 - *it is not correct to say that the contact from the right shoulder of T2 to the face of B14 was with sufficient force to lead to a high degree of danger*
 - *T2 is not physically able to wrap his right arm around B14 due to the presence on that side of T20, who was in the process of tackling B14*
 - *it is not correct to say that there is no sudden/significant drop in height of B14 (the photographs in Mr Merbalh's report and our video clip below, show that there is a sudden/significant drop in height of B14)*
 - *it is therefore not correct to consider that the involvement of T3 and T20 does not provide sufficient mitigation*
- d) *he does not accept that he committed an act of Foul Play as set out in the citing complaint*
- e) *if it were considered an act of Foul Play, the Player does not accept that the act warranted a red card*
- f) *the Player will try to show that he should not have been the subject of a citing complaint (because he did not commit the act of Foul Play specified in the citing complaint and/or that that act would not have warranted a red card)*
- g) *the Player's does not accept that he committed the act of Foul Play specified in the citing complaint and/or that that act would not have warranted a red card for the following main reasons:*
 - *If the match officials had seen the incident involving T2, they would have followed the guidelines set out in World Rugby's Head Contact Process (HCP). Our view is that, Wayne Barnes, the match referee would have decided that T2 was not at fault and there was no act of Foul Play by T2. This is because B14 was driven into T2 and*

pulled down by T3, and T2's shoulder made contact with B14's head mainly as a result of such impact. (This situation is similar to the example given by Wayne Barnes himself in the video in which he explains the HCP where the ball carrier is tackled into the defender during the Scotland v Ireland match).

- *Alternatively, he would have decided that T2's contact to the B14's head was indirect and that it was not applied with high force for a number of reasons, and therefore that there was a medium degree of danger, justifying, at most, a yellow card. This is demonstrated by the report prepared by Mr Merbalh, which shows that:*
 - *T2 is static and crouched in a classic tackle position prior to the incident. He does not move forwards, but moves to the right*
 - *his head and shoulders can be seen to be at the level of trunk of B14, who is reaching upwards to try to catch the ball which is above his head. Note that B14 is 1.87 metres in height and that T2 is 1.81 metres in height.*
 - *T3 tackles B14 with force from behind. T20 tackles B14 with force from the left side*
 - *B14's body flexes as he is struck by the two Toulouse tacklers and he bends downwards*
 - *T2 cannot wrap his arm as he is prevented from doing so by the tackle being made on B14 by his teammate, T20*
 - *the first and main impact of T2's shoulder is with T20's head; T2's shoulder subsequently makes contact with B14's head when B14 bends and pivots as a result of the tackles made on him by the other Toulouse players*
 - *T2 cannot avoid the contact for a number of reasons: B14 arrives at speed, T2 is in a defensive position and cannot see and readjust his tackle as his head is turned to the right, and the involvement of T3 and T20 in the tackle of B14 restricts T2's movement and results in a change of B14's position*
 - *the real impact and force on B14 come from T3 (coming towards T2 from behind B14) and T20*
 - *on the other hand, there is very little kinetic energy involved in T2's action on B14, as confirmed by Mr Merbalh's report*

Moreover, B14 was fortunately not injured in the action, did not need attention from the medical staff, and did not have to undergo a HIA. He also states clearly in his interview with the citing officer during the evening after the match that he did not feel any contact with his head. B14 started for his club in their match against Bayonne on Saturday.

- *The following mitigating factors would also have been taken into account, in accordance with the HCP:*
 - *the significant/sudden drop in height of B14 as a result of loss of the ball and the impact of the two Toulouse tacklers, T3 and T20*
 - *the upright and passive position of T2 in the tackle, and the fact that he moved backwards, not forwards*
 - *the fact that B14 was driven hard into T2 and pulled down, and T2's shoulder made contact with B14's head as a result"*

At the hearing, Mr Robertson, on behalf of the Player, made submissions about the Player and the Player's actions in connection with the incident. His representations included the following:

The Player had turned 26 years of age two days ago. He had been a professional rugby player since he was 19 and had been the captain of Stade Toulousain for the last three years. He was a French international with 14 caps and was a key player in his team. In describing the incident, Mr Robertson stated that the Match was the semi-final of the Champions Cup match played on the Saturday with the second semi-final being played the following day.

He put the incident into context. It occurred in the 58th minute of the Match when the score was very close. He commented that the match officials (including Mr Wayne Barnes) were a very experienced panel. He commented that this was a fascinating case and that even though he had been involved in other rugby head contact cases in recent past (and he named several of them), he said that this one was quite unlike any of those. He said that this case involved issues as to whether the contact between the Player and the other player had been direct or indirect and whether the actions were accidental and to what extent there was a degree of danger and the force of the impact.

He described this case as being the "most interesting but the least clear-cut."

He made comment that none of the match officials had considered the incident was worthy of a red card and had regarded the incident as being "pretty innocuous" at that time. He further remarked that Mr Kenny, the Citing Commissioner, had not been present at the Match and he appeared to have been the only person who had seen the incident.

He then addressed his comments to the question of Mr McTiernan's representations. He made mention of the fact that whilst it was correct that B14 was juggling with the ball, it was important to appreciate that B14 is 1.87 metres tall, i.e. 6 centimetres taller than the Player. He also commented that the so called "ripple effect" on the face of B14 from the Player's shoulder did not tell the Committee anything about the nature of the impact.

Mr Robertson played the video footage and invited the Committee to note the following:

1. This was end-to-end attacking play by Bordeaux.
2. The incident happened incredibly fast and involved two very large tacklers, other than the Player.
3. The other tacklers were responsible for the main impact on B14.
4. There was no impact of any significance on B14 as a consequence of the Player's attempted tackle and there was no Bordeaux player reaction which would often arise if a serious act of foul play had occurred.

Mr Robertson then questioned why the assistant referee had not seen anything as he was on the same side as the incident. Indeed, the Bordeaux team trainers appeared unhappy not because of the impact upon B14, but because he had been tackled without the ball.

At this point, Mr Ugo Mola explained that there were three different impacts and different types of tackles and that the incident had unfolded as a consequence of a combination of those.

Mr Robertson explained that the Player had a large man moving towards him and that by his actions the Player was acting in self-defence.

Mr Robertson also highlighted that the Player goes "backwards" in the motion and that he further commented that he would be able to argue that the contact was indirect, with low force, at low speed and that both the Player and B14 had been static. He said that in his submission, the tackler had been a passive one and was therefore low danger.

He also made reference to the High Tackle Process which sets out a framework to assist judicial committees, citing commissioners and match officials in determining whether incidents relating to high tackles should be sanctioned as penalty kicks, yellow cards or red cards.

At this point, Mr Robertson called the Player to give his evidence.

Player's Oral Evidence

The Player's evidence was translated from French to English by Mr Robertson.

The Player said that the action had happened very fast. He had seen Bordeaux 14 bearing down upon him. At no time did he feel any impact. The Player said that he was concentrating on getting his arms around the Player. He said that B14 went back with the impact, but that he (the Player) had been aiming below the level of B14's chest, but that he fell to his shoulder.

He went on to say that if he been aware that he had made contact with the Player's head, he would have apologised. He was keen to point out that he is not a dirty player and respects the rules as captain. He further stated that he had never been sanctioned before for foul play in rugby.

The Player was then questioned by the Chairman.

He was asked questions about his movement up to the point when his shoulder impacted upon B14. The Player was asked whether he accepted that when his left arm was extended, his right fist appeared to be clenched. He said he would not go into a tackle with an open hand in order to protect the hand. He said that because there were three players coming towards him, he was looking to protect himself.

He was asked why he had not taken any steps to attempt to bind with his right arm upon B14. He said that because of the involvement of T20 who was between him and B14, there was nowhere for his right arm to go. He said that if he had tried to swing his arm to bind on, it would have ended up around the neck area of B14.

The Player was asked whether he agreed that his body had been upright in the tackle. He accepted that he was, but said he was static. He was asked whether he accepted that he was rising in height at the time. He said that he was moving very slowly upwards. When asked about his body position he said that he considered he was at the same level in height as T20.

He was asked why he continued into the tackle when he was aware that he was not going to be able to bind his right arm in the tackle. His response was that the movement happened very fast and his reaction was instinctive.

When he was asked more about his body position and the fact that the video footage demonstrated he was at a higher body position than T20, he answered stating that T3 (the prop who was tackling B14 from behind) made contact with his leg. He was concerned about his knee (as it had been injured previously) and that to protect himself, he felt he had to straighten his knee to stand upright.

At this point, Mr Mola emphasised the three different types of tackles that were taking place at this time in that there was a chasing tackle (T3), a side tackle (T20) and a front tackle (the Player). It was pointed out that each of these players were coming at different angles and therefore the situation was complex.

The Player was asked whether he accepted that if he remained upright in a tackle with his arm “tucked” and he is moving slowly upwards there is a risk he could come into contact with another player. He replied “yes”.

He said he was aiming at the chest in this tackle and his head was tucked to the side (left). He also said the incident had occurred in a split second.

The Player was asked whether, with hindsight, he ought to have approached the tackle in a lower body position. He accepted that with hindsight, that would have been preferable, but he had no time. It was put to him that if he had time to extend his left arm and tuck his right arm why did he not have time to lower his body position. The Player answered that at the time of making the tackle, he was tired. He said his legs were tired and his arms were able to move faster than his legs.

Upon questioning by Mr Graham, the Player was asked whether his right elbow was raised. He agreed with this but explained that this was due to the impact of the contact between he and T20. Mr Graham acknowledged that the incident had occurred very quickly, but asked the Player when he braced, did he accept that he had leaned into the impact with his right shoulder. The Player responded stating that it was a natural reaction to dip into the action so that his shoulder took the blow. He said that he was bracing for the movement.

He was asked why, if he was seeking to tackle at B14’s chest area, he did not bend at the waist. The Player’s response was that he had not had time. He said that if B14 had not dropped, then the tackle would have been at the level of the chest.

The Player was asked whether he realised as a consequence of the T3 tackle that B14 was going to come down towards the ground. The Player responded stating that he was focused on the ball in the air and seeing B14’s head well above him. He said that as he went into the tackle, he shut his eyes.

Upon questioning by Mr Wheat, he was asked how it was the case that he regarded the incident as being so quickly unfolding that his actions had been instinctive, but at the same time, he had changed his stance by straightening his legs to protect his knee from the impact of T3. His response was that this, too, was a natural reflex because of the injury to his knee in 2019.

This concluded the Player’s oral evidence.

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

Evidence of Dr Merbalh

Dr Merbalh, a doctor of biomechanics at Toulon University, had prepared a report on behalf of the Player which contained slides, commentary and some calculations related to acceleration and kinetic energy. It is appended to this judgment.

Dr Merbalh gave verbal evidence to the Committee which was consistent with his report. He spoke of the movement of the Player towards B14 as “closing the gap”. He also said that the video footage suggested there had been high flexion of B14’s head forward (images 6 and 7 on his slides) which could have resulted from a reduction in speed of B14 at the moment the Player’s arm had contacted T20’s head and immediately before his shoulder struck B14. He stated that image 7 demonstrated there was contact between the Player’s shoulder and B14’s shoulder a millisecond before the Player’s shoulder came into contact with the head of B14.

He indicated that the essence of his report was to demonstrate the difference in acceleration force and the kinetic energy in the two aspects of play, namely another tackle carried out by the Player in the same match, following a tackle chase, and the contact involving the Player being cited. He described how the acceleration force in the particular moment of the alleged dangerous tackle was 50% lower than in the other tackle and the kinetic energy was 90% lower than the other tackle.

Dr Merbalh explained that the data that he had used in his calculations was derived from the GPS equipment worn by the Player during the match.

Dr Merbalh confirmed in a response to a questions by Mr Graham that in order to have a complete picture of the kinetic energy in the tackle, it would have been of assistance to have been in possession of the GPS data of the tackled player.

In an answer to a question from Mr McTiernan Dr Merlbah accepted that the energy in this relatively stationary tackle was much less than a tackle involving speed.

Evidence from B14

B14’s video recorded interview with the Citing Commissioner had been transcribed by the Player’s representative. A brief summary of this evidence was that B14 stated he could not recall feeling any contact to his head, and whilst he had felt the impact of a tackle which had been a bit high on the shoulder line, it had not been on the head.

He had also prepared a handwritten statement to the Player's representative which stated that he said he had felt no contact with the shoulder of the Player and as he had explained to the Citing Commissioner, the "shock" was from the first tackler, not through his head.

Mr Robertson commented that this evidence was consistent with the Player's case that his impact upon B14 was without force.

Disciplinary Officer's submissions in support of the complaint

Mr McTiernan reminded the Committee that the burden was on the Player to demonstrate on the balance of probabilities that he had not committed an act of foul play which had warranted a red card. It was therefore for the Player to establish that the Citing Commissioner was wrong. Mr McTiernan said that based upon the evidence that had been presented, he had failed to do so.

In support, he said that Mr Kenny's narrative description of the incident was largely unchallenged. He said that whilst the Player had given an alternative analysis, a summary of the matter was that the Player had a clear line of sight, the Player had time to make an assessment, took various conscious actions, and that he must have seen B14 had been tackled by others.

Mr McTiernan said that the Player must have an obligation to acknowledge the actions of the other players when deciding his own conduct and whether he ought to have attempted to tackle. He said that the Player acknowledged that he had not wrapped his right arm and that whilst this particular Citing Commissioner had not cited him, he had committed an act of foul play by hitting his own teammate. Mr McTiernan stated that contrary to what Mr Robertson had advanced, the match officials had not dismissed this incident. They simply missed the incident and did not conclude there was no foul play.

Mr McTiernan continued by stating that we could see the force of the impact due to the ripples on the head of B14. Mr McTiernan commented that Dr Merbalh draws conclusions about the kinetic energy, but there could be no question that direct contact had been made between the Player and the head of B14.

Mr McTiernan stated that the contact between the Player's right arm upon T20's head did not dissipate the amount of force between the Player's shoulder and the head of B14. Furthermore, whilst comment had been made that the assistant referee who was in very close proximity to the incident had not detected it, the position was such that the assistant referee had been obstructed by the Player.

Mr McTiernan commented that it was wrong to suggest the Player had acted in self-defence to protect himself. He could either have not involved himself in the tackle or have gone in "waist high" and affect a legal tackle. Furthermore, it was not credible for the Player to suggest that he had raised himself up in the tackle area to protect his knee from the impact of T3. If that had been a concern, the obvious thing to have done would have been to have kept his knee back and out of the way rather than go upright.

Mr McTiernan commented that in relation to the Player's argument that the difference in height between he and B14 was of significance and of assistance to the Player's case, in fact, he argued, the opposite was true. If there had been such a difference in height, it should have made it easier for the Player to have avoided contact with B14's head. It demonstrates that the Player had been "incredibly high" up on B14 to have impacted his shoulder to the face.

Mr McTiernan referred again to the Citing Commissioner's report and that the video footage was consistent with what had been written. There had indeed been a crumpling effect of B14's skin and the video evidence was very clear which is sometimes quite unusual in head contact cases. Mr McTiernan said that the impact was avoidable. The Player had been rising with his arm tucked. He said the Player must have been aware of these risks. He said that the Player's tackle was aggressive and dominant and was not passive. Whilst it was accepted it was a fast-moving game, the Player's fist was clenched and there was never any attempt to grasp with the right arm.

Insofar as the scientific evidence was concerned, Mr McTiernan stated that there was no proper basis for concluding that the force was low in this tackle. No comparison had been made in this stationary tackle with another similar tackle by the Player. The analysis had been made between this rather stationary tackle with a tackle at high speed.

Furthermore, Mr McTiernan submitted that B14's evidence should largely be dismissed. Whilst it is correct that B14 states he had no recollection of any contact between the Player's shoulder and his face, that is irrelevant because the video evidence is clear that there was contact.

Furthermore, Mr McTiernan stated that the fact the Player's right "cocked arm" had impacted his own player's head before the Player's shoulder had impacted B14 evidenced the reckless nature of his conduct.

This concluded the submissions on behalf of the Disciplinary Officer.

Player's submissions as to whether the complaint should be upheld

Mr Robertson began by stating that it was wrong to consider the incident in slow-motion because it distorts the actions and the speed. He stated that the evidence indicates that this was a dynamic rugby action without intent or malice. There was no injury to B14.

He responded to Mr McTiernan's submissions by stating that there had indeed been a significant challenge to the facts contained in the Citing Commissioner's report and he referred specifically to the numbered points in the Player's response to the standing directions. He then said that it was important for the Committee to review the pictures contained in Dr Merball's report to see how far the head of B14 comes down. He said that it was not true that the Player's actions involved a high degree of danger, and whilst the Player did not positively advance it was not an act of foul play, taking all matters into account, it would be unjust and disproportionate to consider this incident as a red card.

The Committee then heard representations from Mr Lacroix and Mr Mola to the effect that they hoped the Committee would come to the correct decision which was to dismiss the citing complaint and to take into account the very complicated nature of the incident involving four different players in a dynamic situation and also to take into account the very important consequences to the Player and to the team of the upholding of the complaint.

The Player was invited to make concluding submissions. In so doing, he expressed that he was very sorry for his conduct having taken up such time of the parties. He reiterated that he regarded himself as a very clean player and without any previous disciplinary offences recorded against him. He said that he was proud that he set a good example to his teammates and to younger players.

FINDINGS OF FACT

Committee's Decision

The Committee retired in private to review the evidence it had seen and heard and to consider the match footage. It also considered the Disciplinary Officer's and the Player's representative's submissions.

The Committee recognised that watching footage in slow-motion can give the false impression that a person has more time to think, calculate and form intentions than is actually the case.

Furthermore, the Committee reminded itself that its findings of fact were to be determined on the balance of probabilities.

The Committee's factual conclusions were as follows:

1. Immediately before the incident, Bordeaux 10 had possession of the ball near the Bordeaux right-hand touchline and close to the Toulouse 22. Bordeaux 10 is tackled and in so doing passes the ball infield to B14 who is running in support.
2. B14 fails to catch the ball but, instead, it hits his shoulder and bounces upwards. As he is looking up to gather the ball, he is tackled from behind by T3. T3 tackles him around his waist and attempts to drag him to the floor. At the same time, T20 is coming across B14 from B14's left to right. He tackles him placing his arms around the midriff of B14 and with his head in front of B14's body. Whilst B14 was attempting to gather the ball, the Player is in front and slightly to the right of B14. He is and remains in an upright position and motions his body in a forward and upward manner towards B14. As he does so, his left arm extends outwards and in a wrapping action around B14, whereas his right arm remains in a "chicken wing" position lower down. As he nears B14, the Player appears to raise his right elbow and rotate his body.
3. In so doing the Player's right arm makes contact with the head of T20. In continuing the rotation, his right shoulder impacts upon the face of B14 evidenced by the rippling of B14's skin on his face. As a consequence of the above, B14's head recoils and he is knocked backwards and sideways onto the floor. T3 appears to land to the side of B14. The referee stops play for a knock-on and awards a scrum to Toulouse.
4. B14 remains on the ground for a number of seconds being attended to by medical personnel from his team before getting up and walking slowly back into the defensive line in anticipation for the next phase of play from the scrum.

The Committee further concluded the following:

5. Although this incident happened at high-speed, the Player had a good line of sight to B14 before the tackle.
6. The Player made no attempt to wrap B14 with his right arm. He "led with his shoulder" into the tackle. This was not an attempt to tackle lawfully and was an act of foul play.
7. Whilst B14's head had come forward at the point of impact, he was still relatively upright at the point of contact.

8. The match footage and the dotted lines on the slides attached to Dr Merbalh's report showed that the Player's body position and shoulders continued to rise from a relatively upright position throughout the action to the point of contact between the Player's shoulder and B14.
9. The Player did not have to try and affect a tackle in the manner he did, in order to protect himself.
10. The Player was at fault and his actions in making contact with B14's head were avoidable.
11. The Player remained in an upright position and made no attempt to tackle lower. He attempted to target the chest of B14 at a time that it was entirely foreseeable B14 would be reducing his height, given B14 was attempting to reach above him for the ball and was being tackled by two other Toulouse players.
12. The evidence of Dr Merbalh was of limited assistance in that whilst it demonstrated there was significantly less acceleration force and kinetic energy between a higher speed tackle and this more stationary tackle, that was to be expected.
13. Furthermore, the Committee concluded the video footage and their own rugby experience was sufficient to enable them to form a reliable assessment of the nature of the tackle.
14. Notwithstanding the evidence of B14, from the clear video footage there had obviously been contact with B14's head and the most likely cause of his head recoiling was from that contact as no other plausible explanation had been advanced.
15. The Player's action clearly constituted a dangerous tackle contrary to Law 9.13.

In assessing the seriousness of the act of foul play, the Committee had regard to the law application guidance Head Contact Process and found the following:

1. Contact with the head had occurred.
2. It occurred as a consequence of foul play.
3. The Player had been at fault.
4. Because there had been direct contact between the Player's leading shoulder and B14's head, the degree of danger was high notwithstanding his feet were planted: B14 was running forward at pace and the Player was attempting to make a dominant tackle in the manner described above.
5. Whilst there was some drop in height by B14, and some change in dynamic due to the involvement of other players, this was insufficient in the circumstances of the tackle to mitigate the foul play from meriting a red card.

Accordingly, the Player had failed to discharge the burden of demonstrating on the balance of probabilities that he had not committed an act of foul play which merited a red card. Therefore, the Citing Complaint would be upheld.

The hearing was reconvened, and the Committee announced its decision to the Player and to the Disciplinary Officer.

Submissions as to sanctions

The Chairman invited representations from the Disciplinary Officer as to sanction by reference to the procedure required to be followed.

In summary, where a red card or citing complaint is upheld, disciplinary committees are obliged to follow the three-stage process under the Rules.

The first stage is to identify the appropriate "entry point" in the sanctions table at either low-end, mid-range or top-end by reference to the criteria set out under Rule 7.8.32. Once they have established the entry point, committees are then required to consider the existence of any off-field aggravating factors as set out under Rule 7.8.34 before considering the existence of any off-field mitigating factors under Rule 7.8.35.

The Committee reminded the parties that under the Rules, where an act of foul play involving a dangerous tackle results in contact with the head, committees are obliged to impose at least a mid-range sanction.

For acts of foul play contrary to Law 9.13, the prescribed entry points are follows:

- Low end: 2 weeks
- Mid range: 6 weeks
- Top end: 10+ weeks (Maximum: 52 weeks)

Submissions as to Sanction by Mr McTiernan

The representations received from the Disciplinary Officer were as follows:

It was accepted that the Player's actions were reckless rather than intentional. As to the gravity of the offending, World Rugby had reflected this by reference to mandating at least a mid-range entry point sanction. As to the part of the body used, Mr McTiernan reminded the Committee that it had been the shoulder which had been the point of contact with B14. Mr McTiernan stated that there

appeared to be no impact by the Player's conduct on either the victim or the Match. There was some vulnerability on the part of B14, but the midrange entry point properly reflects the seriousness of that issue.

In relation to the question of the level of participation or premeditation, Mr McTiernan submitted that there was no question of premeditation in this matter and there obviously a lot "going on" at the relevant time involving a number of players.

Finally, Mr McTiernan submitted that the actions of the Player had been completed rather than attempted.

Turning to the second and third stage of the sanctioning process, Mr McTiernan acknowledged that there were no off-field aggravating factors present, and as far as mitigation was concerned, he confirmed that the Player had an entirely clean record.

Submissions as to Sanctions on behalf of the Player

In terms of entry point, Mr Robertson stated that the Player's position was that there had been no intention to commit any foul play nor indeed had his conduct been reckless but, instead, his actions had been accidental. The only other matters that he wanted to raise in relation to entry point were that the Player's case was that he had acted with a reasonable degree of force in self-defence, and that B14 had been in a dangerous position as he approached.

In relation to matters more generally, he stated that since the incident, B14 and the Player had exchanged communications with each other. He said that the Player had conducted himself in an exemplary manner and that it was important that the Committee conclude that the incident had occurred in a split second, in dynamic circumstances and that B14 had not felt any impact.

Turning to questions of aggravation and mitigation, Mr Robertson stated that clearly, there are no aggravating features present and insofar as mitigating factors were concerned, he commented as follows:

Whilst the Player had not made any admission as to his guilt, this was done honestly because he did not believe that he had done anything wrong. Indeed, he asked the Committee to conclude that the question of a red card or otherwise was a marginal one. He relied upon the Player's clean disciplinary record and positive good character. He relied upon the Player having conducted himself in an exemplary manner before the Committee today and that he demonstrated genuine remorse for what had occurred. He described his family background and how he is generally very respectful of laws and rules. He also referred to his charitable activities.

Mr Robertson invited the Committee to apply a 50% discount from the mid-range entry point.

SANCTIONING PROCESS

ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 7.8.32 (a)-(b)

Intentional/deliberate Reckless

State reasons

The Committee was satisfied that even in the short space of time which the Player had to approach the tackle area, he had decided to lead into the tackle area with his right shoulder and that he knew or reasonably ought to have known of the risk of his shoulder coming into contact with the head of B14 as he was in a relatively upright position and moving forwards and upwards.

Gravity of player's actions – R 7.8.32 (c)

The Committee concluded that the Player's actions were relatively grave considering he had led with his shoulder into the face of B14.

Nature of actions – R 7.8.32 (d)

The foul play had involved the Player's shoulder to the face of an opponent

Existence of provocation – R 7.8.32 (e)

Not applicable.
Whether player retaliated – R 7.8.32 (f)
Not applicable.
Self-defence – R 7.8.32 (g)
The Committee did not conclude that the Player had been acting in order to protect himself.
Effect on victim – R 7.8.32 (h)
There appeared to be no effect upon the victim, although it was clear that there had been contact between the Player’s shoulder and B14’s face.
Effect on match – R 7.8.32 (i)
There was no effect on the Match.
Vulnerability of victim – R 7.8.32 (j)
The Committee concluded that B14 had been vulnerable. He had no reason to expect that he would have been the subject of contact between his face and an opponent’s shoulder, and he had no time to protect himself from that occurring.
Level of participation/premeditation – R 7.8.32 (k)
The Committee concluded that the Player had participated in the foul play, but that there had been no premeditation.
Conduct completed/attempted – R 7.8.32 (l)
The Committee found the Player’s actions had been completed, not merely attempted.
Other features of player’s conduct – R 7.8.32 (m)
There were no other features of relevance not appearing above.

ASSESSMENT OF SERIOUSNESS CONTINUED

Entry point					
<u>Top end*</u>	<u>Weeks</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Low-end</u>	<u>Weeks</u>
<input type="checkbox"/>		<input checked="" type="checkbox"/>	6	<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.

Reasons for selecting Entry Point above Top End
Not applicable.

ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

Player’s status as an offender of the Laws of the Game – R 7.8.34 (a)
Not applicable.
Need for deterrence – R 7.8.34 (b)
Not applicable.
Any other off-field aggravating factors – R 7.8.34 (c)

Not applicable.

Number of additional weeks: Not applicable.

RELEVANT OFF-FIELD MITIGATING FACTORS

Acknowledgement of guilt and timing – R 7.8.35(a)	Player’s disciplinary record/good character – R7.8.35 (b)
The Player had not acknowledged his guilt and so could not receive credit for this.	The Player had an unblemished disciplinary record, positive good character and was a good role model.
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
The Player was 26 years of age but was an experienced professional.	The Player’s conduct prior to and at the hearing had been excellent.
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)
Notwithstanding the Player had denied the allegation, he had demonstrated remorse for his actions.	No other off-field mitigation.

Number of weeks deducted: 2

Summary of reason for number of weeks deducted:
The Committee reminded itself that under the Rules, it is able to apply up to a maximum of 50% reduction from the entry point sanction. The Committee also was mindful that it was required to start at 0% and work up to a maximum of 50%. The Player had failed to acknowledge that his conduct was worthy of a red card and therefore was not entitled to the maximum reduction which meant that a reduction of two weeks rather than a three-week reduction would be appropriate.

SANCTION

NOTE: PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 7.2.5

Total sanction (weeks)	Four	Sending off sufficient <input type="checkbox"/>	
Sanction commences	3 May 2021	Costs	None
Sanction concludes	30 May 2021		
Free to play	31 May 2021		

Signature (JO or Chairman)	Simon Thomas	Date	13 May 2021
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NOTE: YOU HAVE THE RIGHT OF APPEAL AGAINST THIS DECISION AS SET OUT IN REGULATION 8.1 AND 8.2 OF THE EPCR DISCIPLINARY REGULATIONS. YOUR ATTENTION IS SPECIFICALLY DRAWN TO THE TIME LIMIT AND DIRECTIONS/REQUIREMENTS RELATING TO AN APPEAL SET OUT IN REGULATION 8.2.1 TO 8.2.4 OF THE REGULATIONS



EPCR - CONTESTATION

Stade Toulousain – JULIEN MARCHAND



Dr MERBALH

Stade Toulousain





The player was running to his left thinking there would be a ruck and was ready to contest, but the ball went out.



The player stops his run: visible with his left foot position. The speed is at this moment close to 0km/h. Rules of dynamics, change of direction (left to right = a state close to 0).



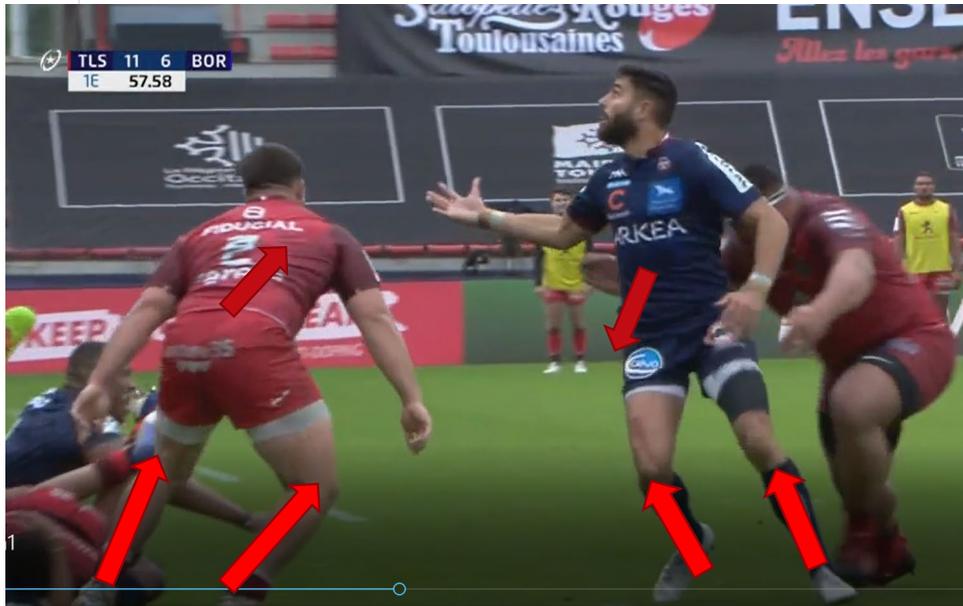
the player prepares the tackle, he has less than 0.5 seconds. he performs a slight flexion of the trunk



Visualization of ground reaction forces. The norm of the vector is not calculated, this is a graphical representation.



Visualization of the displacement vector. The norm of the vector is not calculated, this is a graphical representation.



Key point: the blue player is running in the direction of the arrow...



...But the direction is changed by the intervention of two red teammates. At this point the behaviour of the number 2 player seems to be correct and the tackle seems to be directed onto the trunk of the blue player.



The red player seems to straighten up too early, his information gathering is deficient and he does not consider the stop of the blue player. The blue player does not advance any more in his direction.



Number 2 will tackle the blue player who, hit by two other red players, performs a large cervical spine/neck flexion.

The intention was wrong with a right arm coming off the trunk but the arm is bent along the trunk by contact with his own teammate's head.

First point of contact with the opponent.



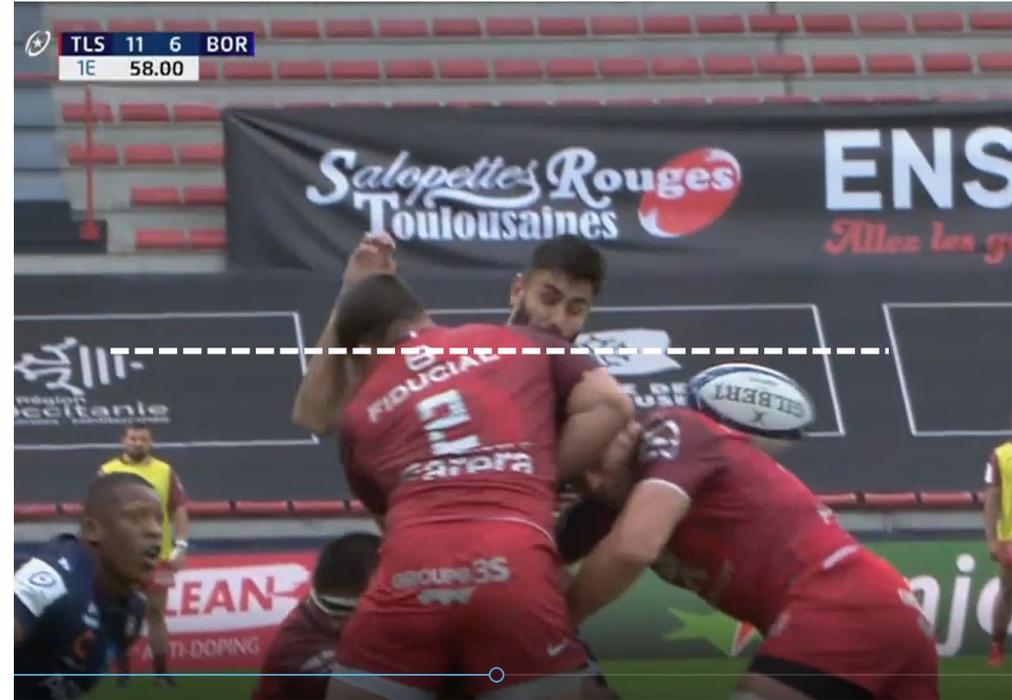
Red player number 2 hits his teammate's head, then appears to hit the blue player's chest first.



a1

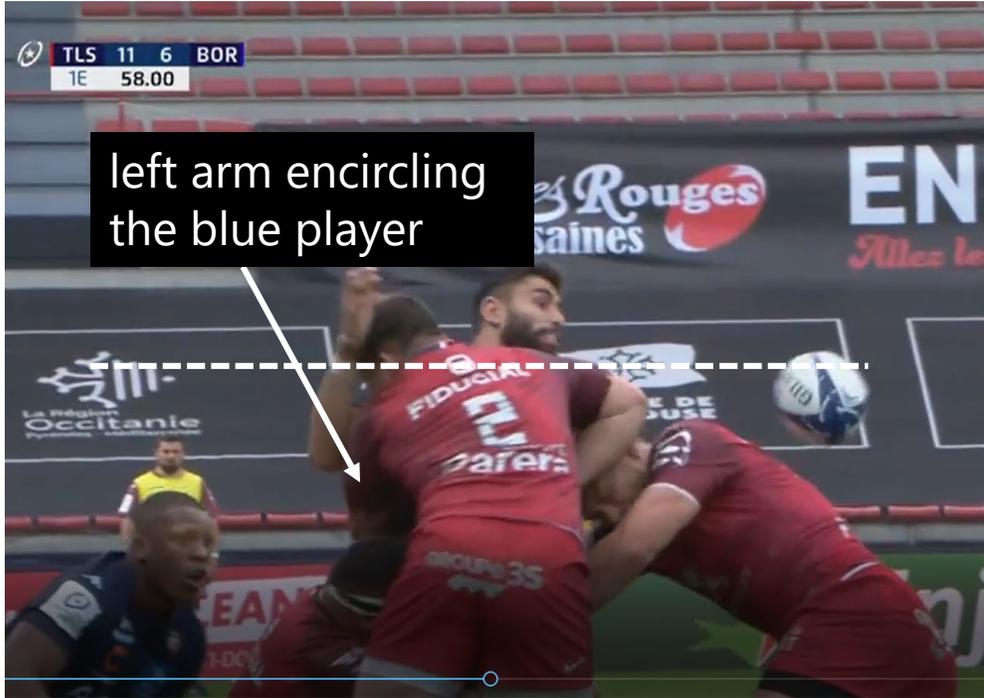
The bending of the head of the blue player and the lack of bending of the trunk of the red player number 2 results in contact between the shoulder of the red player and the chin of number 2.

The linear speed of the red player is $< 7\text{km/h}$.

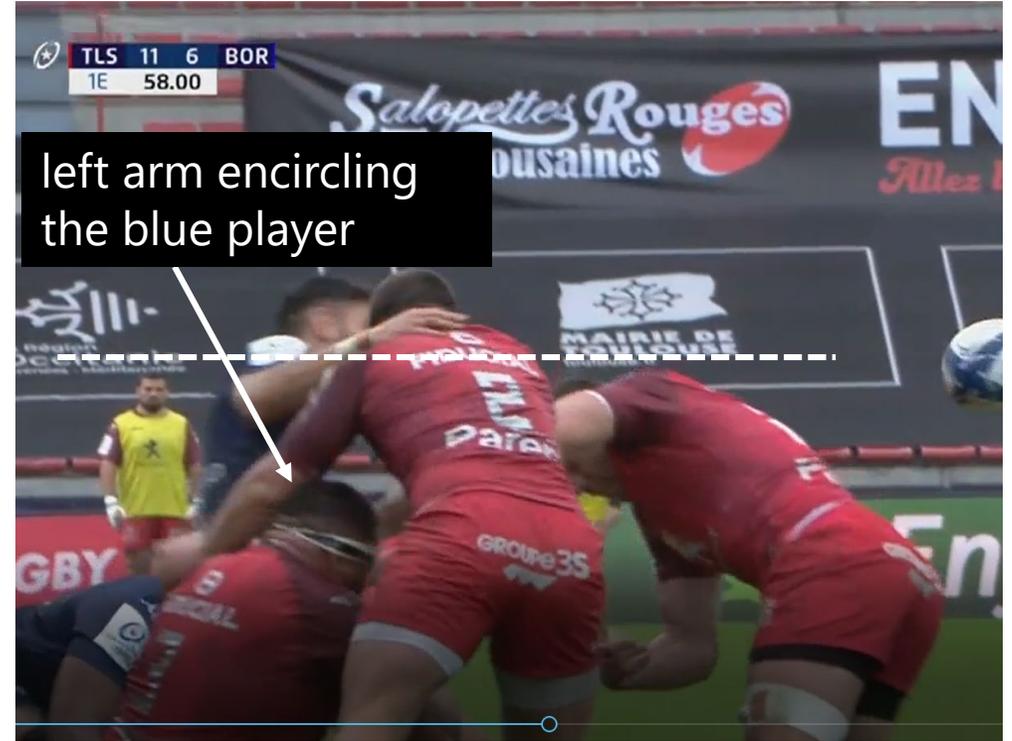


The red player has his head turned to the left (good tackling attitude) but cannot see and readjust his tackle.

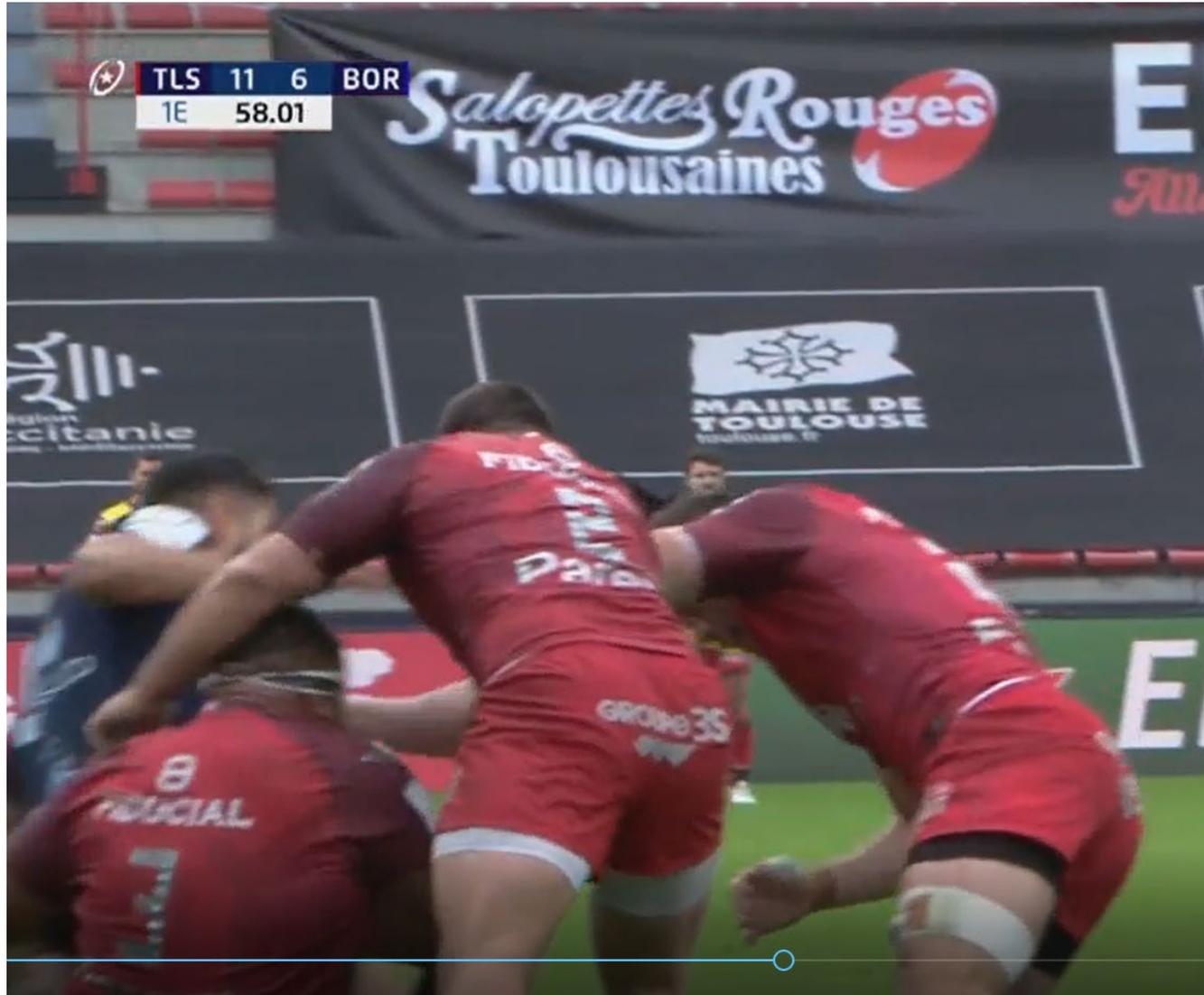
The red player is making an effort to wrap the blue player with his left arm.



The red player does not appear to raise his right arm above his own shoulder line.



In this picture you can see that the red player is bound to the blue player with his left upper limb.



This last image proves how little kinetic energy is involved in this contact. The player is in this picture, standing still, both feet on the ground with no displacement of his center of mass.



Quantification of the forces (g) and kinetic energies (K.E.) involved in two distinct actions:

- Action 1: Tackle chase, without penalty called by the match referee
 - Running speed: 21.69km/h \rightarrow 6.025 m.s⁻¹
 - Acceleration recorded: 14.46 g
 - Calculated kinetic energy: $\frac{1}{2} \times m \times v^2$ with Player's weight = 108 Kg
 - K.E.=**2105.4 J**
- Action 2 : the contact that involved the player's being cited.
 - Running speed: 7.0 km/h \rightarrow 1.95 m.s⁻¹
 - Acceleration recorded: 6.2 g
 - Calculated kinetic energy: $\frac{1}{2} \times m \times v^2$ with Player's weight = 108 Kg
 - K.E.=**205.2 J**

In conclusion

- The acceleration force during action 2 is **57% lower** than action 1 (maximum reference action respecting the rules of the game).
- The kinetic energy involved in action 2 was **90% lower** than in action 1.