

**RUGBY WORLD CUP FRANCE 2007**  
**INTERNATIONAL RUGBY BOARD (IRB)**  
***THE DECISION OF THE JUDICIAL OFFICER IN RELATION TO***  
***HALE T POLE***

***Date of Hearing:***

18 September 2007

***Judicial Officer:***

Mr. Terry Willis – (Australia)

***In Attendance were:***

Mr. Hale T Pole – Player  
Mr. Jean-Jacques Bertrand – Lawyer for the Player  
Mr. Ellis Meachem – Tonga Assistant Coach  
Mr. Angus Naupoto - Tonga Team Manager

Mr. Darren Bailey (Disciplinary Officer) assisted by Mr Payam Beheshti

***Introduction and Preliminary Hearing (11.09.2007)***

- 1.1 Hale Pole was ordered off from the field of play by referee Jonathan Kaplan for a breach of Law 10(4)(a), for striking Samoan no. 18 Leo Lafalali'i during the match between Tonga and Samoa at Montpellier, France on the 16th of September 2007.
- 1.2 A pre-hearing conference was conducted with the player being represented by Mr. Bertrand and Mr. Darren Bailey was also in attendance. I discussed with Mr. Bertrand the procedures to be followed during the course of the hearing and I was informed that the player pleaded not guilty to an offence of striking Lafalali'i to the head with his elbow. I further discussed the sanctioning regime provided for in the Tournament Disciplinary Programme and I was satisfied that the team management were aware of the procedures and the consequences of the plea of not guilty. I was informed that both the referee and the touch judge Bryce Lawrence were available but would need to give evidence by way of telephone hook-up. I was informed by Mr. Bertrand that he was satisfied with this arrangement.

## *Hearing*

- 2.1 At the hearing a further discussion was entered into and after reflection, I was informed that Pole pleaded guilty to striking but that it was the player's case that the striking was not with the elbow to the player's head and the first point of contact was between the player's elbow and the shoulder of Lafalali'i.
- 2.2 At the hearing, I was provided with the following information:
- (a) The Ordering Off Report of referee Jonathon Kaplan;
  - (b) The Ordering Off Report of the touch judge Bryce Lawrence;
  - (c) An outline of argument from Mr. Bertrand;
  - (d) DVD image of the incident with images in normal time 50% slow motion, 25% slow motion and highlighted.
- 2.3 In his report, the referee stated:
- "Touch Judge reported Tongan player elbowed opposition to the head (serious foul play as he tried to counter ruck). The act itself warranted a red card, however, the player had been guilty of two other acts of foul play."*
- 2.4 In his report the touch judge stated:
- "Number 6 Tonga was standing as a pillar at post-tackle phase. A Samoan counter-rucked and Number 6 deliberately elbowed the player in the head (temple area)."*
- 2.5 In addition to the written material, oral evidence was heard from the player, Hale Pole.
- 2.6 Neither the Referee nor the Touch Judge were required to give evidence at the hearing.

## *The Case for Pole*

- 3.1 It was argued by Pole that at no stage was it his intent to hurt a player. Further, it was submitted on his behalf that the first point of contact between the two players was an elbow to the shoulder of Lafalali'i. It was on this basis that the player initially argued that the referee's reasons for his decision were wrong and accordingly that the player was not guilty. However, on reflection, the player's representatives appreciated that the player was ordered from the field for a breach of Law 10(4)(a) i.e. striking and as such, the player did breach Law 10(4)(a) even on their argument.
- 3.2 By way of explanation, Pole explained to me that it was never his intention to elbow Lafalali'i or use his arm to strike the player at the time he took up the position described as a *pillar* defensive position. He said:
- "So I got to the ruck and acted there as a pillar, as it was described...you see the video clips that he was aiming straight at me. So my feet, if he came straight at me, I would never do this, that is raise my left arm into his face...if he came straight into me. So I was down there trying to protect my ruck. As he was coming forward you*

*can clearly see he changes angle before he got to me. So my reaction was just to block my player as well."*

- 3.3 It was submitted at the hearing that Lafalali'i was not injured and executed a fake or "Hollywood collapse" in front of the referee as some attempt to illustrate that he had been struck. I will make reference to this argument in my specific findings. It was further put to me that Pole never intended to use his elbow to the head of Lafalali'i, but it was conceded that the elbow was used, it came in contact with Lafalali'i and that his actions constituted a breach of Law 10(4)(a). It was not conceded that there was contact with the player's face.
- 3.4 I viewed the DVD images of the incident and particularly the images at 11.43 on the DVD. This clearly shows that Pole had his left arm out and ready to tackle. However, his body then moved side-on, not in a body position to drive. This is consistent with the argument that Lafalali'i changed his angle requiring Pole to adjust his body position. The image clearly shows the use of the elbow, the point of contact being on the shoulder and close to the neck of Lafalali'i. The image then shows the forearm moving towards Lafalali'i's face and whilst the actual contact is not visible on that DVD image, it is illustrated in numerous other images including 18.10 and 14.56. The images clearly show Pole throwing his arm in the direction of Lafalali'i which is clearly illegal, reckless and dangerous.

#### ***Penalty***

- 4.1 I accept that Pole, after fully understanding the consequences of his actions, pleaded guilty at the first available opportunity and I further accept his evidence that he did not intend to injure the player and that his was sorry for what happened in the incident.
- 4.2 I have viewed the DVD images and considered the argument that Lafalali'i in some way tried to trick the touch judge and referee by faking an injury. When viewed carefully, the player can be seen to collapse and fall heavily onto his left side. I do not accept that there was no injury to Lafalali'i but thankfully after treatment he was able to continue to play the remainder of the game. I further cannot accept the argument that in some way Lafalali'i faked an injury.
- 4.3 It is the responsibility of players when they are in contact with the opposition to use their arms legally and not illegally. I find, after analysis of the images and after carefully considering the oral evidence of Pole, that he recklessly threw his arm towards Lafalali'i in the mistaken belief that he had to protect another player. Further, that he led with and used his elbow to make contact with Lafalali'i. All too often players are seen driving other players off the ball, who are not bound, in some belief that it is legal to "clean-out or blow-out" opposition players in that position. This is not provided for in the laws of the game and created the situation that faced Pole. It resulted in him using his elbow into the shoulder of Lafalali'i which resulted in the dynamic of the lower forearm and fist striking the head. The illegal use of an elbow coupled with the fact that the lower forearm and fist struck the head of Lafalali'i in my view constituted an appropriate case for a player being sent from the field of play. It is a pity that players seem to be allowed to charge into each other at the breakdown and it does create a flashpoint in the game that can result in foul play, such as occurred in this case.

- 4.4 I was informed that Pole had played 10 games for Tonga, 22 games for the Highlanders in the Super 12/14 competition and over 80 games for Otaga and Southland in the New Zealand NPC Competition without coming before a disciplinary committee for foul play.
- 4.5 Pursuant to the Tournament Disciplinary Programme 12.2, I am required to make an assessment of the seriousness of the player's conduct to determine whether it constituted a breach at the lower end, mid-range or top end of the scope of seriousness for the particular type of offence. In reaching that view, I have to have regard to a number of features in relation to the incident including the level of intent, the gravity of the actions and the vulnerability of the player. After considering all the criteria, I consider that the player's conduct warrants an assessment of it being a low-end offence primarily because I accept the player's submission that it was reckless, that the first point of contact was between the elbow and Lafalali'i's shoulder, that Lafalali'i was temporarily injured but continued to participate in the game and that whilst the use of the elbow is dangerous, the injury was caused because of contact with the player's lower forearm and wrist rather than the elbow.
- 4.6 Having determined the seriousness of the incident and identified the applicable entry point for consideration of penalty, I am then required to determine whether or not there are any aggravating features which would require a higher penalty than the entry point or mitigating features which would influence me to order a lower penalty. I do not believe that there are any aggravating features that warrant an increase in the relevant entry point.
- 4.7 After considering the aggravating features, it is necessary that I determine the relevant mitigating factors pursuant to paragraph 12.4. I accept the submission made on behalf of Pole that he did not intend the consequences of his actions and expressed real remorse for his actions. Further, he conducted himself impeccably both prior to and during the hearing, pleaded guilty to the offence and I accept that he has an excellent disciplinary record. The Tournament Disciplinary Programme provides that the entry point for a low-range offence of this type is 2 weeks, and bearing in mind paragraph 12.1, this equates to one match per week. Bearing in mind the mitigating factors identified by me, I consider that an appropriate sanction for this offence is one week (1 match).

### *Conclusion*

5. That Pole is suspended from all forms of rugby up to and including the 25<sup>th</sup> of September 2007.

Dated 18 September 2007

TJJ Willis

Terry Willis  
Judicial Officer