

WORLD RUGBY U20 CHAMPIONSHIP 2016

Decision of an Independent Judicial Officer

Held at The Park Inn Hotel Manchester on 22nd June 2016

In respect of Jeremy Ward No 13 South Africa (“The Player”)

AND

A citing by Eugene Ryan (Ireland) Citing Commissioner, in respect of (i) Dangerous tackling-A player must not tackle an opponent whose feet are off the ground and (ii) Tackling the jumper in the air - A player must not tackle nor tap, push or pull the foot or feet of an opponent jumping for the ball in a lineout or in open play, contrary to Law 10.4(e) and Law 10.4(i) respectively in the match between England v South Africa on Monday 20th June 2016 at the Etihad Academy Stadium, Manchester.

Judicial Officer: Mike Hamlin (England)

Attending:

The Player

Trevor Barnes - The South African Team Manager

Chris Smith – Counsel for the Player

Yvonne Nolan – Dedicated Disciplinary Officer for World Rugby

DECISION OF THE JUDICIAL OFFICER

The Judicial Officer found that The Player committed an act of foul play, namely tackling or tapping, pushing or pulling the foot of an opponent jumping for the ball in open play contrary to Law 10.4(i). The Citing Complaint in respect of conduct contrary to Law 10.4(e) was not upheld.

The Player is suspended from taking part in the game of rugby union for a period of 2 weeks. The Player is suspended for the remaining match in this tournament on 25th June 2016 which represents a 1 week suspension in the context of this tournament, thereafter the Player is suspended until midnight on 3rd July 2016. The Player is free to resume playing on 4th July 2016.

The Judicial Officer made no award of costs.

INTRODUCTION

1. I was appointed as an Independent Judicial Officer by The World Rugby Judicial Panel Chairman pursuant to The Tournament Regulations. I was appointed to consider the Citing Complaint against The Player in the above match in accordance with World Rugby U20s Championship 2016 Tournament Regulations (“the Regulations”).
2. Eugene Ryan (Ireland) was appointed as Citing Commissioner to this match and cited the Player for two alleged offences arising out of the same set of facts, namely (i)

‘dangerous tackling and (ii) tackling the jumper in the air’ contrary to Law 10.4(e) and Law 10.4(i).

3. Pursuant to Section 2.5(c) of Appendix 5 to the Regulations I issued pre-hearing Directions.

PRELIMINARY MATTERS AND PROCEDURE

4. At the commencement of the hearing, I noted the identities of all present and narrated the allegations. It was confirmed by the Player and Mr Smith that the Player’s position remained as set out in his response to the directions, namely that he accepted the factual description of the incident in the citing report. The Player accepts that he committed an act of foul play by making contact with E15 whilst he was in the air which warranted a yellow card and penalty. The Player does not accept that he committed an act of foul play which warranted a red card or further sanction. The incident occurred within the space of a half a second on the field of play. The Player was running at full speed chasing a grubber kick which uncharacteristically bumped high into the air. The Player was fully committed to trying to win possession for his team. The Player realised at the very last split second that the E15 had leaped into the air to try and win possession for his team. At this point, it was too late for the Player to change his momentum and his right arm made contact with E15 while he was in the air. At no stage did the Player intend or even contemplate to tackle E15 dangerously or in the air – however, due to the speed at which events occurred contact was made. The contact was purely accidental.
5. I reminded all present that The Tournament Disciplinary Regulations 2016 applied. I outlined the procedure I proposed to adopt to determine the matter. All present agreed to proceeding on that basis. No Preliminary matters were raised by Mr Smith. However, I raised two points with Mr Smith. Firstly, I pointed out that his submission in the Player’s response to my directions concerning the conduct not justifying a red card was incorrect. Regulation 12.8 (d) applies, the Player having admitted the act of foul play, my sole function is not to determine whether the misconduct justified the award of a red card but to decide whether any sanction should be imposed. Miss Nolan agreed. Mr Smith upon reflection accepted my determination. Secondly, having reviewed the DVD of the incident and the citing complaint I came to the provisional view that the Player’s actions did not amount to a tackle within the definition of the Laws of the game nor indeed an attempt to tackle, contrary to Law 10.4(e). The actions presented by the evidence fell within a breach of Law 10.4(i). I proposed to proceed on that allegation in the citing and not conduct contrary to Law 10.4(e). After consultation in private with the Player Mr Smith agreed to proceed on that basis. Miss Nolan did not object. I reminded all present that the burden of proof which applies in this case, is the balance of probabilities, as set out in Regulation 12.8.
6. I considered the following evidence:
 - The Citing Complaint
 - The Referee’s yellow card report
 - The Player’s response to standing directions
 - Notice of Hearing
 - The DVD of the incident

- Various emails including a statement from E15, Max Malin and a medical statement from the English Doctor, Dr Rayner
- The Player's evidence and submissions from Mr Smith

SUMMARY OF THE EVIDENCE

7. (i) The Player was alleged to have breached Laws 10.4(e) and 10.4(ii). The Citing Commissioner's Complaint states:

“From a South African scrum which they win, the ball is passed to their backs. The SA out half kicks the ball ahead and the SA13 gives chase. The England15 is covering the advancing ball and runs towards it. As the ball bounces he jumps in the air with both feet off the ground and catches the ball. The advancing SA13, with his right hand and arm outstretched, makes contact with the right leg of the England 15 causing him to rotate in the air so that both his legs are through the horizontal and causing him to land dangerously on the left hand side of his face and neck area. The England 15 received momentary medical attention but was fit to continue the game.”

- (ii) The Referee, Paul Williams (NZ) having reviewed the incident on the big screen with the TMO. The Referee's report stated: “As the England player leapt for a ball in the air he was then tackled by SA13. The England player landed in a dangerous position on his arm and shoulder. SA13 was issued a yellow card.

8. E15, Max Malin stated:

“A ball got kicked behind our frontline defence, the ball bounced up high so I jumped to catch it. The Player then swept my legs from underneath resulting in me landing upside down. I managed to tuck my head and roll so that I landed on my neck/shoulder”

9. Dr Rayner stated: “I attended Max on the pitch immediately following the tackle involving the SA player. He appeared to have landed heavily from height on his left shoulder. When I reached Max he was lying on his back. He was conscious and speaking. I initially secured his neck in view of the mechanism of injury. Max denied any neck pain, stating he landed on his left shoulder. He was alert on the AVPU scale. Initial assessment revealed no significant areas for concern. I then assessed him using the ‘Maddocks questions’, which he answered without problems. I then cleared his neck and sat him up. He continued to deny any head or neck pain. I then cleared him to continue playing. Immediately post match he reported a ‘dead’ left shoulder, possibly as a result of the incident, however he also reported that he had taken a direct to that shoulder prior to the incident and was uncertain which was responsible for his discomfort. He didn't require analgesia overnight and assessment this morning reveals no neck pain with a full range of movement, some tenderness in his left shoulder, but no weakness and no neurological symptoms. My expectation is he will be fully fit for selection for the final in 5 days time”.

10. The DVD footage which I received reflects the content of the citing complaint. It highlights the very dynamic nature of this incident and the high speed at which both players are running. The ball also bounces in a very unpredictable way.

11. At the hearing, the Player told me that after SA had won the scrum, SA10 kicked, the ball was slightly deflected by an English player, he started to chase ball in an arcing run. He was focused on the ball and running at full speed. He saw an opportunity to get to the ball first and secure possession. He was aware that E15 was closing in towards the ball. His sole intention was to secure possession of the ball, as he got close to the ball, his right arm is outstretched ready to catch the ball and at the last minute the ball bounces high. He did not think E15 would jump for the ball but he did in the last split second as E15 advanced onto the ball. His right arm makes contact with E15's right leg who falls to the ground. The Player fell to the ground on his back and immediately holds his hands up. He apologised to E15 whilst he was getting treatment.

I then asked The Player to review the video footage of the alleged incident with me. He agreed that it was possible that given the high bounce of the ball in front of the Player as he advanced that E15 might jump for the ball. At the time he didn't think E15 would jump. He agreed that he was aware that E15 had caught the ball albeit at high speed and in a dynamic situation. He also agreed that he continued to run at speed and did not change the position of his arm, having positioned it to catch the ball nor did he in any way attempt to slow down, drop his arm or take any action to reduce or attempt to reduce or minimise the possibility of contact.

He confirmed to Miss Nolan that he took no action to pull out because of the speed he was running, and accepted that even at the last minute it was not unreasonable to anticipate that E15 might jump for the ball.

12. Mr Smith repeated his primary submission contained in the responses to directions (see paragraph 4 above) plus the following oral submissions:-

- (i) I should not impute knowledge of recklessness to the Player given the very dynamic nature of this incident, he had embarked on an arcing run with the sole intention of securing possession of the ball. The key was the speed at which this incident happened.
- (ii) Did the Player have the chance or opportunity to realise that E15 having jumped for the ball he might collide with E15? The answer, Mr Smith submits, is no. He had no time to pull out or take any action to avoid contact with E15. The contact was in effect "accidental" based upon the Player's evidence of his intention which justified no further sanction.

13. Miss Nolan made no specific submissions in respect of the evidence.

DECISION AS TO CULPABILITY

16. In private, I reviewed all the evidence and taking into account the submissions reviewed the DVD record frame by frame but more so in real time to appreciate the dynamic nature and speed at which this incident happened.

17. My findings of fact as to the alleged are as follows:

- (i) I accept the Player's evidence that his primary intention was to chase and secure possession of the ball, in an arcing run. His actions were consistent with this intention, importantly the outstretched right arm immediately before the ball bounced.

- (ii) He was aware that at the very last second E15 had jumped and beaten him to securing possession of the ball. Immediately before the collision the DVD shows the Player looking/glancing up at E15 who has secured possession. I reject the suggestion that the Player did not know, albeit in the very last second before contact that E15 was in the air off the ground.
- (iii) The Player does not take any evasive action to avoid or attempt to avoid or minimise the possibility of contact. He does not drop his right arm or change in any way the position of his arm or any part of his body but continues forward with his arm outstretched.
- (iv) E15 is in the air with both legs off the ground at the point of contact. The contact (with his right arm is at least a tap within the definition of Law 10.4(i)) causes E15 to spiral in the air and fall to the ground landing on his left shoulder/neck area.
- (v) Save for on field medical assessment E15 is not injured and is able to resume playing. Dr Rayner stated that E15 post match complained of a dead shoulder but that E15 had sustained a knock to his shoulder prior to this incident. Based on this evidence I cannot be satisfied to the required standard that the dead shoulder was caused by this collision.

It was submitted by Mr Smith that this collision was “accidental” given the speed and dynamic nature of it, notwithstanding the Player admitting foul play in the responses to directions, although I accept that this submission was in the context of supporting his no further sanction submission. I reject this submission. “Accidental” means a happening by chance, unintentionally or unexpectedly. The rugby definition of “reckless” is “that the player knew (or should have known) that there was a risk of committing an act of foul play”. Based upon my findings above the Player made reckless contact with the right leg of E15 in that (a) he looked up before contact and was aware that E15 was off the ground in possession of the ball but continued with his original intention with arm outstretched when it was a lost cause; and crucially in my judgment (b) failed to adjust or change the trajectory of his arm or take any evasive action to avoid or minimise the possibility of a collision, he maintained the position of his right arm. The right arm may have missed E15’s legs, but it did not and caused E15 to fall to ground. It follows, therefore that this contact did not happen by chance or unexpectedly. The Player made a split second decision to maintain the position of his arm and in doing so recognised or should have known that there was a risk his arm may come into contact with E15 who was off the ground and thereby commit an act of foul play. In my judgment the player knew there was such a risk. If the Player had dropped his right arm or changed its position or trajectory or made some effort to minimise the effect of probable contact eg by evasive shoulder movement then Mr Smith’s submission may have been arguable.

SANCTION

18. As to sanction, Mr Smith submitted that based upon my findings the relevant factors under Regulation 12.10.1(a) were reckless offending, the speed and dynamic nature of the incident in relation to gravity and the nature of the actions-the trailing arm, the vulnerability of E15, the absence of injury all of which justified a low end entry point of 3 weeks. There were no aggravating factors. In mitigation, whilst the Player had argued that there should be no further sanction he had admitted foul play. He was 19 years of age, captain of the South African U20 side, captain of Eastern Province U19 and also captain of Eastern Province Currie Cup Senior XV. He had a flawless record

and character, he had shown remorse and apologised to E15 immediately after the incident and his conduct before me was respectful. A 1 week deduction was justified as a starting point. Mr Smith submitted that a 2 week suspension for this offence would be wholly disproportionate for the level and type of offending and following the rationale set out in Galarza RWC2015 (Christopher Quinlan QC) which was approved on appeal, this was an appropriate case to apply this provision (Regulation 12.10.3 (c)).

19. In assessing the seriousness of the offence pursuant to Regulation 12.10.1 (a) based upon my findings above I determine as follows:-

(i) The offending was reckless.

(ii) Any contact with an opponent whilst in the air is potentially grave given the risk of injury. The collision looked horrendous, given the fast speed at which both players were running.

(iii) Retaliation, provocation and self-defence are not relevant.

(iv) The contact was an arm against E15's leg whilst off the ground.

(v) E15 suffered no apparent injury. Whilst E15 sustained a dead shoulder, the medical evidence was inconclusive as to whether a prior knock to this incident or this incident caused the dead shoulder. Nevertheless E15 resumed playing after an on field medical check up.

(vi) E15 was vulnerable, he was off the ground with both feet at a considerable height.

(vii) There was no premeditation-it was a spontaneous reckless act.

(viii) The act was completed.

There is no other relevant feature of the Player's conduct in relation to the offending save that I recognise this offending was committed in a very dynamic situation.

In balancing the various factors no one factor is determinative but intent and injury are frequently the most relevant. I considered with care whether the above findings merited a mid entry point. If E15 had been injured or removed from the field of play then the entry point, notwithstanding the reckless nature of the offending, would have been categorised as mid or top end. Vulnerability was also a relevant factor together with the very dynamic speed of this incident, all of which had to be carefully balanced. With some reservations, I came to the conclusion that the offending merited a low end entry point of 3 weeks in accordance with Appendix 3 of the Regulations. Pursuant to Regulation 12.10.3 I find there are no aggravating features.

20. Pursuant to Regulation 12.10.3, I make the following determination in respect of mitigating factors:

- (i) The Player accepted the act of foul play. He attempted to persuade me not to impose any sanction.
- (ii) The Player has an excellent disciplinary record having never appeared before a disciplinary panel or a judicial officer previously.
- (iii) The Player is 19 years of age and to that extent young and inexperienced in adult rugby although I note that he has already captained Eastern Province senior Currie Cup XV. I note also that he captained his school-Grey College and Eastern Province U19.
- (iv) The Player's conduct before me was respectful and appropriate.
- (v) The Player apologised to E15 on the field immediately after the incident.
- (vi) There are no other off field mitigating factors,

Based upon the above mitigating factors I determine that the Player is entitled to a reduction in sanction from the entry point of 1 week (equivalent to the maximum which I can allow on an entry point of 3 weeks). In respect of the submission that I should apply Regulation 12.10.3(c) I reject the submission. All mitigating factors are present but I do not consider that a suspension of 2 weeks is completely totally or entirely disproportionate for the level and type of offending (as per Galarza). Based upon my factual findings whilst this offending was reckless, E15 was vulnerable at a considerable height. Taking into account World Rugby's Memoranda on tip tackles, dangerous tackles to the head and the potential serious consequences of offending concerning the area of the head, whilst this offence is not the subject of a separate World Rugby Memorandum, given the potential risk of catastrophic injury in offences of victim players falling from a considerable height, I cannot conclude that in the circumstances of this case 2 weeks is wholly disproportionate.

The Player is therefore suspended from playing for a period of 2 weeks.

21. The suspension of 2 weeks means that in the context of the Tournament Regulations he will miss match day 5 on 25th June, equivalent to a suspension of 1 week. I was informed by Mr Smith that he was due to play on 2nd July for Eastern Province u19. I am satisfied that this a meaningful game for the Player. Therefore, the Player is suspended from playing rugby until midnight on 3rd July 2016. He is free to play again on 4th July 2016.

22. The Player's right of appeal was drawn to his attention pursuant to Regulation 12.13.

Mike Hamlin (England)
Judicial Officer
24th June 2016.

