

WORLD RUGBY

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND

IN THE MATTER OF COMPLAINTS AGAINST PLAYERS, NAMELY GUILLAUME BROUQUI AND ANDONI JIMENEZ AND THE TAHITI RUGBY UNION IN CONTRAVENTION OF WORLD RUGBY REGULATION 8

Judicial Officer

T M Gresson (New Zealand)

Hearing

Conducted on the papers by way of written material

Parties

World Rugby
Tahiti Rugby Union

Guillaume Brouqui (Player)
Andoni Jimenez (Player)

Attendances

Yvonne Nolan (Counsel for World Rugby)
Sandra Laudon (Maître for the Tahiti Rugby Union,
Guillaume Brouqui and Andoni Jimenez)
Charles Tauziet (President Tahiti Rugby Union)

Introduction

1. Following investigations¹ World Rugby has charged the Tahiti Rugby Union ("the Union"), Guillaume Brouqui ("Brouqui") and Andoni Jimenez ("Jimenez") ("the Players") with breaches of Regulations 8.1 and 8.5 of World Rugby Regulations Relating to the Game. It was alleged the Union and Players were in breach of

¹ Initially by Oceania Rugby and then World Rugby

the Regulations in that the Players were not eligible to represent the Union's Senior Fifteen-aside National Representative Team in a Rugby World Cup ("RWC") qualifier and Oceania Cup match played on 4 August 2017 between the Cook Islands Rugby Union ("CIRU") and the Union played in Rarotonga. Tahiti won the match by 13 points to 9. Brouqui (No 9) scored a try and Jimenez (No 10) kicked a penalty. The former played the whole match; the latter played 84 minutes (the match lasted 99 minutes) before being substituted.

2. The charges arose as a result of the CIRU querying the eligibility of three players (including Brouqui and Jimenez). Initially, an investigation was conducted by Oceania Rugby but subsequently a further investigation was conducted by World Rugby culminating in the charges being brought.
3. The charges were referred to the Chairman of the Judicial Panel (Christopher Quinlan QC) for consideration by an independent Judicial Officer following which I was appointed to hear and determine the matter.
4. The charges were denied by the Union and the Players. They were represented by Maître Sandra Laudon, based in Papeete, Tahiti.

Procedure in Relation to the Determination of the Charges

5. Following receipt of the charges and accompanying documents, Minutes were issued which included directions as to the process to be followed in relation to the determination of the charges. Unfortunately, the Players and the Union have not always complied with the directions and accordingly, in the absence of sworn affidavits by the Players (as directed in a Second Minute dated 22 February 2018), this decision will be based on all the written submissions, evidential and background material received at various times from Maître Laudon and Ms Nolan (Counsel for World Rugby). Given the written material which has been received, I do not consider an oral hearing is necessary as the matter can be conveniently dealt with on the papers. Indeed, neither Ms Nolan or Maître Laudon requested an oral hearing.

The Charges² and Regulatory Framework

Eligibility to Play for National Representative Teams

6. The charges alleged breaches of Regulation 8.1. It states:

“Subject to Regulation 8.2, a Player may only play for the senior fifteen-a-side National Representative Team, the next senior fifteen-a-side National Representative Team and the senior National Representative Sevens Team of the Union of the country in which:

- (a) he was born; or*
- (b) one parent or grandparent was born; or*
- (c) he has completed thirty six consecutive months of Residence immediately preceding the time of playing.”*

7. Essentially, World Rugby alleged breaches of Regulation 8.1(c) in that neither Player had completed thirty six consecutive months of residence immediately preceding the time of first playing for the Union on 6 July 2013 and thus, thereafter, were ineligible to represent the Union, including the match played on 4 August 2017. Neither Player was born in Tahiti, or had a parent or grandparent born in Tahiti.

8. Regulation 8.2 summarised provides:

A Player who has played for the senior fifteen-a-side National Representative Team or the next senior fifteen-a-side National Representative Team or the senior National Representative Sevens Team of a Union is not eligible to play for the senior fifteen-a-side National Representative Team or the next senior fifteen-a-side National Representative Team or the senior National Representative Sevens Team of another Union.

9. Regulation 8.3 provides:

“For the purposes of this Regulation, a Player is deemed to have played for the senior fifteen-a-side National Representative Team or the next senior fifteen-a-side National Representative Team of a Union if:

- (a) He is selected for such team to play in an International Match against the senior fifteen-a-side National Representative Team or the next senior fifteen-a-side National Representative Team of another Union (or in a fifteen-a-side international Match against another Union’s senior or next senior Touring Squad during a*

² Tahiti Rugby Union

World Rugby hereby charges the Union with the following breaches of World Rugby Regulation 8:

Charge 1: The Union breached Regulation 8.1 in fielding an ineligible player (Guillaume Brouqui) and is strictly liable in accordance with Regulation 8.5.

Charge 2: The Union breached Regulation 8.1 in fielding an ineligible player (Andoni Jimenez) and is strictly liable in accordance with Regulation 8.5.

Guillaume Brouqui

World Rugby hereby charges Guillaume Brouqui with the following breach of World Rugby Regulation 8:

Charge: Guillaume Brouqui breached Regulation 8.1 by playing for the senior fifteen-a-side National Representative Team of the Union when he knew or ought to have known that he was not eligible in accordance with World Rugby Regulation 8.1.

Andoni Jimenez

World Rugby hereby charges Andoni Jimenez with the following breach of World Rugby Regulation 8:

Charge: Andoni Jimenez breached Regulation 8.1 by playing for the senior fifteen-a-side National Representative Team of the Union when he knew or ought to have known that he was not eligible in accordance with World Rugby Regulation 8.1.

World Rugby approved International Tour) and is present at the Match played by that team either as a replacement, substitute or a playing member of that team and has, at the time of the Match, reached the age of majority; or

- (b) ...
- (c) ...
- (d) ...”

10. Regulation 8.5 provides:

Responsibility, breach and penalties for a breach of Regulation 8

8.5.1 Unions

Regulation 8 is a strict liability offence and shall be construed in accordance with the principles of strict liability under English law. It is not, therefore, necessary that fault or intent on the part of a Union be shown in order for a breach of Regulation 8 to be established. Nor is lack of fault or intent on the part of a Union a defence to a breach of Regulation 8. For the avoidance of any doubt (and without limiting a Union's other obligations and responsibilities for the conduct, acts or omissions of its members and Persons under its jurisdiction pursuant to any other Regulation) Unions are responsible and accountable for the conduct of their Players and all Persons under its jurisdiction in relation to compliance with the provisions of Regulation 8 and any breach of Regulation 8 by such Player(s) or Person(s) shall be deemed to be a breach of Regulation 8 by the Union concerned. Each breach of Regulation 8 by a Union, howsoever arising, will result in a minimum fixed fine being imposed on the Union concerned. The minimum fixed fines for each breach of Regulation 8 are as follows:

- (a) *For a Union that is represented on the Council £100,000 sterling;*
- (b) *For all other World Rugby Member Unions £25,000 sterling.*

Based on the facts and circumstances of any breach of Regulation 8 the applicable minimum fixed fine as set out above may be increased. In addition, other penalties as set out in Regulation 18.6 may also be imposed on the Union concerned.

...

Players

8.5.3 Notwithstanding Regulations 8.5.1 and 8.5.2 above and without prejudice to any sanction imposed on a Union, Players may also be subject to sanction in accordance with Regulation 18 where they breach Regulation 8 in circumstances where they knew or ought reasonably to have known they were not eligible to play for the relevant Union at the time of participation.”

11. It will be noted that in respect of Unions, Regulation 8.5 creates an offence of strict liability whereas in respect of the Players it must be established the Players

knew, or ought reasonably to have known, they were not eligible to play for the Union at the time of participation.

Facts

12. Prior to participating in the match on 4 August 2017, the Union and Players signed the Oceania Rugby Cup Terms of Participation and the RWC Qualifier Terms of Participation, both of which governed participation in the match. Importantly, in relation to the charges, by signing the Terms of Participation, they agreed to comply with the World Rugby Regulations Relating to the Game.

13. Based on the Match Sheet and the Union's Head Coach's (Mr Romi Ropati) written confirmation, the Players first represented the Union on 6 July 2013 in an Oceania Cup Match played against the Cook Islands in Rarotonga. Mr Ropati also confirmed the Players' eligibility was based on residency stating "(they had) *completed 36 months of consecutive residency immediately preceding playing for Tahiti*". Subsequently, they represented the Union in 2013, 2015 and 2017 Oceania Cup Tournaments.

14. Brouqui was born in France. There is no evidence as to the countries of birth of his parents or grandparents. His Tahiti Certificate of Residence³ dated 11 September 2017, initially provided by Mr Ropati, and subsequently by Maître Laudon, stated the Player resided in Avatoru, Rangiroa⁴, Tahiti from an unspecified date in January 2009 to 20 February 2012. Thereafter, according to the Union, the Player returned to France (where he originally resided) to receive treatment for his back from an Osteopath who certified the treatment was provided between February 2012 and November 2012 for chronic back pain. Maître Laudon stated Brouqui then returned to Tahiti to "*train*" in preparation for the 2013 Oceania Cup Match. When he returned to Tahiti he stayed with friends and Mr Tauziet (Union President). There were no international matches between November 2012 and July 2013 and in spite of Maître Laudon's assertion that the Player's friends would be able to "*certify*" the Player stayed with them when he returned to Tahiti, no evidence was provided detailing the periods when the Player stayed with them after he had returned to Tahiti. Nor, has Brouqui provided any such detail. Further, Mr Tauziet did not provide details of the periods Brouqui resided with him during 2013 leading up to the

³ The Residency Certificate provided by the Union were described by Maître Laudon as:
"*... the undisputable proof that the dates reflect our information*"

⁴ Rangiroa is an atoll approximately 350 kms northeast of Tahiti

match played on 6 July 2013; only stating he "hosted" him "several times" from 2013 until 2015.

15. Jimenez was born in France and again, there was no evidence as to the countries of birth of his parents or grandparents. The Player's Tahiti Certificate of Residence dated 27 October provided by the Union stated, on the basis of his passport details, he resided in Tahiti from an unspecified date in July 2011 to December 2014. The certificate also stated that Jimenez declared he resided in Faa'a. The Player first represented the Union in the Oceania Cup Match played on 6 July 2013 at which stage he had resided in Tahiti for a period of 24 months. Subsequently Maître Laudon confirmed the Player settled and lived in French Polynesia in July 2011. She also stated Jimenez "first came to Tahiti in February 2011 with the Agen Club junior team" and "it is not possible to dispute the details relating to Jimenez's residency". Apart from stating Jimenez lived in French Polynesia for "over 36 consecutive months", no further details were provided. Maître Laudon further stated Jimenez also represented the Union in 2015 and 2017 Oceania Tournaments⁵ without any problems.
16. Maître Laudon explained French Polynesia is an "integral" part of France. The citizens of the former are French citizens and can move freely between France and Tahiti. However, it was beyond dispute Tahiti and France are separate member unions of World Rugby; the former being a member of the Oceania Association of Unions which includes the CIRU.
17. In relation to the Union, Maître Laudon stated it is a small Union dependent on volunteers. It has "very limited financial resources". The best players, who are amateurs, are sent overseas for further development. She stated the Union has selected the same group of players over the last few years and any notion of "fraud" should be rejected. She requested:

"If, by an extraordinary turn of event, in spite of Tahiti Rugby Union's good faith, an infringement was to be found against Tahiti Rugby Union that has been in existence since 1984 and with World Rugby since 1991, with no infringement ever recorded since then, the disciplinary bodies are asked to exercise the utmost clemency."

Findings in Relation to the Alleged Breaches

18. As indicated, Maître Laudon stated Tahitian citizens and also French citizens have freedom of movement between Tahiti and France and French Polynesia citizens are also French citizens. But, as noted, because of its membership of

⁵ Played in Papua New Guinea and Cook Islands respectively

World Rugby the Unions' Players represent Tahiti and under Regulation 8, except for the Olympic Games, a player's eligibility to represent a country is not determined by nationality or citizenship. Player eligibility to represent the National or next National Teams of the Union of a country is determined solely in accordance with World Rugby's Regulation 8 criteria.

19. Maître Laudon also submitted that as a period of four years and nine months had elapsed since the date of the alleged breach in July 2013 and the Players were permitted to play in the two subsequent Oceania Cup Tournaments, "*the limitation period in respect of the breach of regulations ... had expired*". But, breaches of Regulation 8 are not subject to a limitation period. Neither, as submitted by Maître Laudon, does "*ordinary law*" (her term) apply in relation to limitation periods in the context of Regulation 8. Further, as World Rugby submitted, if a player is ineligible when he first represented a union he cannot remedy his ineligibility by subsequent representation or a subsequent 36 months of residence. Maître Laudon also submitted there was a form of waiver or acquiescence in the Players' breaches in 2013 and 2015. Again, the equitable doctrines of waiver or acquiescence do not apply in the context of Regulation 8. In any event World Rugby only became aware of the alleged breaches in 2017.

20. In relation to Brouqui, I am comfortably satisfied it has been established he did not complete thirty six consecutive months of Residence immediately preceding when he first represented the Union on 6 July 2013. Guideline 14 to Regulation 8 defines Residence as "*the place or location in which the Player has his primary and permanent home*". The Regulation stipulates Residence must immediately precede the time of playing but in the Player's case there was a gap of 16 months when the Player, based on his Residency Certificate (which was not in dispute), was not a resident (as defined) of Tahiti.

21. During approximately eight months of the 16 month period identified above Maître Laudon stated Brouqui was in France where he received osteopathic treatment for low back pain. Subsequently, on an unknown date, he returned to Tahiti where he was "*hosted*" by the Union's President and stayed with friends. Unfortunately, there is a lack of probative evidence from the Player corroborated by others (eg. friends) as to when this occurred. I accept Brouqui returned to Tahiti during part of this period (possibly as part of the Union's preparation for the Oceania Cup match played in July 2013) but given the Player resided in France for eight months and the lack of detailed evidence as to his primary and

permanent home during the post November 2012 period, I cannot be satisfied Brouqui's primary and permanent home was in Tahiti.

22. As mentioned, the undisputed Certificate of Residence produced in respect of Jimenez stated he resided in Tahiti from July 2011 to December 2014. He also first represented the Union in the match played on 6 July 2013; thus, not satisfying the residential requirement by approximately twelve months. For this reason, I am comfortably satisfied the breach has been established in respect of this Player.
23. In relation to the Union, Regulation 2.1.2 provides each Union is responsible for ensuring compliance with all Regulations Relating to the Game. Accordingly it is the responsibility of each Union to ensure all players it selects are properly eligible within the provisions of Regulation 8; which as mentioned is a strict liability offence. Thus, as the Regulation clearly states, it is not necessary for fault or intent be shown on the part of the Union. Nor, as the Judicial Officer (Christopher Quinlan QC) stated in the case of Lithuanian Rugby Union and Mantvydas Tveraga (decision dated 8 December 2017), does "*inadvertance and/or misunderstanding of the regulatory or factual position ... afford a defence*".
24. Against this background, and given the ineligibility of both Players when they represented the Union in the match played on 4 August 2017, I find, as charged and particularised, the Union committed two breaches of Regulation 8.5 when they participated in that match. As explained, because of the Players' ineligibility when they first represented the Union in 2013, thereafter they remained ineligible to represent it.
25. In relation to the Players, as mentioned Regulation 8.5.3 requires proof of knowledge on their part and World Rugby properly accepts that in this regard it is "*not aware*" of the Player's position. Further, on the basis of the evidence provided by Maître Laudon in her submission, I cannot be satisfied the requisite element of knowledge has been established. But, given the Players did not provide sworn evidence as directed I defer making a final decision and allow World Rugby, following enquiries, if it wishes, to provide submissions in relation to the Players' state of knowledge.

Sanctions

Union

26. It has been emphasised in previous World Rugby eligibility cases⁶ and in the World Rugby guidelines Regulation 8 is a cornerstone provision governing the eligibility of players to play international rugby. Unless there is strict compliance with its provisions the integrity of the game and honest participation at international level, would be seriously undermined. Put simply, in terms of the eligibility rules there must be a level playing field. This is reflected in both the strict liability and level of sanctions available under Regulations 8.5 and the wide list of sanctions which are available under Regulation 18.6. A Judicial Officer is permitted to impose such penalties on all Unions as he or she thinks fit. Such sanctions may include a fine, the replaying of a match or the forfeiture of a match (refer Regulation 18.6.1(b)).
27. I accept Maître Laudon's submission that the Union is a "*hard working small federation and (at) a low level of competition*" and commendably provides overseas opportunities for development of its Players' rugby skills and experience. However, the mischief in relation to these breaches is that not only did the ineligible players fully participate in an important qualifying RWC match, but according to the team sheet they played in pivotal positions (Brouqui No 9, Jimenez No 10) and in a close scoring match significantly influenced the outcome by respectively scoring a try and penalty.
28. World Rugby indicated the CIRU sought to have the match result overturned and the outcome of the match be awarded to it. That view is supported by World Rugby. I agree. Given the breaches which have been committed by the Union, to not allow the result to change would not only be unfair to the CIRU but would not send a clear and deterrent message to Unions this important core regulation will be upheld and enforced. Accordingly, I direct the match is to be awarded to the CIRU.

Fine

29. Reference has previously been made to Regulation 8 which prescribes the minimum fixed fine for each breach for non-Council World Rugby Member

⁶ For example
[International Rugby Board v Rugby Union of Russia](#) (22 January 2003)
[International Rugby Board v Rugby Union of Russia](#) (14 February 2003)
[International Rugby Board v Kazakhstan & Uzbekistan](#) (3 June 2016)
[World Rugby v Lithuanian Rugby Federation and \(2\) Mantvydas Tveraga](#) (27 January 2018)

Unions and, based on circumstances of any breach, the minimum fine may be increased.

30. However, Regulation 8.5.2 provides:

"In exceptional circumstances, a Union in breach of Regulation 8 may make submissions to the relevant disciplinary body appointed under Regulation 18 to adjudicate on the case as to why the Union should not be subject to the applicable minimum fixed fine. For the avoidance of any doubt, however, the relevant disciplinary body shall only be entitled to reduce the applicable minimum fixed fine set out in this Regulation where the Union is able to provide clear and indisputable evidence that truly exceptional circumstances exist and that the Union concerned had taken all necessary steps to comply with Regulation 8."

(Emphasis added)

31. Given the ineligibility of both Players since 2013 their continued participation in International Rugby over a period of approximately four years, I am unable to find truly exceptional circumstances existed. Further, I found it troubling the Union failed to provide cogent evidence in support of its contention both Players complied with the residency requirement. Thus, I could not be satisfied it had taken all necessary steps to comply with Regulation 8.

32. Accordingly, I impose the fixed minimum fine of £50,000 for the two breaches. Having regard to the limited financial circumstances of the Union, the effect of the fine on the game in Tahiti, and the Union's participation in RWC 2019 has been terminated; I consider it is appropriate to adopt the approach in previous cases (including the Appeal Committee in the case of International Rugby Board v Rugby Union of Russia (supra)) whereby payment of the fine will be suspended, provided the Union does not commit a further breach of Regulation 8 at any time prior to 4 August 2022. Thus, if a further breach is committed during the five year period the Union will be liable to immediately pay the suspended fine, in addition to any other sanction imposed as a result of a further breach. For the avoidance of doubt, a further breach will be deemed, for these purposes, to have occurred at the time an ineligible Player is fielded, regardless of when a final determination is made in respect of that Player's ineligibility.

Decision

33. (a) The result of the match played on 4 August 2017 is overturned. I direct the winner is the CIRU Senior National Team.

- (b) Impose a total fine of £50,000 on the Union for its two breaches. Payment of the fine will be suspended for a period of five years provided there is compliance with the terms outlined above (refer paragraph 32).
- (c) In relation to the alleged breaches by the Players, for the reasons discussed above (refer paragraph 25) I allow World Rugby, if it wishes, to make further submissions which are to be filed by 5.00 pm GMT on 9 April 2018. The Players' submissions in reply shall be filed by 5.00 pm GMT on 23 April 2018. World Rugby may file submissions in reply to the Players' submissions in relation to any fresh matters raised by 5.00 pm GMT on 30 April 2018.

Costs

34. My preliminary view is there should not be a direction as to costs against the Union. However, World Rugby may if it wishes file a Memorandum in relation to costs by 5.00 pm GMT on 30 April 2018.
35. The Union may respond to that Memorandum by 5.00 pm GMT on 14 May 2018.


T M Gresson
Judicial Officer

21 March 2018