

RUGBY FOOTBALL UNION.

DISCIPLINARY APPEAL HEARING.

At: Holiday Inn Gatwick Airport, Povey Cross Road, Horley. RH6 0BA.

On: 3rd June 2008.

JUDGMENT.

Player: Stuart Hathaway **Club:** Hove RFC.

Match: Bognor 2nd XV v Hove 2nd XV.

Venue: Bognor RFC **Date of match:** 23rd February 2008.

Panel: Robert Horner, Julian Morris, Michael Cordell.

In attendance from RFU: Bruce Reece-Russel (BR-R) and Brenda Parkinson.

Attending: The Player, Andy Ward (Hon Secretary, Hove RFC) (AW). Kieron Robertson (KR), and Mike Slade (MS).

Frank Edmonds (Chairman, Sussex RFU Disciplinary Committee) (FE), Roger Edmondson (Hon Secretary, Sussex RFU Disciplinary Secretary)

To consider: An appeal by the Player against the decision of the Sussex RFU Disciplinary Committee on 10th April 2008 to suspend him from playing for a period of 6 weeks from 20th March 2008 after finding him guilty of the offence of committing a dangerous tackle contrary to Law 10 (4) (e).

Introduction.

1. The Player & AW did not object to the composition of the Panel.
2. Documents 1 to 16 included in the pack circulated by the RFU Disciplinary Secretary were agreed. It was further agreed that The RFU Appeal Decision of 14th November 2005 should be added for completeness as Document 17. No other documents lately received by the RFU were relevant.
3. The Player confirmed his date of birth as 20 January 1986.
4. The date of the Notice of Appeal from Hove RFC was thought to be 21st April 2008. BR-R confirmed that it had been received within the requisite time limit.
5. It was established that the appeal was against conviction
6. The Player confirmed that he was playing as wing threequarter in the match
7. No further preliminary issues were raised.

Appeal

The Panel has considered:

1. The written Notice of Appeal on behalf of the Player.
2. The written report of the referee
3. The Disciplinary Hearing Report of Hove RFC.
4. The Judgment of Sussex RFU.
5. The other documents in the RFU pack.
6. The oral submissions of, and replies to questions from, AW, the Player, KR, and MS.
7. The oral statements of, and replies to questions from, FE.

The hearing of the appeal.

The chairman enquired of AW, who was the main spokesman on behalf of the Player, the reason for the attendance of the two witnesses and a possible third. AW explained that FE, without prior warning to the Player and his club, had seen fit to read out at the Sussex hearing two statements which he had obtained from Bognor, and which were taken into account (subject to RFU Disciplinary Regulation 7.1.8) by the Sussex Disciplinary Committee as evidenced by its judgment. The Player had not been given prior sight of them, and indeed the first time that he or any member of his club had seen them was when the RFU pack was received the previous Saturday. Accordingly he wished to have the opportunity to bring rebuttal evidence. The Panel took the view that, in these circumstances, the appeal should proceed by way of a rehearing de novo on the evidence rather than, possibly, being determined on an allegation of lack of due process at the original hearing.

The evidence against the Player:

Pursuant to RFU Disciplinary Regulation 11.7.6, the evidence against the Player was taken first. It was agreed by all present that this comprised the Report of the referee, and the two statements obtained by FE from Bognor players. It was common ground that the report had been submitted by the referee without the name of the Player included as he had not been able to ascertain this. Unusually, the report does not identify the Player either by position or jersey number. The relevant part reads: "Maul forms Bognor driving towards the Hove line. Hove player lifts leg in fast driving maul to over his waist level in attempt to stop drive. I whistled to stop play for safety as I felt a dangerous collapse at speed was imminent. I am situated 4m with a clear view from the offence infield facing directly at maul slightly on Bognor side with ball in view. Just after or at the same time as the whistle Bognor half back removes ball from back of maul and runs 2m to the try line where after the whistle, I saw the Hove Player tackle the Bognor player lifting him off his feet and in the ensuing tackle invert the Bognor player so his head is facing the ground with the Bognor Player's hips level with the Hove player's chest. He made no effort to alter his position before dropping the Bognor player

onto his upper neck and back.” The referee further stated in his report that it was in his view an instant red card offence. The Bognor player was not injured and continued in the game for a further eight minutes when the referee abandoned it “for safety and discipline issues with the Hove team.” The referee in his report also confirmed that immediately after the tackle there had been a fracas in which he had found it difficult to identify any retaliation offenders.

FE confirmed that the referee had attended the Sussex hearing and stated that he had verified the statements in his report. The Player suggested that this was incorrect and that the referee at the hearing had materially altered his evidence by stating that he had not witnessed the whole tackle, but only what occurred when he blew his whistle. The referee was accordingly contacted via his mobile phone when on his commuter train travelling home. He first confirmed with the chairman that although he had not specifically identified the Player in his report, he had done so at the Sussex hearing as the player he had sent off for a dangerous tackle. He then confirmed that he had not witnessed the Player actually making the tackle. At that time he became aware of it, the Bognor player was in a position with his head facing the ground and was allowed to fall as the Player released him. He had not been aware of any other player being involved, but could not specifically deny that one had been. In reply to a question from AW, the referee stated that he considered that the Player had a duty to put his player down safely. He also confirmed that, immediately after the match had been terminated, the Player had approached him as he was leaving the pitch to supply his details, but he was not prepared to take them until he had showered. In reply to questions from the Panel, the referee stated that he did not know quite where the Player was holding his opponent, and confirmed that the tackle took place near the touch line and on or by the try line.

The panel then considered the two statements obtained by FE from Bognor players. FE, in reply to the chairman, stated that he had decided to seek statements through the Hon Secretary of Bognor to corroborate the evidence of the referee. When asked whether this was his standard practice, he stated it was not; he might have done it twice previously during the past ten years. Upon enquiry as to why he had seen fit to take this action in the current case, he simply stated that it seemed appropriate, not least because he did not know whether the Player or Hove would attend the hearing, having already missed one, and he therefore considered that additional evidence to support the referee would be helpful. FE acknowledged that the statement from the Bognor captain was not player specific and could have related to any Hove player, and that the statement from J. Toone simply mentioned a Hove winger.

The Evidence for the Player:

The Player confirmed the award of the penalty for dangerous play at the Maul. Bognor No 9 took a quick tap immediately. The Player moved forward to tackle him. On impact, Bognor 9 half turned as the Player grabbed him round the chest in an upright tackle as he was moving forward. He did not lift him, but just held on until the whistle went when

he released immediately, playing to the whistle. He had not been aware that another member of his team had tackled Bognor 9 around the legs and lifted them from the ground. As the player released Bognor 9, he fell forward onto his shoulder rather than his head. In reply to questions from the panel, the Player stated that the Bognor 9 was shorter than him but was perhaps slightly taller than the average scrum half. He reiterated that he was not aware of another player taking Bognor 9's legs away or thrusting them upwards; there was momentum in his tackle and it was all over very quickly. He believed that he was correct in releasing on the whistle and he did not consider it to be dangerous. He also confirmed that Bognor 9 then jumped up and punched him; he did not retaliate other than to hold his opponent's arms to prevent being punched by him again.

KR stated that he was playing at scrum half for Hove. He confirmed the award of the penalty at the maul by the touchline, which was taken immediately by Bognor 9. The player smother tackled Bognor 9 around the chest. He, KR, came in immediately and further tackled Bognor 9, lifting his legs up to the height of his, KR's, chest. He held him until the whistle went, when he let go and the Player also let go. Bognor 9 then swung at the Player. On being questioned by the Panel, KR stated that he could not be certain who released Bognor 9 first; it may well have been him, but he could not be certain. He was certainly not aware of Bognor 9 being held upside down in a dangerous position.

MS, as Team Manager, had been on the touchline, just outside the Hove 22, on the same side of the pitch as the maul. The penalty was awarded to Bognor, and quickly taken by Bognor 9. The Player tackled Bognor 9 around the torso, and KR then took him round the legs. He was absolutely certain that both players had been involved in the tackle. He could not say who let go first. He assumed that at the moment of release both legs of Bognor 9 were off the ground. When released, Bognor 9 did a perfect forward roll and immediately came back and swung at the Player. He could not see that the Player had done anything wrong. Before leaving, MS handed in a statement from Alex Pell-Stevens, the captain of Hove 2nd XV on the day, who had hoped to attend the hearing but had been unable to do so.

In summing up, AW, who had not been present at the match, confirmed that the Player had been hot-headed in his late teens, but had learned his lesson, and had not been in trouble for over two years. During that period, he had not been admonished by a referee or been the subject of a yellow card. The sending off had been thoroughly investigated by the Hove club and an internal disciplinary hearing had taken place at which all concluded that the Player had done nothing wrong when he tackled Bognor 9. The Player had nothing further to add.

Decision

The Panel painstakingly considered the facts as adduced in the evidence before it as there was a clear conflict of evidence. On the one hand, the

referee's report, although not identifying the Player by position or number, indicated the commission of an act of dangerous foul play at the end of a tackle for which he sent the Player off. As written, the report implied that the referee had observed the commission of the tackle throughout. However, at both hearings, he had corrected this by stating that he only observed the release by the Player of Bognor 9 in a manner which he construed as being dangerous. Hence the red card. The Sussex Disciplinary Committee had also taken into consideration two statements which FE had, exceptionally, seen fit to obtain from Bognor without giving any prior notice of them to the Player. Such conduct, it seemed to the Panel, clearly breached the requirement of RFU Disciplinary Regulation 6.4.1 and could have invalidated the Sussex decision. However, the statements had been circulated prior to the appeal with the result that the Player had sought a de novo hearing to produce evidence in rebuttal. This justified the procedure which the Panel had adopted. However, the Bognor statements were defective. That from T. Spurle did not identify in any way the Hove player allegedly making a dangerous tackle, and could have applied as much to KR, or, indeed, any other member of the Hove team, as to the Player. The other statement from J. Toone, although referring to "the Hove winger", contains allegations at variance with those in the Referee's report and the defective statement from T. Spurle. Accordingly, the Panel has resolved that it cannot take either statement into account.

On the other hand, the Panel had the clear evidence from the Player that he had simply grasped Bognor 9 around the chest and did not turn him, although the attentions of KR seemingly had that effect. KR is clear that he was responsible for lifting Bognor 9's legs from the ground, and his evidence is corroborated by MS, a seemingly responsible and objective Team Manager, who from his position, admittedly further away than the referee, but possibly with a wider perspective, could not see anything wrong in the Player's conduct in the tackle. There is uncertainty as to who last released Bognor 9, the player or KR. If it was KR, then his actions could have resulted in the angle of fall, and it would be arguable that he, as the last player in contact, owed a duty of care as to release. At the Hove RFC hearing, seemingly KR had accepted that if an offence had taken place, he was the perpetrator. If the Player was the last to release, and so, arguably, had a duty of care, was he in a position at that moment to realise it? It has to be borne in mind that this was seemingly a moving and fluid situation, which happened quickly, and could well have ended differently but for the referee's whistle which caused both Hove players to release their grip earlier than might otherwise have been the case.

In such a case of conflict, the independent evidence of the referee has to be of considerable evidence. The Panel has great sympathy for the referee in this case; he clearly was enduring a torrid afternoon which ultimately led to his abandoning of the game. He was attempting to sort out an act of dangerous play at a maul, the penalty was taken quickly at that point when his attention was not on the ball, and as he blew to bring it back, he saw the end of a tackle which he deemed to be dangerous and took action accordingly. However, the totality of the evidence indicates

that the reality of the situation may not have been as he honestly interpreted it. The Panel is prepared to accept that a second player (KR) was materially involved in the tackle and may well have been primarily responsible for such danger as ensued.

The Panel accepts that the Player did not deliberately tackle in a dangerous manner or that he intentionally committed the offence for which he was sent off. Was he, however, reckless in letting go as and when he did; in other words, in that split second, should he have considered that in letting go as he did, there was a risk that he might commit an act of foul play? After anxious consideration of the evidence, the Panel has concluded with some reluctance that it cannot be satisfied on the balance of probabilities that the conduct of the Player was reckless and accordingly is obliged to allow the appeal.

Costs.

The Panel does not believe that Paragraph 11.10.1 was intended to apply in the case of a successful appeal. Accordingly, in the light of the decision reached as recorded above, the Panel anticipates that the fee paid by the appellant on making the appeal should be returned to him.

Signature: *Robert Horner.*

R. W. Horner, Chairman.

Date: 4th June 2008.