RUGBY FOOTBALL UNION

DISCIPLINARY JUDGMENT

Player: David Westhead Club: West Park St Helens RFC

Match: Tynedale RFC v West Park St Helens RFC

Venue: Tynedale RFC **Date of match:** 16th February 2008

Date of Hearing: 3rd March 2008

Venue: Holiday Inn, Leeds Brighouse

Panel: Clif Barker (Chairman) and Peter Rhodes

Secretary to the Panel: Bruce Reece-Russel

In attendance: (i) David Westhead (hereinafter referred to as "the Player"); and

(ii) Martin Strett, the Rugby Manager of West Park St Helens.

To consider: the sending off of David Westhead for an offence of verbal abuse of a match official contrary to Law 10(4)k, the particulars of the offence being:

On the 16th February 2008, David Westhead, West Park St Helens RFC verbally abused the match referee, Mark Liddell, by saying to him "Blow that for forward you c..t" during (31st minute of second half) the match Tynedale v West Park St Helens.

Plea: Not Guilty

Preliminary matters:

- 1. The Panel introduced themselves and those attending confirmed that they had no objection to the composition of the Panel and, in particular, to the fact that it was a two man Panel;
- 2. The Chairman explained the procedure which the Panel proposed to follow and those attending confirmed that they had no objection to it; and
- 3. Those attending confirmed that they had no other preliminary matters, which they wished to raise.

Evidence as to fact

The Panel considered:

- 1. The sending off report and oral evidence from the referee via a telephone conference link:
- 2. A written statement and oral evidence from the Player; and
- 3. A DVD of the incident.

Summary of the Evidence

1. In his written report, the referee states as follows:

"I was following play by approx 10m as a Tynedale player gave a pass to put his team mate in for a try on the West Park 22m line. I called "play on" as the pass was good. Behind me I heard "Blow that for forward you c..t." I turned round and made eye contact with Mr Westhead as he was 5-6m behind me and the only player within the vicinity. At this point Mr Westhead was sent from the field of play and the try was awarded."

2. The referee gave evidence before the Panel by a telephone conference link. He confirmed the contents of his written report and expanded on it. When the Tynedale player gave a pass to his "team mate," he heard a shout of "forward from somewhere." The referee shouted "play on". He then heard the words set out in his report, looked over his left shoulder and saw the Player 5 or 6 meters behind him. Questioned by the Player and Martin Strett, the referee confirmed that, when he looked over his left shoulder, the Player was the only player in the vicinity from where the abusive comment came and that he felt sure that he had sent off the right player. Questioned by the Panel, the referee confirmed that, at the time when he heard the comment, he was himself accelerating in order to get closer to the try scoring break and he felt certain that it was the Player who made the comment, which was uttered after the Tynedale player's pass to his "team mate" and before the try was actually scored. The referee was unable to be more specific on the precise timing of the comment between these two events. A DVD of the incident had already been viewed by the Panel and those present at the hearing (see 3 below). Unfortunately, the referee had not been given the opportunity of seeing the DVD and it was, therefore, difficult for him to comment. However, the Panel put to the referee what the DVD appeared to reveal (see again 3 below). The Panel also invited the referee's observations on the Player's contention (see the second paragraph of the Player's written statement at 4 below) that, after the game, the referee told him that, as the Player was the nearest person to him when he turned round, he had "assumed" that it was the Player who had uttered the abuse and that the referee then "actually apologised" and told him that "he was sorry if he had got it wrong." The referee confirmed that the Player did approach him as the two teams were leaving the field at the end of the game (either just before or just after the players had gone through the tunnel) but the referee maintained that he had definitely not spoken those words. In this respect, the referee stated that, in the conversation referred to, the Player told him that he, the referee, had got it wrong and that he, the Player would never use those words, at which the referee informed the Player that he had told him on the field at the time of the sending off that he had used those words and that they would be set out in the referee's written report.

- 3. The DVD revealed that, when the pass was made, which led to the try, it did not appear to be forward. The play was at that time about 40 meters away from the West Park try line. At that point, the referee and the Player were both running towards play and the referee appeared to be some 3 to 4 meters behind the play. However, the Player was not behind the referee but was about 2 meters to the referee's left and slightly in front of the referee. Furthermore, the West Park St Helens number 7 was also following play and he was running 3 or 4 meters behind the referee and positioned over the referee's left shoulder. The Panel also noted that both the Player and the West Park number 7 were wearing scrum caps. The Player and the referee go out of the picture when the try scorer is about 30 meters from the try line on what is then virtually an unopposed run in. This is because the camera follows the scorer's run in. At that point, the Player is still slightly in front of the referee and 2 meters to his left and the West Park number 7 is still 3 to 4 meters behind the referee. All three of them are still running towards the play.
- 4. The Player handed to the Panel a written statement of evidence. It reads:

"After approximately 70 minutes of the game a passage of play led to Tynedale scoring a try, immediately after the referee awarded the try he blew his whistle and summoned myself and our captain Steven Briers over to himself. He told Steven that I called him in no uncertain terms a c..t. At this point, I was sent from the field via a straight red card for referee match official abuse. I told the referee that he was utterly wrong and had embarked on a case of "mistaken identity" and that I did not call him a c..t.

After the match I approached the referee and he told me that he heard "someone" shout the profanity at him and when he turned round he saw myself, and as I was the nearest person to him "assumed" it was me, he actually apologised and told me that he was sorry if he had got it wrong.

In my job as an RFU Community Rugby coach I strive to always promote the game and its ethos to my utmost ability and certainly would never encourage or endorse referee match official abuse. I myself often referee small matches/tournaments at a school level and understand the disgusting nature of such an incident. I would never use that word on any level and especially not on a rugby pitch; I find the alleged charge against me a slur against my person and reputation."

5. In his evidence before the Panel, the Player confirmed the contents of his written statement. He added that, when he had the alleged conversation with the referee after the game, the West Park captain, Steven Briers, and Alan Clarke, a West Park official, overheard it. Questioned by the Panel, the Player said that he did not hear any abusive or other comment made by any West Park player and that, although the allegation was talked about in the dressing room after the game, noone had come forward to admit that they had said it. The Player also confirmed that neither Steven Briers nor Alan Clarke had submitted a written statement nor were they in attendance at tonight's hearing in order to give evidence.

6. At this point, an attempt was made by Martin Strett to reach Alan Clarke via the conference telephone link. However, he was not at home.

Decision and Reasons

Having carefully considered all the evidence, the Panel finds the Player not guilty of the offence of verbal abuse for the following reasons:

- 1. Paragraph 7.1.2 of the Disciplinary Regulations, which provides that a referee is an independent eye witness of what occurred and, thus, "his evidence or report carries considerable weight," does not, of course, apply to match official abuse. Consequently, the Panel is unable to attach any extra weight to the referee's evidence.
- 2. The Panel accepts that, unfortunately, the referee has not had the benefit of viewing the DVD. Had he done so, he would have been in a much better position to assist the Panel.
- 3. Furthermore, the Panel concludes that this was an extremely difficult situation for the referee to assess. The Tynedale players executed and finished their try scoring move at considerable pace. In addition, the referee had to concentrate on a number of matters virtually simultaneously as, for example, (i) following a speedy break, (ii) adjudicating on an alleged forward pass, (iii) looking over his left shoulder whilst still running in order to try and establish the source of the abusive comment and (iv) following play to the try line in order to check that the try was actually scored. The Panel, therefore, has some sympathy with the predicament in which the referee found himself, a predicament which could quite easily have led to a genuine and understandable case of mistaken identity.
- 4. Furthermore, the evidence revealed by the DVD supports the Player's case in that at or about or just before the abusive comment was made, the Player was not behind the referee but slightly in front of him and to his left. At that point, it is clear that the West Park number 7 was 3 to 4 meters behind the referee and that both the player and the number 7 were wearing scrum caps. Understandably, the referee cannot now be precise as to when the comment was actually made in this fast passage of play, save to say that it was some time after the pass was made and before the try was actually scored. There is a possibility, therefore, that, after the Player and the referee disappear from view on the DVD (because the camera follows the try scorer), the referee could have overtaken the Player and left him 5 to 6 meters behind him. However, the Panel considers this to be unlikely and, on the evidence revealed by the DVD, the Panel concludes that the more likely offender was the West Park number 7 and not the Player.
- 5. In these circumstances and applying the standard of proof required (ie proof on a balance of probabilities), the Panel is not satisfied that the Player committed the offence and, accordingly, the Panel finds him not guilty of the offence. The Panel, therefore, dismisses the charge against the Player.

6. Finally, the Panel does not accept on the evidence before it that the referee informed the Player after the game that he only "assumed" that the Player was the guilty party and that he apologised if he had got it wrong. In this respect, the Panel bears in mind that the Player and the West Park Club could have easily adduced written or oral evidence of this important contention but have omitted to do so.

Clif Barker Panel Chairman 5th March 2008