RUGBY FOOTBALL UNION DISCIPLINARY HEARING

At Holiday Inn, Filton, Bristol

On 24 July 2008

JUDGMENT

Player: SERU RABENI ('the Player')

Club: Leicester Tigers

Panel: Christopher Quinlan (Chairman), John Brennan and

John Doubleday

Secretariat Brenda Parkinson

Liam McTiernan

In attendance: Seru Rabeni

Peter Wheeler, Chief Executive, Leicester Tigers

Simon Cohen, Head of Operations, Leicester Tigers

Preliminaries

1. In advance of the hearing Leicester Tigers ('the Club') were informed that the Panel would, subject to any representations from the Club include John Doubleday (part of the panel which imposed the original suspension of 14 weeks) and John Brennan (a member of the appeal panel which dismissed the Player's appeal). On 22 July in writing the Club indicated that it had no objection to the composition of the Panel.

Charge and Plea

2. The Player admitted three charges of conduct prejudicial to the interests of the Game contrary to Rugby Football Union ('RFU') Rule 5.12. The particulars of those charges are as follows –

Charge 1

"On 25-27 April 2008 Seru Rabeni played rugby in the East Grinstead Wooden Spoon Sevens tournament, that date being within the period from 1 April – 8 July 2008 when he had been suspended from playing rugby football union by an RFU Disciplinary Panel for an act of foul play.

Charge 2

"On 13 June 2008 Seru Rabeni played rugby in a Sevens tournament in Nasolo, Fiji, that date being within the period from 1 April – 8 July 2008 when he had been suspended from playing rugby football union by an RFU Disciplinary Panel for an act of foul play."

Charge 3

On 28 June 2008 Seru Rabeni played rugby in the Bath Charity Sevens tournament, that date being within the period from 1 April – 8 July 2008 when he had been suspended from playing rugby football union by an RFU Disciplinary Panel for an act of foul play.

Facts

- 3. The facts were not in dispute. At a disciplinary hearing in 31 March 2008 the Player was found to have committed an act contrary to good sportsmanship namely making contact with an opponent's eye in breach of Law 10(4)(k). He was suspended from playing rugby union for a period of fourteen weeks from 1 April to 8 July 2008 (inclusive).
- 4. An Appeal Panel dismissed his appeal against that decision on 10 April 2008.
- 5. The RFU was informed of the Player's misconduct very early in July. That disclosure appears to have been prompted by an article in the *Bath Chronicle* newspaper, which reported the Player's participation in the Bath Charity Sevens, played on 28 June 2008. In fact Mr Rabeni's name was entered in an RFU team sheet submitted in respect of that tournament. It is not clear to us whether that team sheet was ever submitted to the RFU. It perhaps matters not

for the purposes of this hearing. The RFU was informed and began to investigate the matter.

6. On 9 July by email HHJ Blackett (RFU Disciplinary Officer) communicated the following to Mr Cohen, Head of Operations at the Club.

"I now have some unconfirmed information that Rabeni has played a series of 7s tournaments through the summer and has in fact organised the teams.... If this is the case it is a much more serious matter - intentionally playing when suspended is very serious both for the player and any club that knowingly allowed him to play - and may merit a significant further suspension.

This is going to take a little bit of time to bottom out - unless, of course, Rabeni is prepared to provide a list of those tournaments he has been involved in and played in. Such assistance would be helpful in mitigation."

7. Mr Rabeni and Leicester Tigers did assist the RFU. In an email sent at 16.52 on 11 July the Club informed HHJ Blackett

"Further to your email of 9 July and my telephone message of 10 July, Richard Cockerill and I met with Seru Rabeni yesterday to discuss with him the statements regarding his playing during his period of suspension.

We warned him of the seriousness of the situation and told him it was important that he told us of any incidents in which he may have taken part in organised matches during the suspension period. He advised us as follows:

- 1 He attended a Wooden Spoon 7s tournament in East Grinstead in April and was encouraged to play in two of the matches by the organiser of the event, who told him that it was a charity event and not a proper tournament. He had taken with him a signed jersey that he presented to the charity for auction.
- 2 He played in a 7s tournament in Bath, again for charity and again being told that this was not a proper 7s tournament. He played in all the games and his team donated the prize money to the charity.
- 3 On 13 June, when he was back in Fiji, he organised a 7s tournament for his village, Nasolo, to raise funds for their church hall. He played in the

tournament and covered all the costs of the tournament which exceeded £2,000."

8. We had a bundle of material put together by the RFU which contained the charge sheet, emails, various newspaper articles from the *Bath Chronicle*, together with the decisions of the two hearings referred to above.

Player's Case

- 9. In advance of the hearing we were helpfully provided with the following
 - a. Letter from Cpl Roquara and Lance Cpl Turagabeci dated 10 July explaining the Player's involvement with the Kaiviti Krusanders
 - b. Letter dated 11 July, signed by a number of individuals relating to the Nasolo Village Sevens
 - c. Letter from John Gould, 15 July relating to the Bath Sevens
 - d. Email from Gary Gordon, 23 July, 09.17
- 10. Mr Cohen invited the Player to explain to us how he came to participate in the tournaments. His intention was to coach the Kaiviti Krusaders team at East Grinstead. He said he was "pressured" by organisers to participate in the event. It was for charity and he was unable to resist the overtures to 'turn out'. He told us he was assured it was "possible" for him to do so as it "was not a major competition".
- 11. Some light is shed on this by the email from Gary Gordon. Therein he states,

"The Sunshine Sevens is the largest Charity Sevens in the South - and each year as the standard improves - we raise more money for the two local Children's Charities. In conjunction with Wooden Spoon we raised £10,000 last year and hope we have done the same this year. Can I highlight that Seru could not have done more in helping to promote the Tournament, particularly when he knew of the charitable background.

Seru a few weeks before the tournament contacted me and said that he would not be able to play as he had a ban, but would still bring his team down and support the Tournament and the Charities. Seru on the day had not planned to play - but not having a full compliment in his team, people wanting to see him, and Seru's wanting to support the tournament, meant that he was trying to please all - and play in what he honestly believed was just a Charity event.

Peter, Seru's self-less attitude certainly helped us, but I hope that in doing this there are no further repercussions."

- 12. The Fiji tournament is played in the Player's village. He is the fulcrum of that tournament; it is timed so that he is able to attend. He told us he organises the event and (understandably) is very keen to contribute towards the well being of his village. He did not say this but we can well see that he is a star in his village (and beyond); people want to see him participate and it may be their only opportunity to see him play 'live'. He told us it was the only time he returned home. There is and was pressure on him to play.
- 13. In material terms, he sponsored the tournament to the tune of \$FIJI6500. The purpose of the tournament is to raise funds for the village. The receipts form this year's event assisted in the funding of a walkway to, and reserve watertank for, the village. On any view he makes a significant and commendable contribution towards his village.
- 14. The Bath tournament is one in which he participated with the Kaiviti Krusaders. The letter from Mr Gould makes it clear that the Player "helped to raise the standard and the profile of the tournament". He adds that in advance and at the time of entering Mr Rabeni "expressed his desire to help out charity events like this". If further evidence were needed, the team won the tournament and donated the winnings to charitable foundation in whose benefit the event was staged.

- 15. Again, the Player told us he was assured by tournament organisers that the event is "not a major competition and it would not "affect your ban". The Player was motivated by his desire to help charity.
- 16. The email from Cpl Roquara and Lance Cpl Turagbeci provides us with information about the Player's role in the Kaiviti Krusaders. The team is formed from United Kingdom based players and members of the armed forces. The Player is the coach and he has been central to obtaining sponsorship and financing the team. It serves an important function in raising the profile of talented Fijian players. It is nicely summarised in this way: "Seru's involvement with the 7's competitions was purely as a means to give something back to the Fijian community in England ... [he] would like to help others and to promote the game itself."
- 17. Mr Wheeler emphasised that the Player committed to two of the tournaments before his suspension was imposed. His participation was beneficial to each event and his motive was well intentioned. His behaviour was not for personal financial gain and he received none.
- 18. Mr Wheeler told us that the Club knew nothing of this, until informed by the RFU. He told us that the Club informed Mr Rabeni at the time of the consequences of his suspension. Leicester Tigers, he said, took the situation "very seriously". He played without permission and so in breach of a term of this contract of employment. He repeatedly used the word "coerced" in the context of explaining how Mr Rabeni came to participate in the various events; we suspect 'prevailed upon' might more accurately reflect what he was saying.
- 19. Mr Wheeler invited us to have regard to the impact of the fourteen week suspension. He said thereby the Player had missed the opportunity of playing in a number of international matches and two domestic cup finals. The answer to that, in so far as that was relevant, is that it would have been taken into account by the panel which imposed that sanction and was a consequence of it.

- 20. Mr Cohen told us the implications of the suspension were explained in clear terms to the Player. The coach Richard Cockerill told him he not want to see a photograph of him playing a game on the beach. It is right that we record that the Club made it very clear to us that it is "important that any disciplinary order is adhered to".
- 21. Mr Cohen invited us to have regard to the well-published recent decision of the HHJ Blackett in *Ojo & Brown*. It is correct that case also involved allegation contrary to Rule 5.12, though the circumstances are very far removed from the instant. He also invited us to the view this was not arrogant, deliberate flouting of the suspension but rather the actions of a stupid and naive man. The adjective stupid might well be appropriate to describe (bluntly) the conduct but not, on our assessment of him, the man.

Sanction

Period of suspension

- 22. Sanction for breaching Rule 5.12 is at large; it is offending which can take many forms. We know of no such similar case nor is there assistance to be found in the disciplinary regulations. We approached the task in the following way.
- 23. In our judgment there are two elements to sanctioning in cases of this kind, namely those involving playing in breach of a suspension. The first element comprises the period of the original suspension which the player breached and so has not served.
- 24. He played not in isolated games but in weekend tournaments. In the context of Sevens Tournaments, IRB Regulation 17.34 *et seq* provides for the imposition of suspension based on the number of matches. We have decided not to approach this case on the basis of extrapolating to weeks, the number of games played. We treat each tournament as one week of his original suspension he did (and has) not serve. That is obviously to the Player's advantage.

- 25. In this case, he played on three separate weekends. He played during three weeks when he should not have done: he was suspended. He has not served those three weeks of his ban. It seems to us unanswerable that he should. He received a fourteen week suspension. He played in three of those fourteen weeks. He must serve those three weeks. That is quite separate from any additional punishment he receives for acting in breach of Rule 5.12.
- 26. The second element is the punitive or punishment part of the sanction. That is the element designed to punish the Player for breaching the period of suspension: his disobedience of the order of the disciplinary tribunal. In determining the seriousness of the breach we venture suggest that a panel will have (and we have had) regard to such factors as
 - a. The extent of the breach, namely the number of games played and the period over which such games were played
 - b. How soon after imposition of the suspension, did the player play in breach
 - c. The nature of the games in which the player participated
 - d. The circumstances of his/her playing in those games

27. In his case the playing in breach was serious. It was serious because

- a. The offending was repeated. He played several games in three separate tournaments, weeks apart. This was not participation in an isolated one-off fixture, for example.
- b. Further, he played so soon after the suspension was imposed his appeal was dismissed on the 10 April and just over a fortnight later he is participating in a sevens tournament.
- c. Further, there can be no doubt that he knew he was not permitted to play. That is clear from the Mr Gordon's email in which he stated that the Player contacted him "a few weeks before the tournament" and told him he could not play because of his suspension. Further, as Mr Cohen made clear to us this evening, his coach told him he did not want to see him playing a game of rugby "on the beach". It could not have been

clearer: he was suspended from all forms of the game, 'official' or 'unofficial'.

- 28. We have regard to the fact that these tournaments were held for charitable causes and to all we heard about the circumstances in which he came to play. However, in our judgment the offending in this case was so serious that the suggested penalty, a fine, is wholly inadequate. There has to be a period of suspension to reflect the serious nature of the breach and to underline the fact that periods of suspension must be obeyed. The integrity of the discipline system depends upon players and clubs complying with decisions and sanctions of disciplinary tribunals. The system is completely undermined if participants unilaterally disregard them. Further, it is unfair on those who comply with such orders, if others are permitted to ignore them with impunity. We, like Leicester Tigers, take a very serious view of this. Those who play or otherwise act in breach of sanctions imposed by RFU disciplinary panels do so at their peril.
- 29. Having regard to all of the circumstances of this case, the appropriate starting point for the punitive element is a suspension of nine weeks.
- 30. We turn to the question of aggravating factors. From a disciplinary view, the Player has had an unhappy season: he is developing a record which does him no credit. However, we do not find that to be an aggravating factor. In our opinion there are none.
- 31. Turning to mitigation, he is entitled to credit for his guilty pleas, his admissions, his candour and the help he and his Club gave the RFU. We accept he made no personal financial gain from his activities and that he was not motivated by personal gain. The tournaments benefited charities (or in one case his village) and he contributed to that. We give him credit for those matters and all that we heard and read on his behalf. In the circumstances we think that equates to a period to three weeks. It is a third of the punitive element. Nothing is to be deducted from the original sentence: such credit as he was entitled to, was deducted at the time it was imposed.

Commencement of suspension

- 32. The hearing was conducted during the close season. The Leicester Tigers website reveals that the first XV have the following pre-season games: Biarritz on 15 August, Middlesex Sevens the next day, Neath Swansea Ospreys on 23 August and Western Force on 30 August. The Guinness Premiership starts for the Club with an away fixture against Gloucester Rugby on 6 September.
- 33. Regulation 8.2.12 provides that any period of suspension imposed by a Disciplinary Panel may:
 - "(b) Include or exclude the whole or any part of the close season taking into account any tours or other games to which the player or other person to who the report relates is committed"
- 34. On our understanding Regulation 8.2.12 expressly permits us to include any part of the close season taking into account games to which the player is committed. In other words, games in which otherwise (but for the suspension) he would be eligible to play. That is not, on our construction, limited to league games or games played in what might be called the 'official season'. It is not so restricted. We are fortified in that approach by the use of the expression "Club's Competitive Matches" in Regulation 8.2.15(c).
- 35. There seems to us no good reason not to include the games Leicester are due to play against Biarritz, Neath-Swansea Ospreys and Western Force: they are competitive first team (first XV) fixtures. That is consistent with the approach I adopted in *Imanol Harinordoquy and Renaud Boyoud* 6 July 2008. The decision in *Calum Clark* 23 June 2008 (and the subsequent Ruling by way of clarification) does not assist us.
- 36. The Club's website announces that the intended fixture against Nottingham planned for the 9 August has been cancelled at the request of the first team coach. Mr Wheeler told us that the Club "might send a second team". That the Club will play that fixture is far from certain. If it does, it will not be a first

XV game and not in our judgment a competitive fixture in which the Player

would be likely to participate. We exclude it, as we do the remainder of the

close season, namely from the day of the hearing until the 14 August. The

suspension commences on 15 August and runs up to and includes the 16

October 2008.

37. In imposing that suspension we have not ignored the fact that the Club has a

mid-week (league) fixture on 1 October. We had before us next season's

fixture list for Leicester Tigers first XV. Of course, to his advantage, we

treated one tournament as one week. In any event, we cannot see that this

causes him any injustice.

38. The Player is therefore suspended from playing rugby union for nine

weeks from 15 August to 16 October 2008. He may play again on 17

October 2008.

39. Although drafted by the Chairman, each member of the Panel had the

advantage of seeing the decision in draft and agrees with it.

Costs

40. Costs of £250 were awarded against the Player/Club.

Right of Appeal

41. The Player is reminded of his right of appeal, as provided by Regulation 11.

Christopher Quinlan

Christopher Quinlan

Chairman

Dated: 30th July 2008

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