

RUGBY FOOTBALL UNION
DISCIPLINARY HEARING

At: Holiday Inn, Brighouse
On: Wednesday, 16th April 2008
Player: Lee Thomas **Club:** Sale Sharks
Match: Sale Sharks v Bath
Venue: Edgeley Park
Date of Match: 28th March 2008
Panel: Antony Davies (Chairman), Dr. Barry O’Driscoll and
John Brennan
**Secretary to the
Panel** Liam McTiernan, RFU Disciplinary Department

Attending: Lee Thomas (“the Player”)
Michael Hayton (Counsel for the Player)
Quentin Smith (Chairman, Sale Sharks)
James Jennings (Chief Executive, Sale Sharks)

To Consider

1. A citing complaint initiated by Peter Colston, the appointed Premiership Citing Officer, in relation to an incident in the match Sale Sharks v Bath on 28th March 2008. The charge which followed the citing report was one of striking contrary to Law 10.4(a), the particulars being that the Player struck an opponent during the 20th minute of the first half of the match Sale Sharks v Bath.

Preliminaries

2. The Player did not object to the composition of the Panel.

3. The hearing had originally commenced on 8th April 2008, but had been adjourned at the request of the Player, who had stated that he was not aware of the existence of any independent video, nor had any such video been given or shown to him. The medical evidence which had been lodged in support of the citing complaint had not been served on him and he would have been prejudiced had the hearing continued.

No medical evidence which had been lodged in support of the citing complaint had been served and he would have been prejudiced had the hearing continued. The Chairman confirmed that as no determination had been made on any matter, nor any evidence weighed or tested, the hearing would proceed de novo.

4. The Player asked the Panel to consider two preliminary matters, both concerning the validity of the citing complaint brought.

The First Preliminary Point

5. Mr. Hayton expanded upon his two written skeleton arguments. The main thrust of these was that the citing procedures in Appendix 7 to the Disciplinary Regulations are two separate and distinct procedures. The first procedure is described as “General (other than in Premiership 1st XV Games)”. These can be found on pages 385 and 386 of the RFU Handbook 2007/2008. The second part is headed “Premiership Clubs” and is to be found on pages 387 and 388. Paragraph 1 of the latter states that those procedures apply only to Clubs in the Premiership and then only when participating in the Guinness Premiership.

6. Mr. Hayton took us carefully, and in some detail, through those Regulations, contending that they provided a logical sequential series of steps which had to be followed to validate a citing complaint.

7. Mr. Hayton argued that the clear implication from the way the Regulations were drawn was that there must be an independent video and that only the Premiership Citing Officer (“PCO”) had the power to cite. Para. 5 gave power and responsibility to the PCO to cite, but only “a player whom the independent video shows to have committed an act of foul play”. This, he said, should be read in conjunction with and implied into paragraph 6 so that it reads to the cumulative effect that before bringing a citing complaint the PCO must be satisfied from evidence in the independent video that the act of foul play merited the award of a red card. In this case, there was either no independent video (the provenance of the video supplied was questioned by him), or there was a video but that did not show any act of foul play, let alone an act of foul play

which passed the red card test.

8. Even if the independent video did show contact, he contended that a reasonable Citing Officer could not conclude the red card test was passed because the contact could be accidental. It would be wrong for the case to be prosecuted and contrary to the rules of natural justice as it would be in clear breach of specific Premiership citing criteria and would set an unhappy precedent.

9. The evidence relied upon by the PCO in this case was not the independent video, but an allegation made by the victim player. Premiership citing was intended, in his submission, to be based upon video footage only. The evidence relied upon by the PCO was not taken from the video and therefore there was a clear breach of the Appendix 7 Rules.

10. We asked Mr. Hayton a number of questions. He conceded that in the majority of cases at lower levels there were no videos, but the Premiership Regulations were brought in, he said, to stop Clubs citing each other and clearly intended to hand power to the PCO only and to restrict the PCO to incidents of foul play clearly seen as passing the red card test on the independent video. With regard to a number of other Premiership cases this season where no such point had been taken in similar circumstances and the citing found to be valid, he submitted that those may have been wrongly decided because a video had to be the foundation stone for the process. The Premiership Citing Regulations did not provide for oral evidence of witnesses to expand upon and cure faults in the video evidence where they did not clearly show foul play passing the red card test.

11. In summary, Mr. Hayton argued that only the PCO can cite under the Regulations. The only issue for him is whether the evidence contained on the independent video is sufficient for him to conclude the red card test is passed and the only evidence he is allowed to take into account is that provided by the independent video. He appreciated that this may lead to unfortunate consequences which may be unhealthy for the game, but where the Regulations were inadequately drawn or not sufficiently clear, any adverse consequences were not a matter for us to consider. The

Premiership Citing Regulations must be regarded as separate and distinct to the rest of the game and had to be treated in isolation. Even though he conceded there was nothing in those Regulations relating to standards and burdens of proof, these could not be inferred or implied from the general citing procedures.

12. When asked how silence or ambiguity within the Regulations should be construed, Mr. Hayton argued that it should only be construed in favour of the Player and not in favour of any other stakeholder within the game.

Decision on First Preliminary Point

13. The Panel conceded that on a literal reading and interpretation of the Premiership Clubs Citing Regulations, the Player's interpretation is tenable but an alternative interpretation is much to be preferred. The Regulations are to our mind quite capable of an entirely different and much more tenable interpretation.

14. We did not agree that the Regulations represented a sequential step where each provision had to be considered and complied with before proceeding to the next. We found that it was perfectly possible to read para. 4 and 6 together, deleting any reference or consideration to para. 5 in a case where there was no evidence from the independent video (as in this case). In our view, a Club can notify the RFU Disciplinary Manager of incidents they wished the PCO to consider and provided he is satisfied that the red card test is passed, the citing is properly brought. In this case, the citing was based upon a written statement from the victim player, and the serious injury sustained. In our view it was otherwise validly made.

15. We consider that this interpretation would better reflect the purpose behind para. 5, namely to give power and responsibility to the PCO to cite where there is no complaint by any Club, or no other evidence outside what is shown in the independent video. In those restricted circumstances, we can see an argument that the PCO may be limited to what is disclosed on the video.

16. To conclude otherwise would be to construe the Premiership Citing Regulations

as requiring trial by video only. It would provide huge practical problems with regard to discreet offences (gouging, testicle grabbing etc.), which were rarely shown in video evidence. It is also difficult to reconcile with the reference in paragraph 6(d) of the Premiership Citing Regulations to “details of the evidence relied on”. This is not restricted to video evidence only. We feel that if it was intended the Premiership should be in a different position to the rest of the game and be restricted to video evidence only, the Regulations would specifically have stated so.

17. Accordingly, we dismiss the first preliminary point brought on behalf of the Player and do so unanimously.

The Player’s Second Preliminary Point

18. Mr. Hayton referred us to para. 4 of the Regulations which required a Club to notify the RFU Disciplinary Manager of incidents to be considered by the PCO within forty eight hours of the conclusion of the match. It was the Player’s case that whilst the citing had been brought within four working days as required by the Regulations, the complaint had not been brought within the forty eight hour period and there was a clear breach of para. 4. The time limits for the Club and the PCO were different and if it were intended that the Club had four working days, it would specifically have said so in the Regulations. Reference to forty eight hours was a specific one and there was no express discretionary power within any of the Regulations to waive or extend that time limit.

19. We felt it appropriate to speak at this point with Mr. Peter Colston, the PCO, and with the victim player, Mr. Berne.

20. Mr. Colson confirmed that he received the DVD of the match on Tuesday, 1st April. He was notified that there may be a letter coming from the Bath Club. He believed he received an e-mail, being a scanned copy of the letter from Mr. Berne, on Thursday, 3rd April. He considered this and accepted that it formed the basis for a citing complaint. He did not consider the time limit for receipt of a complaint from the Club. He had little time between receiving that complaint and the time by which his citing had to be made. He confirmed that when the original forty eight hours afforded to the Club

had expired, he had no reason to suppose there was any foul play in the game and having watched the video on Tuesday, 1st April, he still had no indication there was anything awry and it was not until he received the complaint on Thursday, 3rd April, that he became aware of the allegation.

21. We then spoke to Mr. Berne, who told us that almost immediately after the game, the team set off to return to Bath by coach. As he was getting off the coach, he had a brief discussion with the coaching staff who agreed to raise the matter with the Referees Department and look at the video to see if the incident was shown. Saturday and Sunday were rest days and he did not return to the Club for any further discussion until the Monday following. On Monday, 31st March, he was informed that there was a procedure where the Club could initiate a complaint, but it was not until Thursday, 3rd April, that his statement had been sent.

22. Mr. Hayton submitted that there was a clear breach of para. 4 of the Regulations which could not be cured by any express or inherent jurisdiction available to the Panel.

23. We considered this point carefully in the absence of the Player and his representatives. We concluded, albeit reluctantly, that Disciplinary Regulation 4.5.1 must be read in conjunction with 4.5.2(a) and that in this regard at least the Premiership Citing Regulations were quite clear as to time periods in which Clubs had to refer matters to the PCO. We concluded that whilst we did not have the power to override those time limits in this case, the RFU Disciplinary Officer nonetheless retained a discretion so to do in the event that he regarded there to be exceptional circumstances. We indicated to Mr. Hayton that this would be our intended course of action unless he wished on the Player's behalf to waive the time limit. Having raised this as a preliminary matter in support of his argument that the citing was a nullity, and after consultation with the Player, he confirmed that the Player nonetheless wished to pursue the point. We suggested to the Player that he should consider carefully with his legal advisers the potential benefits available to him in having the matter dealt with on its merits rather than technical legal points. The Player confirmed that he had received such advice but would nonetheless take the point available to him.

24. We advised the Player and his representatives that the matter would now be

referred to the RFU Disciplinary Officer for consideration.

Antony Davies

Antony Davies,

Chairman

17th April 2008

