RUGBY FOOTBALL UNION

APPEAL HEARING

Venue: The Offices Russell Jones & Walker 80-86 Gray's Inn Road, London WC1 8NH

Date: 15 July 2008

Player: Peter STERIENBERG

Club: Letchworth RFC

Match: Thurrock v Letchworth

Date: 19 April 2008

Panel: Jeremy Summers (Chairman) and Dr Julian Morris ("the Panel")

Present:

Letchworth RFC

Peter Sterienberg ("the Player)
David Sharp (Chairman),
Graham Walker (Vice-President)
Brian Burke (President)

Hertfordshire RFU

John Knighton

Secretary: Liam McTiernan

To consider: An appeal against the decision of a Hertfordshire RFU disciplinary committee dated 30 May 2008 suspending the Player for 4 weeks having been sent off for receiving 2 yellow cards both for striking an opponent.

PRELIMINARY ISSUES

- 1. The Player and Letchworth were content to proceed with a two person Panel.
- 2. Mr Knighton confirmed that Hertfordshire RFU were content for the appeal to proceed notwithstanding that it was technically out of time.
- 3. The procedure to be followed in the appeal as set out in the RFU Disciplinary Regulations was identified. There were no other preliminary issues.

THE FACTS

- 4. By reference to the Referees report the following facts are material:
 - i. The Player was spoken to following a fracas in the 20th minute of the game and both captains were warned.
 - ii. The Player was issued with a yellow card in the 38th minute having struck an opponent on the side of the head. The opponent was in an offside position and was also sin-binned. The blow did not connect with any force and no injury was sustained.
 - iii. At approximately the 65 minute mark the Player was then involved in another off the ball fracas that the Referee did not see. The Payer was spoken to again by the Referee.
 - iv. After 74 minutes the Player again aimed a punch at an opponent standing at a ruck situation. The blow was not delivered with any real force, but was aimed at the side of the head. No injury was sustained. The Player was issued with a second yellow card and dismissed from the field of play.
- 5. The game in question was the final league game of the season for Letchworth. The club had previously been knocked out of the relevant cup competition.
- 6. The player appeared before the Hertfordshire RFU disciplinary Panel on 30 May 2008. He had previously been suspended by his club for 3 weeks.

THE INITIAL HEARING

- 7. The Player pleaded guilty and had no previous record.
- 8. The first instance tribunal ("the Tribunal") assessed the offending as being at the Top End of the scale of seriousness, and thus the entry point was the low end entry point for striking contrary to Law 10 (4) (a), being the most serious offence. This provided for a 2 week suspension.
- 9. The Tribunal then added a further period of 2 weeks to the suspension for aggravating factors¹. The Short Judgment Form recorded 3 reasons for this decision.
 - a) Lack of remorse² "there seemed to be little if any remorse"
 - b) Player Status³ "As a junior coach needs to set an example"
 - c) Need for a deterrent⁴ "Can't take law into his own hands"
- 10. The Tribunal ordered that the 4 week suspension should commence on 30 August 2008, with the Player being free to play again on 27 September 2008.

² DR 8.2.7 a)

¹ DR 8.2.7

³ DR 8.2.7 b)

⁴ DR 8.2.7 c)

THE APPEAL

- 11. The Player has a limited ability in English and thus submissions were made on his behalf by Mr Sharp.
- 12. The appeal was advanced on 2 grounds namely that the period was excessive and that it should have run from the date of the hearing, 30 May 2008.
- 13. It was submitted the Player had pleaded guilty and that any lack of remorse stemmed from his limited grasp of English. Although there was dispute as to what had been said in this regard at the hearing, it was submitted that the Player was not in fact a junior coach, but simply assisted with the junior section on a regular basis. In any event it was contended that his status in this regard should not have been deemed an aggravating feature. It was not disputed that the player could not take the law into his own hands, but again it was contended that the facts did not justify the imposition of an additional period of suspension.
- 14. As to the commencement date for the suspension, it was submitted that the Player could have played for the club 7's team and represented Hertfordshire in the 2 weeks following the end of the league season. However, on questioning it was accepted that the Player had not played 7's for the club in any tournament earlier in the season and that, whilst he had the potential to gain such selection, he was yet to win Hertfordshire representative honours.

RULING

- 15. The Panel had no hesitation in concluding that the Tribunal was correctly entitled to assess the offence as being at the Top End of the scale of seriousness.
- 16. Despite the Player's guilty plea and clear record, in all the circumstances the Panel considered that the Tribunal was similarly entitled, as a matter within its discretion, not to reduce the period of suspension having regard to mitigating factors.⁵
- 17. However, the Panel was not able to uphold the additional 2 weeks imposed for the aggravating factors referred to above.
- 18. Whilst not finding it necessary to rule on the Player's language ability, any apparent, or actual lack of remorse can be, and was, properly dealt with by not reducing the suspension as might normally have been expected given the Player's plea and record. To not allow mitigation whilst simultaneously increasing the suspension by reason of lack of remorse appeared in the Panel's view to be penalising the Player twice.
- 19. With regard to the Player's status as a junior coach (and noting there was a dispute in this regard) D.R. 8.2.7 b) in fact provides for "The player's status as a persistent offender of the laws of the game". Accordingly, and whatever the Player's actual involvement with junior rugby, that involvement is not relevant for the purposes of this regulation. In light of the Player's previous clear record, the Panel concluded that this regulation had not been engaged.

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⁵ DR8.2.8

- 20. In any event the Panel was satisfied that the regulation should be applied in the context of repeated offending over a series of matches rather than in respect of a number of incidents in a single game. This may particularly be so in cases where the player concerned has not previously appeared before a disciplinary hearing.
- 21. Turning to deterrence, D.R. 8.2.7 c) provides for "<u>The need to provide for a deterrent to combat a pattern of offending</u>". The Panel also respectfully disagreed with the Tribunal's view that the facts of the matter engaged this provision.
- 22. The Panel was however content that, given the chronology set out at paragraph 4 above, the Tribunal was again entitled not to give the Player credit by way of mitigation. However, it did not consider that the facts merited the imposition of an aggravated sentence.
- 23. In this respect and with reference to deterrence generally, students of rugby discipline will recall that in 2006 and 2007 the RFU Disciplinary Officer was concerned as to the prevalence of illegal rucking (albeit predominantly within the Premiership). A pattern of offending was identified whereby players were not rucking for the football but were seeking to clear out opponents with the use of the boot. The Disciplinary Officer accordingly indicated that if the pattern of offending was to continue he would consider the imposition of an aggravated sentence in order to deter the practice. Happily, such offending ceased, and it was not necessary to make use of D.R. 8.2.7 c) in this way.
- 24. However, it should be noted that the need to deter a pattern of offending within the context of this regulation is principally referable to issues that relate to the game in general and not to incidents in a specific match.
- 25. In all the circumstances therefore the Panel concluded that the appropriate period of suspension was one of 2 weeks.
- 26. Turning to the commencement date, the Panel was less than convinced that the Player would have played beyond the date of the match in question, and accordingly found that the Tribunal was correct to start the period of suspension from 30 August 2008, being the start of the 2008/2009 season.

ORDER

27. The Player is therefore suspended for 14 days from 30 August 2008. He is free to play again on 13 September 2008.

COSTS

28. The appeal only having been partially successful, the appeal fee of £100 is to be forfeited.

COMMENT

29. There is some potential for misunderstanding in that the Short Form Judgment form simply says "Player's status" and "Need for a deterrent". This is an issue that it may be appropriate to look at further in due course. However, whilst the

form has been prepared to assist disciplinary panels, it is not intended to be definitive and Constituent Bodies need ultimately to refer to the Disciplinary Regulations.

Jeremy Summers Chairman 22 July 2008