

RUGBY FOOTBALL UNION
DISCIPLINARY HEARING – 16 May 2008
HOLIDAY INN, BRISTOL FILTON

JUDGMENT

Player : JULIAN WHITE
Club : LEICESTER TIGERS
Match : GLOUCESTER RUGBY v LEICESTER TIGERS
Venue : Kingsholm, Gloucester
Date of match: 18 May 2008
Panel : Christopher Quinlan (Chairman), Mike Curling and John
Doubleday
RFU Discipline Manager Bruce Reece-Russel
In attendance: Julian White
Richard Smith QC
Peter Wheeler, Chief Executive, Leicester Tigers

INTRODUCTION

1. No objection was raised to the composition of the Panel.

CHARGE and PLEA

2. On Friday of last week and by email, Mr Smith QC on behalf of the Player informed Mr Bruce Reece-Russel, RFU Discipline Manager, that Julian White ('the Player') would be admitting the act of foul play. He was good enough to copy in the Chairman.
3. The Player admitted committing an act of foul play, namely stamping on an opponent, contrary to Law 10(4)(b).

FACTS

4. There was no factual dispute. The incident occurred in the ninth minute of the match played on 18 May. The Citing Report by Mr Peter Larter dated 21 May and timed at 17.00 describes accurately what the DVD showed. It reads

“The Leicester number 5 (Ben Kay) was double tackled by the Gloucester number 3 (Nieto) and the Gloucester number 6 about 17 metres infield of the nearside touchline and about 12 metres inside the Gloucester half. A ruck was formed and Nieto’s legs were exposed on the Leicester side of the ruck. As the Leicester number 3 (Julian White) joined the ruck from an onside position, (to the left of the picture on the video/DVD) he stamped with his right foot/boot on Nieto’s left leg in the region of the upper calf and knee, Nieto’s leg was motionless on the ground and the ball was not in the immediate vicinity. The referee then awarded a penalty to Leicester against Nieto for “not rolling away” after making the tackle. I therefore cite the Leicester number 3 (Julian White) for stamping contrary to Law 10.4(b) of the Laws of the Game Rugby Union 2007.

5. Mr Larter’s report indicates that he spoke with the referee who informed him that he did not see the act of foul play and neither touch judge brought anything to his attention.

SUBMISSIONS ON SANCTION

6. Mr Smith QC outlined his submissions and then invited Mr White to tell us in his own words what he did. He accepted stamping deliberately on a Gloucester player whom he deemed to be lying on the wrong side deliberately slowing down Leicester ball. It is of note that there is some support for that contention in that the referee penalised Mr Nieto for not rolling away.
7. He accepted the stamp made contact with Mr Nieto’s leg, though contended that was not deliberate. The purpose of the stamp was to free the ball, namely to

make or attempt to make the Gloucester player roll away. He accepted it was foul play.

8. Mr Smith QC took us through the Regulations relevant to sanction and reminded us of decisions in similar cases which we might find of assistance. He sought to persuade us the offence did not merit “further sanction” but (no doubt recognising the strength and volume of decided cases against him) if it did, he submitted the appropriate starting point was low entry.
9. We heard from Mr Smith QC, Mr White and Mr Wheeler on the Club’s reaction to this incident. On Friday of last week it suspended him for one week and he was not selected to play in the first team fixture (described to us as a ‘capped club game’) against the ‘Classic All Blacks’, played on Sunday last. We pressed Mr Wheeler on the status of that game, the reality of whether Mr White would have played and asked him for the names of other first team regulars picked, mindful of the forthcoming Guinness Premiership Grand Final (Saturday next). Mr Wheeler assured us the Player would have played and we accepted his word. The Club also fined him £5000.
10. In relation to that Guinness Premiership Grand Final, Mr White told us it was “probably his last chance to play at Twickenham”.
11. We invited Mr Smith QC to address us on Mr White’s disciplinary record. It is an unenviable one. He has been suspended for foul play on four occasions: (i) April 2002, two weeks for striking (ii) September 2002, ten weeks for striking with the head (iii) October 2005, he was suspended for eight weeks for striking and (iv) in January of this year he was suspended for five weeks for striking. In that last instance the disciplinary panel (applying the Heineken Cup Disciplinary Regulations) found “aggravation in his status as an offender”.

SANCTION

12. In light of the Player’s admission of foul play, we upheld the citing. It is worth empathising what we consider to be the proper approach for a Disciplinary Panel

when dealing with a citing complaint. If we may say so, we cannot improve on the words of HHJ Blackett in *David Paice & Joe Ward*, 26 March 2008, namely

“The panel first addressed the submission that the offending only merited a yellow card. There was no doubt that both players were guilty of foul play in that they struck each other. In those circumstances it is not the function of the disciplinary panel to assess whether the foul play was sufficiently serious to pass the Red Card test. It may well be the case that these incidents would only have attracted a yellow card had they been seen by the referee, but that is not the point. Referees have a number of specific game management considerations when making split second decisions in relation to the appropriate on field sanction. They necessarily err on the side of caution. The citing officer, on the other hand, applies an objective test which solely addresses the incident in question and disciplinary panels are bound by that assessment. The panel, therefore, rejected the submission that the citing should be dismissed on the basis that the offences did not pass the Red Card threshold.”

13. That does not mean, as we understand it, that every act of foul play will necessarily result in a sanction. As to whether it does (or does not) merit a sanction is to be determined by reference to and application of the established and well-known criteria, namely the RFU Disciplinary Regulations, more particularly Regulations 8.2.1 *et seq.*
14. We undertook an assessment of the seriousness of the Player’s conduct (Regulation 8.2.5):
 - a. It was admitted to be a deliberate stamp
 - b. The victim was vulnerable in that he could not see what was coming nor was he in a position to defend himself
 - c. It was stamp on an exposed, unprotected lower limb
 - d. It was a completed act of foul play
15. This was a deliberate stamp on an exposed limb. Disciplinary Panels in a number of previous cases have spelt out that a deliberate stamp on an exposed limb can

cause serious and long-term injury. Mr Smith QC was well aware of those decisions and referred us to some during the course of his submissions. In any event we had reminded ourselves of such decisions as *Visagie*, 13 November 2005, *Hoadley* 22 April 2006, *Deacon* 18 May 2006 *Finegan* 8 November 2006 and *Grewcock* 4 January 2007.

16. However, we note

- a. It was single stamp.
- b. It did not cause injury.
- c. The player stamped on got to his feet and continued.
- d. We accept the act was spontaneous.
- e. It had no effect on the game.

17. In those circumstances and unanimously we concluded that the act of foul play was so serious as to justify a low entry point, namely two weeks.

18. The Panel addressed the question of aggravating factors as required by Regulation 8.2.7. Pursuant to Regulation 8.2.7(b) aggravating features include, “the player’s status as a persistent offender of the laws of the game”. Interestingly, there is a footnote to Regulation 8.2.7 but it attaches not to 8.2.7(b) (as one might expect) but to 8.2.7(a) (which deals with lack of remorse and/or contrition). That footnote is headed “The Player’s status as an offender of the Laws of the Game” and thereafter enjoins (“shall be considered”) a Panel to have regard to the player’s disciplinary record in all competitions and in other sports (if appropriate) during his playing career from the age of eighteen. It ends by stating that a Panel may in fixing sanction “take account of such offending [‘judicial findings’ of acts of foul play, misconduct and/or illegal play] as an aggravating factor”.

19. The footnote heading repeats exactly IRB Regulation 17.14.3(b), the foundation of RFU Regulation 8.2.7 (save for the expression Judicial Officer in the IRB Regulation, all other respects they are identical). The body of the footnote is identical to footnote 2 to IRB Regulation 17.14.3(b).

20. It is to be noted there is a difference between the footnote, which speaks of a player's status as an offender of the laws of the game and Regulation 8.2.7(b), which talks of a "persistent" offender. Mr Smith QC submitted that Mr White's actual record, when viewed fairly, was not one in respect of which he could properly be characterised as a persistent offender.
21. Turning to mitigation (Regulation 8.2.8), we had regard to the Player's acknowledgment of guilt, helpfully notified to us in advance of the hearing. We have commented on his playing record and age and experience is not relevant. Before us he behaved as we would expect (entirely appropriately) and through his admission expressed remorse.
22. We do not have to resolve any apparent conflict between the footnote and Regulation 8.2.7(b). In our judgment, his record is such that he is properly to be regarded as a persistent offender. His record aggravates this offence. However we note, Regulation 8.2.7 reads, "Disciplinary Panels shall identify all relevant aggravating factors and determine what additional period of suspensions, *if any* [our emphasis] above the applicable entry point for the offence should apply". Further it does not prescribe the quantum of any aggravation. In our judgment, that is a matter of fact and degree to be determined by the Panel.
23. Imposing a sanction in a case such as this is not without its challenges. The regulations are not to constrain but to guide Panels towards a consistent and fair sanction. A player, whoever he/she may be, is to be sentenced for the offence *actually* committed. We note HHJ Blackett in his decision in the case of *Gillies* decided towards the end of the season 2006-2007 (April 2007), to round down (to the player's advantage) a period of suspension (two weeks for two offences of stamping – one mid-range) because in the "exceptional circumstances of the case, equity dictated". Sanctioning is emphatically not the application of simple arithmetic.
24. In the event, and by majority of two to one we consider the mitigating factors outweigh the single aggravating feature. The consequence of that is that he is entitled to credit. The effect is that the majority decided the appropriate period of

suspension from playing the game of rugby union was one week. Having regard to his Club's action that suspension will commence on the date of the citing, namely the 21 May and run up to and include 27 May 2008. He is free to play again on 28 May 2008.

25. This case is fact-sensitive. It does not nor is intended to set any precedent.

26. We record our gratitude to Mr Smith QC for his succinct and helpful submissions.

COSTS

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

RIGHT OF APPEAL

28. There is a right of appeal, as provided by Regulation 11.

Signed ...*Christopher Quinlan*.....Christopher Quinlan (Chairman)

Dated: 27 May 2008