

RUGBY FOOTBALL UNION
APPEAL HEARING

COVENTRY M6, JUNCTION 2 HOLIDAY INN

TUESDAY 26TH AUGUST 2008

Player: Angus Spenser

Club: Newark RFC

Match: Newark RFC Colts U-19 7 a side team v Nottingham Colts U-19 7 a side team on 11 May 2008

Citing: Mr Barnard on behalf of Nottingham RFC dated 12 May 2008

Citing Hearing: Notts, Lincs and Derbyshire Disciplinary Panel on 4 August 2008

Panel: John Brennan (Chairman), Bob Taylor and Geoff Payne

Secretary: Bruce Reece-Russel

Attendees: Angus Spenser, John Fuchs (Chairman, Newark RFC Senior Youth), John Mudd (Honorary Secretary, NLD Disciplinary Panel)

Decision of the Appeal Panel

1. This was an appeal against sanction. Most unusually, it is necessary to rehearse the events that led to the imposition of the sanction at some length before turning to consider the sanction itself.

The Match

2. On 11 May 2008, the Notts, Lincs and Derbyshire ("NLD") Colts U-19 7 a side tournament took place at Newark RFC. The final was contested between Newark Colts ("Newark") and Nottingham Colts ("Nottingham").
3. The following is common ground. Five minutes into the first half of the match, the ball went behind the Nottingham defensive line. Tom Warren, of Nottingham, chased back and dived on the ball. As he did so, Angus Spenser, of Newark, was in hot pursuit. Mr Spenser tackled

Mr Warren. In the collision that ensued, Mr Warren fractured his fibula. The match was interrupted to enable Mr Warren to be treated for his injuries. It was suggested that the match be resumed on a neighbouring pitch whilst Mr Warren waited for the arrival of an air ambulance. At or about that time, it came to the attention of the Nottingham players and management that the referee did not intend to take any action against Mr Warren, the injured party (the referee's report indicated that he did not see the incident). The upshot was that Nottingham refused to resume the game. The match was awarded to Newark.

The Citing Complaint

4. By letter dated 16 May 2008, the manager of Nottingham Colts, Mr Barnard, submitted a citing complaint against Mr Spenser to the NLD Disciplinary Panel for what he alleged was "dangerous and reckless play". The details of the allegation were as follows:

"The Newark player, Mr Angus Spenser, did not allow Mr Warren to get to his feet, but instead, having already pushed the Nottingham player (Mr Barnard) in the back, to get him out [of] the way, [he] deliberately dropped onto the prone body of Mr Warren, making contact with Mr Warren's legs, with his feet and knees. Mr Warren was in a vulnerable position, on the ground with his back to Mr Spenser, and no ball in his possession and was unable to protect himself."

The Response of NLD Disciplinary Panel

5. The NLD Disciplinary Panel considered the complaint. By letter dated 20 May 2008, the Honorary Secretary wrote to Newark RFC. The letter that:

"We [the Panel] consider this to be a very serious case of "kicking an opponent" and would expect your disciplinary committee to take appropriate action. Should you be unwilling to take on the case we shall proceed to a citing hearing ..."

The Response of Mr Spenser

6. Mr Spenser took stock of the position. He did so in conjunction with the Disciplinary Officers of Newark RFC. Properly understood, Mr Spenser did not intend to deny that his tackle had been dangerous within the meaning of Law 10.4(e). What Mr Spenser did intend to deny, however, was that he had deliberately tackled Mr Warren in a dangerous manner.
7. Unfortunately, Mr Spenser proceeded on the mistaken basis that the appropriate course in those circumstances was to deny the charge. That approach was obviously an error. The facts Mr Spenser intended to admit (i.e. that the manner in which he had tackled Mr Warren was dangerous) amounted to an admission of the offence of dangerous tackling contrary to Law 10.4(e). The Appeal Panel accept, however, that the distinction between an admission, an

admission on a different factual basis to that alleged and a denial is not one that comes easily to those without a lawyerly cast of mind.

8. In those circumstances, Newark RFC declined the opportunity to deal with the matter internally. Its view was that a hearing was essential in order to determine whether Mr Spenser had committed the act of foul play alleged in the citing complaint. That approach was obviously sound. Any attempt by Newark RFC to determine that issue would inevitably have rung hollow so far as Nottingham RFC was concerned. Strictly speaking, the hearing was not necessary to determine whether an act of foul play had been committed. The need for a hearing only arose in order to determine whether an admitted act of foul play had been committed deliberately or not.

The Hearing

9. The hearing did not take place until 4 August 2008. The delay was nobody's fault. It was impracticable to hold a hearing earlier due to the timing of A-level exams, holiday commitments and a family bereavement.
10. In the event, only one of the witnesses who had provided statements in support of the citing complaint attended the hearing in person namely, Mr Rolf Updale. Not a single one of the witnesses who had provided statements in support of Mr Spenser attended the hearing to give evidence in person. The Appeal Panel was told that this was due to "unforeseen circumstances" (see Mr Swain's letter of appeal dated 13 August 2008). To make matter worse, Mr Spenser was taken ill on the day and was unable to attend the hearing himself.
11. The NLD Disciplinary Panel had regard to Mr Updale's oral evidence, the written statements that had been submitted before the hearing on behalf of Nottingham RFC and Mr Spenser, Newark RFC and written statements that had been solicited by the NLD Disciplinary Panel from the match officials.

The Finding and Sanction of NLD Disciplinary Panel

12. The NLD Disciplinary Panel made the following findings of fact. First, Mr Spenser had tackled Mr Warren in a dangerous fashion. Secondly, Mr Warren was not in possession of the ball when he was tackled. Thirdly, Mr Warren was either on the ground or in the process of getting to his feet when he was tackled. Fourthly, Mr Spenser had not acted with premeditation. Fifthly, Mr Spenser had deliberately tackled Mr Warren in a dangerous manner. Sixthly, Mr Spenser had recklessly tackled Mr Warren in a dangerous manner. It was evident to the Appeal Panel that in coming to that conclusion, the NLD Disciplinary Panel had placed particular weight on the written statement of Mr Shaw, a match official who had been a touch judge during the match.

13. The NLD Disciplinary Panel came to the conclusion that the appropriate sanction was a suspension from playing for 8 weeks.
14. Unfortunately, the NLD Disciplinary Panel did not make use of the Constituent Body Short Judgment Form. It was, therefore, necessary for the Appeal Panel to ask Mr Mudd, the Honorary Secretary, to explain how the NLD Disciplinary Panel had come to that conclusion. He advised the Appeal Panel that the offence had been categorised as being in the mid-range of the scale of seriousness and that 8 weeks had been identified as the appropriate entry point. It follows that the aggravating and mitigating factors had either been found not to arise or had cancelled each other out.

The Appeal Panel's Decision on the Appeal Against Sanction

15. The Appeal Panel shared the view that the offence was in the mid-range of the scale of seriousness. The recommended sanction in the RFU Disciplinary Regulations for dangerous tackling contrary to Law 10.4(e) is 6 weeks.
16. As to aggravating features, the Appeal Panel was disappointed to note that Mr Spenser had not sought to proffer an apology to Mr Warren once tempers had cooled with the passage of time. As to mitigating features, the Appeal Panel took the view that, properly understood, Mr Spenser's case amounted to an admission of the alleged act of foul play and that his decision to deny that he had acted with premeditation or deliberately had been vindicated by the findings made by the NLD Disciplinary Panel. Accordingly, he ought to be afforded credit for his acknowledgement of culpability. Secondly, Mr Spenser was only 18 years of age when the offence was committed. Thirdly, the reference provided by Mr Fagan, Mr Spenser's school master, spoke of him as a fine young man who is regarded by those that know him well as being possessed of a number of commendable qualities.
17. Accordingly, balancing the entry point of 6 weeks against the aggravating and mitigating features that arise, the Appeal Panel took the view that the appropriate sanction was a suspension from playing of 4 weeks.
18. The suspension begins on Saturday 30 August 2008. Mr Spenser will be free to play again on Saturday 27 September 2008. In other words, Mr Spenser must not play in any match between 30 August and 26 September 2008 (inclusive).
19. Mr Spenser was not ordered to pay the costs of the appeal. The cheque provided by Newark RFC on Mr Spenser's behalf in respect of the costs of this appeal will not be presented for payment.

Post Script

20. This case has illustrated the importance of framing a clear charge in all cases in which a Constituent Body receives a citing complaint which does not define the alleged act of foul play by reference to the Laws of the Game. A clear charge is essential. It enables the player to decide whether he should admit the charge or not, and, if not, to marshal evidence to meet it. Furthermore, the imposition of the recommended sanctions set out in the RFU Disciplinary Regulations is impossible without reference to specific offences within Law 10.4. In the event that a citing complaint does not identify the act of foul play by reference to the Laws of the Game, it is open to the Constituent Body Disciplinary Panel to either reject the citing complaint as invalid or, more likely, to exercise its powers under the RFU Disciplinary Regulations to frame a proper charge (see 5.6.2).

27 August 2008

John Brennan