

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

Judgment

At : Holiday Inn, Coventry

On : Tuesday, 10th February 2009

Coach: **GORDON DENSLEY** **Club:** Spartans RFC

Match: Handsworth Under 12 v Spartans Under 12

Venue: Handsworth RFC

Date of match: 21st December 2008

Panel: Antony Davies (Chairman), John Brennan, Geoff Payne

Secretariat: Bruce Reece-Russel, Brenda Parkinson (RFU Disciplinary Department)

In attendance : **Spartans RFC:**

Gordon Densley (“the Coach”)
Glen Willetts (Counsel for the Coach)
Predrag Zaric (witness)
Penny Zaric (witness)
Wayne Ferguson (witness)
Phillip Archer (witness)
Joanne Archer (witness)
Lorraine Densley (witness)
Craig Stanley (Chairman)
Emma Sly (CWO Spartans RFC)

Handsworth RFC

Gerrard McEvelly (Counsel)
Jonathan Mahon (witness)
John Mahon (witness)
Adrian Lowe (witness)
Scott Leckie (witness)
Andy Payne (Chairman)
Brendan Owens (Vice Chairman)

As Observers

Paul Bolton (RFU Press Officer, Midlands)
Mark Underhill (Council member, RFU)
Jamie McDonald (Staffordshire Child Welfare Officer)
Jane Waterhouse (Warwickshire Child Welfare Officer)

Preliminary Matters

1. There were no objections to the composition of the Panel, nor other preliminary matters.

2. The Panel convened to hear the following matters alleged against the Coach:

Charge 1

Conduct prejudicial to the interests of the Union and the Game contrary to Rule 5.12 of the RFU Handbook 2008/2009, the particulars being that on 21st December 2008 during the match Handsworth Under 12 v Spartans Under 12, Gordon Densley, Spartans RFC, **used threatening behaviour towards the Match Referee, Jonathan Mahon.** This offence was denied.

Charge 2

Conduct prejudicial to the interests of the Union and the Game contrary to Rule 5.12 of the RFU Handbook 2008/2009, the particulars being that on 21st December 2008 during the match Handsworth Under 12 v Spartans Under 12, Gordon Densley, Spartans RFC, **used offensive language towards the Match Referee, Jonathan Mahon.** This offence was denied.

Charge 3

Conduct prejudicial to the interests of the Union and the Game contrary to Rule 5.12 of the RFU Handbook 2008/2009, the particulars being that on 21st December 2008 Gordon Densley, Spartans RFC, **struck the Match Referee, Jonathan Mahon,** at the end of the match Handsworth Under 12 v Spartans Under 12. This offence was denied.

3. The Panel outlined the procedure to be followed during the hearing and considered the following :

- (i) Oral evidence from witnesses in support of the charges from Handsworth RFC:
Jonathan Mahon, John Mahon, Adrian Lowe, Scott Leckie.
- (ii) Oral evidence from witnesses for Spartans RFC :
The Coach, Predrag Zanic, Penny Zanic, Wayne Ferguson, Phillip Archer
Joanne Archer, Lorraine Densley
- (iii) Written statements from Shirley Jobbins and Kevin Hannis.

- (iv) RFU incident report form completed by Justin Marsh, CWO, Handsworth RFC.
- (v) RFU incident report form completed by Emma Sly, CWO, Spartans RFC.
- (vi) Submissions from Mr. McEvelly.
- (vii) Submissions from Mr. Willetts.

The Case for Handsworth RFC – Evidence Considered

Jonathan Mahon

4. Jonathan confirmed his written statement. He is the Assistant Coach to the Under 12 team and was 14 years old when the incident happened. He was asked by Scott Leckie if he would referee the Under 12's match against Handsworth. Scott Leckie had discussed the matter with the Coach and it was agreed that Jonathan should referee. The offer made to Spartans to provide a Referee for the second half was declined, therefore Jonathan refereed the whole match. In the first half of the match, Jonathan sin binned a Spartans player for inappropriate use of the boot and he explained his decision to the Coach. During the second half, Jonathan gave a penalty against a Spartans player. The player started to argue about the decision. Jonathan had previously warned Spartans about arguing with his decisions. As such, he felt that a yellow card was appropriate and the player was sin binned. After a try had been scored by Handsworth, the Coach came onto the pitch to address the players. He seemed extremely agitated, in particular with the recently sin binned player. Jonathan approached the Coach and began to explain his decision. There was a respectable distance between the two at this point.

5. Once Jonathan had finished explaining his decision, the Coach stepped right up into his face in an extremely threatening manner. Jonathan felt intimidated and very uncomfortable by this. The Coach used insulting and inappropriate language to him. He could not remember the exact words used, but the Coach did swear and accused him of letting Handsworth players go unpunished. Such was the behaviour of the Coach that Jonathan felt in danger of being assaulted. He made a decision to end the match with 7 minutes to go. He blew the final whistle and moved to walk away. However, the Coach suddenly punched him on his arm with a clenched fist. The punch was forceful and painful. Jonathan was very upset by this and wanted to leave the pitch as quickly as possible.

6. Under questioning, Jonathan confirmed that he had not had a problem with the Coach after his first sin bin decision. He could not recall the Coach proffering a handshake or tapping him on the arm or back. Instead, the Coach lent his body forward and put his face close to Jonathan's. The punch on his arm was after he blew the final whistle, and as the Coach did so, he said "good game Ref" in a sarcastic manner. He could not explain why that comment had not been put in his witness statement. He was not sure whether the strike came before or after the comment "good game Ref". The incident, he agreed, happened in a moment, very quickly. He was sure it was a clenched fist because he could see the entire body. He did not see the hand make contact with him, but felt he knew the difference between contact with an open palm, and a clenched fist. He confirmed he had borrowed the Coach's whistle and that this had been returned to him after the game without incident or comment. He felt it was the right thing for he himself to hand the whistle back personally. He did not feel intimidated when he did so. He did not recall shaking hands with the Coach. He recalled the Coach asking him whether he had hit him. He did not reply to that question but did not deny that he had hit him.

7. When asked exactly what the Coach had said to him which he had construed as threatening and swearing, he recalled the following words being used :

"If my players are being penalised, how come you are letting your fucking little cheating bastards get away with it."

8. Under questions from the Panel, Jonathan confirmed that he wrote his statement the same day as the incident. It was as soon as he got home. He was instructed to do so. His father, a member of the Club, was present when he wrote the statement. They sat down together and he was asked to recall what he had seen. His father typed the statement. He did not know how his father's statement came into being and could not remember if he was in the room with his father at that stage.

John Mahon

9. John confirmed his written statement. He had a younger son playing in the game. He witnessed the assault on his son. He was incensed by what he had seen and immediately went over to intervene in the situation. He has been involved in rugby for 46 years, including 24 years as a Coach, and had never witnessed a Coach strike a

Referee in this time.

10. He was some 15 metres away from the Referee, behind the tryline, when the second yellow card was given. It was clear to him that the Spartan player was arguing with the Referee. The Spartan Coach came onto the pitch and started addressing his players. He appeared extremely angry and in an agitated state. He shouted at the sin binned player. As he was leaving the pitch, the Referee walked some 10 metres to speak to him. Initially he did not think anything was wrong, but became concerned when the Coach stepped very close to the Referee in a very threatening manner. The Coach placed his face close to the Referee's face in a manner he regarded as totally inappropriate. The Referee blew his whistle to signal the end of the game. The Spartan Coach proceeded to punch the Referee on the top of the Referee's left arm in a forceful manner. He became incensed and went onto the field and, in his words, because of the threatening manner of the Coach, "I was forced to defend myself".

11. When questioned, John explained his experience within the game. When asked why not one of the Spartans' supporters saw the incident as he had and three of them would say they saw the Coach extend his hand, he could not understand that interpretation. He saw the Coach encroach into the Referee's space and construed this as intimidating behaviour. When asked whether he had stormed onto the pitch and thrown repeated punches at the Coach, he said he reacted as a father who was concerned about his son's well-being and a rugby player concerned about an Official being abused. He had no doubt in his mind as to what he had seen. He accepted that he had sworn at the Coach. He did not know whether it had taken three people to pull him away from the Coach, though he was extremely incensed. He took the greatest of exception to any other person raising his hand to his son when he had never done so. He was quite certain about the sequence. The Coach stepped into the Referee's face. The Referee blew the whistle for the end of the game. At that point, the Coach punched the Referee. He did not believe he could have been mistaken. He is used to making statements. The statement was made at 5.00 p.m. on the day.

12. Under questions from the Panel, he described the motion of the Coach's arm. It was a jab motion, not a "haymaker". It jolted his son backwards a little. He had examined this arm and it was not bruised. He has never run onto the field of play before.

In all his time and experience, he has listened to Referees being abused, but he has never seen one be struck. He would have gone onto the pitch even if it had not been his son. He did not feel minded to apologise for his behaviour. He was extremely enraged and emotional. He had considered reporting the matter to the Police and was given the opportunity of taking out Court action, but felt it was best left to the Rugby authorities to deal with.

Adrian Lowe

13. Adrian confirmed his statement. He is a parent of another child in the team and watched the game. He began to be concerned at the behaviour of the Spartans Manager who was shouting loudly, angrily and aggressively at his team. He thought it inappropriate given their age and experience. During one outburst, he heard the Coach shout at his team “You don’t want to be beaten by these cheating bastards”. As for the incident itself, the Coach clearly punched Jonathan in the chest area near to his shoulder. It was a jab type punch with a clenched fist. It was not a full pelt type punch, but it caused Jonathan to step back from the force of the strike. The punch appeared to be borne out of pure frustration and anger. He is a Police Officer with 16 years’ experience, and a trained observer. He was not in any doubt as to what he had seen.

14. Under cross-examination, he confirmed he was about 35 yards away, observing a short momentary incident. There was one point of contact. He saw the connection and that it was with a clenched fist. When asked why, if he was so sure, he had not arrested the Coach, he said he was restricted from front line duty and felt any intervention would have made the situation worse. His assessment was that the identities of the protagonists were known and the matter could be resolved later. He did not agree that his lack of intervention was because he was not sure what he had seen.

Scott Leckie

15. Scott confirmed that he is the Under 12’s Coach. The match became a little scrappy in the second half and he saw the Coach running up and down the touchline screaming at his players. He said this behaviour became a talking point amongst the Handsworth supporters. He saw Jonathan issue a second yellow card to a Spartans player and the Coach being verbally aggressive and threatening towards Jonathan. He then saw him hit Jonathan on his upper arm. He then saw John Mahon enter the field of

play and a short while later heard the Coach say “They can fuck the return match, the cheating bastards”.

16. He had produced his statement about 10 days after the incident. He had seen the Coach strike the Referee with a clenched fist in the upper arm region. It was a swing of the arm with full force and connection was with the top of the shoulder. He described it as “a frustration shove/hit” rather than a tap on the back. When asked to demonstrate by the Panel, he indicated a movement of the right arm which started out to his right hand side, swinging towards the front. He did so with an open hand. When questioned about this, he changed the action to one with a clenched fist, and was sure it was a fist that he had seen.

Witness Evidence on behalf of the Defence

Gordon Densley

17. Gordon explained that he is the Under 12’s Coach at Spartans. He has been coaching children in sports for 8 years or so at various Clubs, and he goes into Schools undertaking rugby and athletics coaching. He described the game itself. He had no problems with Jonathan refereeing it as he himself did not wish to. He had lent the Referee his whistle.

18. As the game went on, his players had become upset about bad language and punches being thrown by Handsworth players. In the second half, Handsworth scored and he went into the end zone to try and calm his players down and tell them to play rugby how they had been taught. The Referee came over and said he was going to sin bin another Spartans player. He said to the Referee that he thought his players had had enough as there was no control in the game. The Referee said “fair enough” and blew his whistle. He tapped him on the shoulder a couple of times whilst facing him and said “cheers mate”.

19. The next thing he knew was that an onlooker had run onto the pitch and punched him in the face. He described the conduct of that person, who was accusing him of having hit the Referee. It was an ugly incident. When this person had been held back, he called the Spartans players and parents over and apologised for the way the game had

ended. He said he had been accused of hitting the Referee and asked if anyone had seen him do anything wrong. He said he had been praised for keeping his control and not retaliating and he was given a chorus of “three cheers” by the parents.

20. Later the Referee came up to him and gave him his whistle back and said “thank you”. He said to the Referee “I didn’t hit you, did I?” The Referee said “no”, they shook hands and he walked off. He said he then walked over to the onlooker that had hit him and said he must have misunderstood the situation as he would never hit a Referee. The onlooker then started swearing loudly and aggressively at him again and his wife (Lorraine Densley) asked him not to swear as there were women and children present. She received some abuse. They then walked away. As they were going back to their cars, he wished the Handsworth Coach Happy Christmas, and this was reciprocated. There was no reason for them to stay as the Club House was closed.

21. Under cross-examination, the coach denied calling Handsworth “cheating bastards”. He accepted he was trying to calm his players down and used his arms. He raised his voice to get their attention. He denied putting his face up close to the Referee’s face. He maintained he tapped the Referee on the shoulder in a sportsmanlike manner. He denied swearing at the Referee. He wanted the game to end because the children were getting agitated and there was not much rugby being played. The people who had given evidence for Handsworth had misread the situation. There was no reason for him to punch a Referee.

22. Under questioning from the Panel, he confirmed that he had signed the Code of Conduct and been on refereeing courses, including a Best Practice course. He described his coaching style and maintained he could influence and direct a game from the sidelines by shouting at the players. As to why the Referee’s father had been so upset that he had punched him, he maintained that he must have misread the situation and acted out of paternal outrage.

Predrag Zaric

23. Predrag confirmed his written witness statement. His interpretation of what was going on on the field was that an inexperienced Referee had lost control of the game and the game was abandoned. Following the abandonment, the Spartans Coach spoke to the

Referee and patted him on the shoulder in a congratulatory/grateful manner. He was about 20 metres away. He then noticed a man run onto the field shouting profanities at the Spartans Coach and when he reached the Coach punched him in the face. The Spartans Coach took a number of steps backwards and assumed a defensive posture. He had removed his son from the area of animosity.

24. He could not think of anything that might possibly have been misconstrued as a punch.

Penny Zaric

25. Penny is Head of Physical Education at a Secondary School in Birmingham. She was present at the game as a parent. The Referee did not have control of the game and there was some shouting and swearing from Handsworth players. This was intimidating and Spartans players were frightened. They were also increasingly frustrated with the apparent unfairness of the situation. The Coach had tried to get order in the game, but this did not happen and the game seemed to finish slightly earlier. At the end of the game, she saw the Coach tap the Referee on his shoulder in a gesture to suggest a “thank you for umpiring” way. She then described someone running onto the pitch and the matters which followed.

Wayne Ferguson

26. Wayne is another parent of a Spartans player. He heard the Coach say to the Referee “I’m sorry but I’m calling an end to this game”. He had extended his hand out to shake with the Referee’s hand. The Referee did not shake the Coach’s hand so he patted the Referee on the top of the shoulder as an alternative. Suddenly, a man stormed over to the Coach and accused him of hitting his son. He witnessed the man punch the Coach three times in the face whilst the Coach did not retaliate. He helped two other parents pull this man away from the Coach. He conceded in cross-examination that the Referee’s father must have thought his son had been hit. He understood it was the Coach’s decision to call the game off. He did not think the Referee saw the Coach extend his hand to shake, but he did see him pat the referee on the top of his left shoulder. The Coach did not retaliate and did not throw any punches back. He admitted that the Coach was angry because of the way the game was being refereed. When asked

how the Referee, his father and Mr. Lowe could be so wrong describing what they had seen, he suggested that this may be motivated by desire to give some justification for the Referee's father running onto the pitch and punching a Coach.

Phillip Archer

27. Phillip, another parent, had described the final whistle being blown and Gordon Densley giving the Referee a friendly pat on the back of his shoulder. He had a good view and he did not see a punch. The only punch he had seen was a man who ran onto the field and punched Gordon in the side of his face with a flurry of punches. Gordon did not retaliate, either physically or verbally. He described himself about 50 feet away, with an excellent clear view of the incident. He also saw the Referee hand back the whistle to Gordon later. They both shook hands. He felt the Referee's father had got hold of the wrong end of the stick.

Joanne Archer

28. Joanne confirmed her statement. She did not feel the game was well refereed. The Coach became increasingly frustrated but she would not describe him as angry. He was telling the Spartans players just to get on with the game and whether they liked the Referee's decisions or not, they would have to put up with them. She recalled the Coach saying to the Referee that it was a good thing that he had blown the whistle. She denied that the Coach was invading the Referee's personal space. The only motivation for the father running onto the pitch was that he misconstrued the tap on the shoulder.

Lorraine Densley

29. After confirming her written statement, she described the game in a similar manner to the other Spartan witnesses. Gordon had been talking to his players after they had conceded a try, at which point the Referee came over to Gordon. They seemed to have a brief chat – she did not hear the conversation – and the Referee blew the whistle for full time. She was about 20 metres away and saw Gordon pat the Referee on the back as a thank you/well done gesture. She said she saw this plainly as there was no-one in front of her. At this point, a man came running onto the pitch and hit Gordon. The man was dragged off by a number of parents. The Spartans parents and players all got together and Gordon apologised for the man running on and what had followed from that, saying that did not normally happen at a game of rugby. He then explained that he

had been accused of punching the Referee and asked if anyone had seen him do that. The consensus amongst the parents was that he had controlled himself well in a difficult situation and he was given three cheers.

30. Later, Gordon was approached by the Referee, who gave him his whistle back and shook his hand. He did not approach the Referee.

31. She did not know what had caused the man to run onto the field. It seemed to happen just out of the blue.

32. Written witness statements of Kevin Hannis and Shirley Jobbins were read.

Submissions

33. Mr. McEvelly and Mr. Willetts carefully summarised the evidence for us, explaining how we should interpret it as supporting their respective positions. In particular, our attention was drawn to the areas in which the oral evidence given and tested under cross-examination differed from that contained in the contemporaneous or almost contemporaneous witness statements.

Findings as to guilt

34. We have carefully considered all the evidence given and the helpful submissions made by Mr. McEvelly and Mr. Willetts. It has been suggested to us by Mr. McEvelly that the case needs to be proved only on the balance of probabilities with the concept of the “sliding scale” in disciplinary cases being recently dismissed by a decision in the House of Lords (re: B 2008 and re: Doherty (2008)). We are asked to conclude that these recent cases state in effect that there is no “flexible civil standard of proof” and that the seriousness of the allegation and the consequences have no special significance. We do not agree. We believe it to be correct to apply Disciplinary Regulation 6.5.2 unless and until that Regulation is amended. We do not regard Court decisions as automatically binding precedent upon us.

35. The allegations against the Coach are extremely serious. Match Official abuse

itself is serious enough when verbal, but extremely serious when physical. In this case, the alleged behaviour is towards a Match Referee who was only 14 years of age at the time. Physical abuse of a Match Official carries a maximum sanction of a suspension from rugby for life. In all these circumstances, we need to be satisfied that the allegations are proved to a high standard of proof.

36. We find as follows in relation to the charges :

Charge 1

The only cogent evidence in support of the charge of using threatening behaviour comes from the Match Referee himself. It is not sufficient corroborated by witnesses on either side, though many claimed to have had a good clear and uninterrupted view. It relies upon the perception of the victim and in the absence of any other extraneous evidence in support, do not feel that that alone is sufficient for the case to be proved on the balance of probabilities. We therefore find Charge 1 not proved.

Charge 2

As to the use of offensive language towards the Referee, we note that in his witness statement which was made within hours of the end of the game, the Referee stated that he could not remember the exact words used by the Coach, but that he did swear in an insulting manner towards the Handsworth team. He has however recalled today exactly the words which he recalled being used. We find it unusual that words can be recalled with such precision a matter of weeks after they were spoken, but could not be recalled within a matter of hours. There is no independent corroborative evidence in support of the allegations that certain words were used, or used towards the Match Referee, and accordingly we find Charge 2 not proved.

Charge 3

It is inevitable in cases of this nature that the evidence is fractious and inconsistent. We have heard two completely contradictory accounts of the incidents described by Spartans and Handsworth. It may be that the truth lies somewhere in between the opposite poles, but we must apply the evidence we have heard to the standard we require. The Coach appears to be well liked by parents and children. He has CRB approval, together with coaching qualifications. To find that he would have punched a 14 year old in the manner described needs, to our minds, strong and consistent evidence to support it. We

are not satisfied that that evidence exists in this case. We note that the Referee did not see a fist. He concluded that it was a fist from the way it had made contact with him. Mr. Mahon Snr. and Mr. Lowe, both described clearly a “rabbit like” punch, but when Mr. Leckie gave his evidence he demonstrated an action more in keeping with the evidence of the Spartans witnesses. When this was pointed out to him, he reverted to a clenched fist. It has been suggested to us that evidence of Handsworth witnesses may have been motivated by a desire to exculpate Mr. Mahon Snr. and his actions which bring no credit to himself or his Club. We do not feel the need to make such a finding. It is perfectly possible to our minds in the heat of the moment for Mr. Mahon to have misinterpreted the nature of contact. In support of this, we note that the Coach never lost his control, even though he was punched repeatedly to the head by Mr. Mahon. He had not sought out the Referee – the Referee came to him. He had held out his hand and, when this was not taken, agreed he had made physical contact with the Referee, but not in the manner alleged. We also note that the Referee was quite content to approach the Coach again later to hand back the whistle to him with thanks.

Having considered the totality of the evidence, we do not find Charge 3 proved to the required standard and accordingly find the Coach not guilty.

Comment

37. We have heard the game described from the perspective of both sets of parents, Coaches and supporters. What is described is a truly unpleasant incident which will have caused scars within both Clubs and particularly for a fledgling Referee who ought, and deserves, to have support and respect from Coaches, players and parents alike.

38. Having asked the Coach about his style of coaching and his behaviour on the day, we have significant concerns that if he continues in such a manner, incidents of this nature may well occur again in future. Players and parents do not respond well to the sort of behaviour we have heard described as exhibited by the Coach on this occasion. It is of concern to us that the Coach’s actions towards the Referee (whilst not passing the threshold for us to find the allegations proved) was sufficient for Mr. Mahon Snr., Mr. Lowe and Mr. Leckie to misconstrue them to such an extent where Mr. Mahon Snr. ran onto the pitch to assault the Coach.

39. We are satisfied that the Coach made a sarcastic remark to the Referee and that it was not unreasonable for his words and actions to have been capable of misconstruction. In those circumstances, and in order to bring about what we regard as a required improvement in the Coach's manner and demeanour, we make the following orders consequent upon our findings :

(i) We order that the Warwickshire Child Welfare Manager, Jane Waterhouse, carry out a child welfare audit of Spartans RFC and report to the constituent body as to any action which may be deemed necessary arising from that audit.

(ii) That Gordon Densley will resit his Level 1 coaching qualification.

(iii) That Gordon Densley attends a recognised young persons safeguarding course to be advised by Jane Waterhouse.

Costs

40. We do not feel it appropriate to order any costs in this case.

Antony Davies

Antony Davies,

Chairman

16th March 2009