

RUGBY FOOTBALL UNION
DISCIPLINARY HEARING

At: Warrington Holiday Inn, Warrington, Cheshire

On: 7th April 2009

Player: Mark Cueto

Club: Sale Sharks RFC

Venue: Edgeley Park, Stockport

Date of Match: 27th March 2009

Panel: Mike Hamlin (Chairman)
Clif Barker
Peter Rhodes

Secretary: Bruce Reece-Russel

In Attendance: Mark Cueto (Player)
James Jennings – Chief Exec of Sale Sharks RFC

PRELIMINARY MATTERS

1. The Panel was convened to consider a citing complaint by the Citing Officer Budge Pountney against the Player who is alleged to have committed an offence of dangerous tackling, contrary to Law 10(4)(e). The alleged incident occurred in the 29th minute of the first half.
2. The Player did not object to the composition of the panel and no preliminary issues were raised.
3. The panel considered
 - a. The Citing Officer's Report
 - b. DVD of the match
 - c. Evidence from the Player
 - d. Evidence/submissions from James Jennings

- e. Written Testimonial from Martin Johnson – England Team Manager
- f). DVD's of dangerous tackles in the cases of Rasmussen, Hodgson & Abbott

THE CITING

The Citing Officer's Report recorded as follows:-

“Bath number 13 retrieves the ball off the floor approximately 1m from the Bath try line. The Player comes in to make a tackle and competes for the ball. The Bath number 11 (“AH”) comes in to clear the Player away from the ball, the Player then counter rucks AH away slightly from the ruck. At this point the Player starts to stand up and has his left arm around the torso of AH just above the hips and his right hand under the left leg of AH, at this point the left arm of AH is around the head of the Player. The Player continues to grapple with AH who is looking to get back to the ruck. The Player then squats very briefly and only a tiny amount and he then powers his legs in an upward and explosive motion in order to lift AH into the air. The Player also deliberately uses his left knee and thigh against AH's right leg to sweep and unbalance that leg which in turn accelerates AH's rotation in the air. The Player's right elbow also comes away from the tackle which is an indicator that the tackle is out of control. AH is lifted into the air at some velocity and his body rotates to the point that his left leg is above the head of the Player. AH lands onto the ground upon his right shoulder. The Player takes no care to lower AH safely to the ground. Understandably AH keeps hold of the Player's legs and whilst they are on the ground the Player kicks out at AH in order to free his feet. During the whole incident AH did not have the ball. No apparent injury occurred as AH played on for the rest of the match. There was no action taken by the Referee”.

The Citing Report is silent as to details of the discussion with referee/ touch judges and the Citing Report states “none they obviously did not see it otherwise they would have flagged it”.

The panel considered the match recording in full sequence, short sequence and slow motion and what was seen on the match recording reflected the Citing Officer's Report in nearly all aspects as set out above. The incident occurred about 1m away from the Bath try line.

THE PLAYER'S CASE

Initially James Jennings stated that no one at the Club was aware of the incident until they received notification of and the content of the citing. The Player told the Panel at the time that he did not think too much of the incident. He had

spoken to AH after the game and had subsequently telephoned him. He had played the rest of the game and had not sustained any injury nor had he remonstrated about the incident. The Player then took the Panel carefully through the DVD explaining his actions. AH attempts to ruck and drive the Player away from the ruck, the Player wanted to drive AH past the ball to leave it available for hopefully one of his colleagues to collect the ball and possibly score. He was not aware that he was on his own with AH, he thought he was still part of the mini ruck. The leg lift he executed he had been taught as a junior at school. He referred to the absence of any reaction from the players, spectators or indeed the touch judge who was in very close proximity to the incident. He accepted he could have released AH after initially trying to drive him upwards and away from the tackled player and the ball on the ground. He also acknowledged that his right elbow was away from the tackle and in a position between vertical and horizontal as described by the Citing Officer. He accepted that he had put him in the air and that on this occasion his superior strength and technique had put AH in that position. He also told the Panel that having got AH into that position he realised albeit momentarily that AH may have been vulnerable and as a result he did not drop him or let him go but in his opinion did his best from that moment to do what he could to look after him. His left arm remained around AH's torso as he came into contact with the ground. Whilst acknowledging that he had admitted responsibility for committing a dangerous tackle, he felt it was marginal as he had kept his left arm around AH and did not let him fall as a result of his own gravity having put him in that position in the first place.

James Jennings submitted that the Club had viewed the DVD carefully and had taken advice from a number of coaches and had similarly come to the conclusion that whilst prima facie this was a dangerous tackle it was marginal in that:-

1. It had been committed on the spur of the moment.
2. It was not premeditated.
3. There was no provocation.
4. There was no crowd player or any other form of reaction including intervention from the officials.
5. The Player would appear to have attempted to reduce the potential risk by not letting go of him.
6. There was no injury to AH.

Accordingly it was submitted that this should be a low entry case with starting point of 2 weeks. Upon enquiry from the Chairman about the guideline and dicta set out in the Abbott case no further submissions were made by Mr Jennings.

FINDINGS

The panel considered all the above evidence and submissions. The Panel were impressed by the Player's candid explanation of what he did. He was an

impressive and credible witness. His evidence as to his thought process, actions and explanation as to his intent were compelling and to a certain extent persuasive, particularly with regard to his actions after he had put AH in a vulnerable position.

The Panel found that he was aware AH had been put in a vulnerable position and that the Player recognised the potential risk having done that. The Player believed he could not have done anymore to ensure a safe descent to the ground but the Panel disagree on this part of his evidence.

To the extent that the Player retained a hold on AH's torso, we agreed but in the circumstances it was not sufficient. He did take some care to lower AH by maintaining hold of AH's torso with his left arm. To that extent only the Panel differed from the Citing Officer who had stated "the Player took "no" care to lower AH safely to the ground".

The Panel accepted that the Player had not intended to cause injury, it was clear from the actions of the Player by his superior strength and technique he intended to drive the player up and away from the ground and into the air and in doing so to use his own words "he was in control mentally and physically of AH". Consequently he was from the moment he had put him in the air at least reckless as to the risk of serious injury being sustained by putting AH into the air and in a vulnerable position. The Panel found however that he did not let him go or drop him or for the sake of completeness in any way drive him into the ground. A very careful review and analysis of the incident does not support the contention that he made "no attempt" to bring AH safely to the ground. He did not let him go and maintained his left arm under AH's torso. The Panel concluded therefore that the fall to the ground in part only was cushioned by the Player's left arm around AH's torso.

As required, the panel undertook an assessment of the seriousness of the offending having regard to the criteria prescribed in regulation 8.2.5 of the RFU Disciplinary Regulations. In this regard, the panel found as follows:-

- a. The panel found that the lifting of the AH was intentional although there was no intent to cause any injury.
- b. The Player had, however, thereafter not taken sufficient care to avoid the risk of injury once AH was in the air. By not letting AH go and maintaining a hold around his torso he went some way to trying to safeguard AH but in the Panel's view he should not have put him in that position in the first place and could and should have been more pro active in ensuring his descent to the ground safely.

- c. The Player's actions were as set out as above. There was no evidence of provocation.
- d. There was no apparent injury to AH which in the circumstances may have been fortunate although some credit should be given to the Player for maintaining the position of his arm around AH's torso.
- e. When any player is lifted up and through the horizontal and dropped or allowed to fall with his head or shoulder exposed even if the contact with the ground is lessened to a certain extent by the actions of the Player as in this case, there is an inherent vulnerability of the victim player and accordingly a potential risk that injury or potentially significant injury may arise as a result of the Player's action.
- f. There was no premeditation although the attempted lifting and subsequent successful lifting of AH into the air was in the Panel's view intentional.
- g. The conduct was complete in that the Player lifted AH into the air and insufficient care was taken to try and ensure that the player came to the ground safely. The Player whilst maintaining his arm around AH's torso reduced the risk factor but, as on his own evidence he was in control both physically and mentally he could and should have ensured a safer descent. He took a risk by putting AH into the air – he should not have done so, but having done so had a clear duty to bring him to the ground safely and not expose him to the potential risk referred to in sub clause (e) above.
- h. There are no other relevant factors constituting the Player's offending.

In considering the entry point as set out in the RFU Disciplinary Regulations the panel took relevant notice of the decision of the RFU Disciplinary Officer, His Honour Judge Blackett, in the Abbott case when this type of offence was considered in detail on the 12th September 2006. Bearing in mind the circumstances of this alleged offence, it was necessary in the panel's view to remind themselves of the statement in the Abbott decision since the relevant policy with respect to offences of this nature are clearly set out in that decision and is as follows:-

“Medical advice from the IRB suggests that the risk of significant injury clearly exists where a player is driven head first into the ground (the classic spear tackle) but it also exists where a player is simply dropped head first onto the ground and, as Dr. O’Driscoll states, “gravity will do the rest”. As the risk of catastrophic injury flowing from such action is high, a player who turns an opponent upside down has an obligation to ensure that he lands safely by controlling his descent..... The policy of the IRB is to deter this sort of tackling and the RFU supports that policy”.

“It is important that this sort of tackle is dealt with severely and, although there was no injury, a tackle which allows a victim to drop head first into the ground from some height is inherently a more serious form of dangerous tackling. The IRB ranges for dangerous tackling includes all forms of such activity including high, late and spear tackling. Any dangerous tackle which puts the victim head first into the ground is, therefore, either Mid-Range or Top-End on the scale of seriousness because of the real risk of catastrophic injury”.

The Panel noted that the mid end entry point for a dangerous tackle, contrary to Law 10(4)(e) is 6 weeks and a low entry 2 weeks. The Panel was then required to assess the appropriate entry point and:

1. The panel duly had regard to the findings above.
2. Taking into account the finding that the initial movement of lifting AH into the air was intentional but from then on the Player did not take sufficient care as to the extent to which AH came to ground. The Player did not drive or drop AH. He realised AH was vulnerable. He maintained his arm around and partially underneath AH.
3. The absence of injury.
4. There was no malicious intent, it was committed very quickly in the heat of the moment and although the Player had the opportunity not to put AH into a vulnerable position in the air on the second time he went on to do so. He, therefore, is responsible for the potential risks which follow. Whilst the Player had enquired what more he could have done, in the Panel’s view he (a) should not have put him in that position in the first place and (b) as he was in control should have ensured the total safe descent to the ground. He did not.
5. There had been no other reaction from any other player or spectator and the game was not affected.

In these particular circumstances and the facts of this case and bearing in mind the lack of care in ensuring AH came to ground safely, although there was initial intent to put AH into the air, the Panel determined that the appropriate entry point was low entry namely 2 weeks. All cases turn on their own specific facts and the Panel’s conclusion was only reached after the most careful analysis of the DVD coupled with the Player’s compelling and impressive evidence. It is in no way minimising or ameliorating the dicta and guidelines set out in the Abbott case. Offending which causes an opposition player to land on his head or shoulders would normally be classified as mid or top end in the scale of seriousness. However based upon the findings and for the reasons given above the Panel concluded that fairness was achieved by finding as we did.

The panel considered the aggravating factors set out in the RFU Disciplinary Regulations 8.2.6 and found one to be present. The need to deter this type of offending and tackle or attempted tackle. In accordance with RFU Regulation 8.2.6 (c) it was in the Panel's opinion and noting the decision in the David Lemi case dated 13th January 2009 necessary to deter players from taking action which puts opposition players in a highly vulnerable position. There are potential inherent risks of serious injury.

The panel then undertook an assessment and considered the relevant mitigating factors set out in the RFU Disciplinary Regulations 8.2.7 and having carefully considered the mitigation all the relevant mitigation factors were present:-

1. He acknowledged his guilt.
2. He has an impeccable record having never appeared ever before a Disciplinary Panel.
3. He has an impressive rugby playing background having represented Sale Sharks for nearly 10 years, represented England and the British Lions.
4. His conduct before the Panel was outstanding and impressive.
5. He showed genuine remorse for what had occurred and had post the incident contacted and spoken to AH. All factors were present which would have justified a full discount but the Panel concluded that any increase in sanction to reflect the aggravating factor referred to above should be discounted to reflect the mitigation.

SANCTION

The Player is therefore suspended for a period of 2 weeks. The suspension will run from 7th April 2009 until 21st April 2009 and the Player is accordingly free to play again on the 22nd April 2009.

COSTS

Pursuant to Regulation 8.3.1 the Player and/or his club shall pay the costs of the hearing of £250 in accordance with Appendix 6.

RIGHT OF APPEAL

There is a right of appeal against this decision and this should be lodged with the RFU Discipline Department by 5.00pm on Thursday 9th April 2009 and in accordance with the RFU Disciplinary Regulations.

Signed

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Mike Hamlin
Chairman

Dated 8th day of April 2009

