

RFU – GUINNESS PREMIERSHIP

DISCIPLINARY HEARING

At: Holiday Inn, Bloomsbury

On: Tuesday 5 May 2009

JUDGMENT.

Player: Justin Harrison **Club:** Bath Rugby

Match: Bath Rugby v Saracens

Venue: Recreation Ground **Date of match:** 25th April 2009

Panel: Jeff Blackett (Chairman), Buster White, Jeremy Summers

Secretariat: Bruce Reece-Russel

Attending: The Player.
Thomas Shepherd – Legal representative
Dave Guyan – Team manager Bath

Peter Larter – Citing Officer
Steve Borthwick (by telephone)

Preliminary Issue

1. Mr Shepherd asked for clarification as to whether the citing officer had jurisdiction to cite a player for an act of foul play after the final whistle had been blown by the Referee. This citing arose out of conduct which occurred as part of a melee during which the Referee had signalled the end of the game, and any contact between the Player and Steve Borthwick certainly occurred after the whistle had been blown.

2. The Panel decided that the citing officer did have jurisdiction to cite and the panel were thus able to adjudicate for the following reasons:

- a. There was a melee involving a number of players from both sides which started during play and just before the Referee signalled the end of the match. It would be artificial to rule that the citing officer had jurisdiction to cite those who started the melee but not participants who joined in after the whistle had been blown.
- b. Law 10 states that foul play is anything a person does within the playing enclosure that is against the letter and spirit of the game.
- c. A Referee can award a Red Card for an act of foul play while players are within the playing enclosure even after he has ended the match.

- d. The purpose of the citing regulations is to allow post match analysis by an independent citing officer who may cite an act of foul play which he considers to merit a Red Card. If a Referee can award a Red Card for an act of foul play after the final whistle, then *mutatis mutandis* a citing officer must be able to cite.
- e. Even if that analysis is wrong, there is a power under RFU Rule 5.12 (misconduct) for the RFU Disciplinary Officer to bring a charge against a player for any conduct which is prejudicial to the interests of the Game or for any infringement of the Laws of the Game

The Citing Complaint

3. The Player was cited for making contact with the eye or eye area of an opponent (Steve Borthwick) immediately after the final whistle of the match contrary to Law 10(4)(k). He denied the offence. The citing report stated:

“The Saracens were attacking and the Bath number 18 (Jonny Faamatuainu (JF)) tackled a Saracens player about 15 metres from the Bath try line and just inside the far touch line as viewed from the main Sky camera; the ball was knocked on in the tackle, then the referee blew the whistle to end the match.

During the above sequence of play, JF ended up on the back of the Saracens player he had tackled and, almost immediately, the Saracens number 10 (Glen Jackson (GJ)) dropped onto JF’s back; the ball was not in the immediate vicinity. As JF got up he pushed GJ in the chest and when GJ got up he reacted and they started wrestling with each other in the area between the pitch and the fence in front of the spectators.

Other players saw the above incident and quickly joined in; there was a lot of pushing, shoving and wrestling as players sought to protect their team mates. There were 3 or 4 Saracens players around JF and the Saracens number 4 (Steve Borthwick (SB)) was one of these players, albeit at arms length from JF. The Player then came up behind SB and wrapped his right hand around the left side of SB’s face with his fingers in a crooked position making contact with SB’s left temple, he also grabbed SB’s left shoulder with his left hand. SB then attempts to pull his head away prompting the Player to try to get a better grasp with his fingers in a crooked position over SB’s left ear. The Player then dragged his right hand across the left side of SB’s face in a similar manner as before. The Player then moved his right hand back to a similar position once again. SB then successfully removed the Player’s right hand from his face using his right hand. The Player then grabbed SB with his right hand around the front of his face in the nose/mouth area, and eventually managed to get his arm around SB’s throat and wrestled him to the ground; once he was on the ground SB managed to free himself and walked away from the incident”

4. The panel viewed the DVD recording of the incident and the citing officer highlighted that at various times at the start and during the incident Steve Borthwick did not have any wound or blood on his cheek just below his left eye. However, as he

stood up after the incident and walked away the recording appeared to show a scratch or split on the upper left cheek bone with blood flowing from it.

5. The Player denied that he made contact with Borthwick's eye or eye area either intentionally or recklessly. He addressed the panel at length providing a commentary to the DVD which was replayed in slow motion and stopped at various stages to emphasise what he said. He stated that he had control of his hand at all times, apart from when Borthwick grabbed it and pulled it, and knew exactly where it was throughout the incident. He said that as the game came to a close he saw players start to push and shove each other near the side of the pitch. He watched it and thought it was dying down. However, he saw Borthwick grab Faamatuainu in the region of his neck and head and other Saracens players then joined in as the incident flared again. They were grappling and there was contact with Faamatuainu's head and neck. This was clear from the DVD. The melee continued with more Saracens than Bath players and the Player said that he approached intending to grab Borthwick who, he suggested, was being an aggressor at that stage. He intended to place Borthwick in a head lock so that he could pull him backwards and away from the incident.

6. The Player said that he put his right arm around the top of Borthwick's head from the right and his left arm on Borthwick's left shoulder. The first point of contact with his hand was to the side of the head (corroborated by the DVD) but he could not get a firm hold. He moved his hand forward, not to rake Borthwick's face but to realign so that he could get a better grip. He submitted that it was clear that at that stage his hand was not in contact with Borthwick's face as was suggested by the citing officer – this, he said, was clear from the DVD for two reasons: first on close analysis of a frame by frame view there was a space between his hand and Borthwick's face and second there was no reaction from Borthwick who continued to concentrate on Faamatuainu. Had there been any contact with his eye or eye area he would have reacted. The Player said that he realised he had not had any effect so he grabbed hold of Borthwick's left ear and squeezed it. This caught his attention and he then grabbed the Player's hand to pull it away. The Player was then able to complete the headlock and he pulled Borthwick back and away from the melee. As they fell to the floor he released Borthwick who got up and moved away quickly as a number of other Saracens players struck the Player with knees, elbows and fists. The DVD recording showed Borthwick get up and move away but there were too many bodies in shot enable any further clear analysis.

7. The Player then said that not only did he not commit the offence but he was not the sort of person who would commit this sort of offence. He had received countless offers of support to provide testimony to this effect. He said that at 35 years old, and a professional since the Game went open, he has tried to be a role model and prides himself on his honesty and integrity. He accepted that in a snapshot in time he presented an unacceptable role model by becoming involved in this melee, and for that he expressed sincere remorse. However, that snapshot has been misinterpreted – he said that any attack to or near the eye was completely unacceptable and merits severe sanction. However he was not guilty of that offence. As regards the blood on Borthwick's cheekbone, he said that he believed there was no cut but that blood had come from the wound on Borthwick's nose or from a cut above the eye which occurred earlier in the game. He certainly did not cause it by scratching him. He said

that after the incident he had Borthwick shook hands and congratulated each other – there being no animosity or remonstrance. At that stage, he said, the blood had been wiped away and there was not visible wound.

8. Steve Borthwick was asked by Mr Shepherd to give evidence via a telephone link. Mr Shepherd said that Borthwick had not had any contact with him before the hearing, there had been no proof of evidence and he did not know precisely what he would say. However, he was so confident in the Player's veracity that he wished Borthwick to be called to describe the incident from his perspective. Steve Borthwick said that he had not seen the DVD recording but he could remember the incident well. He said that after the melee started he grabbed hold of Faamatuainu and he in turn was grabbed from behind. He said he felt something move across his face fleetingly and then he was held by the neck and fell backwards. He received no blows to his head at any stage and it was all over very quickly. He said he felt no adverse pressure on either his eye or in the area of his eyes and thought no more about it. As regards the blood on his cheek, he said that when he returned to the changing room the medic wiped the blood away and there was no injury underneath. He was not sure where the blood stain (as he described it) had come from, but once it was wiped off there was no more blood.

9. Mr Shepherd acknowledged that there appeared to be prima facie evidence to support the citing on the DVD – there was blood on Borthwick's face which looked as though it came from a scratch or cut and the Player was pulling him away from the melee. However, he said that the incident was very close to the crowd but there was no reaction from them, and there was no reaction from any of the players in the vicinity. In particular, there was no reaction from Borthwick himself – he submitted that if there had been any contact in or near Borthwick's eyes he would have disengaged from Faamatuainu and reacted either by bringing it to the attention of match officials, pointing to his eye or retaliating. Further the evidence from both the Player himself and Borthwick was clear that there was no contact with the eye or eye area.

Decision

10. The panel reviewed the DVD recording a number of times, and took account of what the Player and Steve Borthwick said. Although the DVD recording showed the Player apparently grappling with the side of Borthwick's head and then move across the front of his face, the recording is consistent with the Player's account of what occurred. At the crucial moment it is possible to discern a gap between his fingers and the front of Borthwick's face. Borthwick corroborates the important detail of the Player's account. The panel were troubled by the blood on Borthwick's cheek bone. It was not there at the start of the incident but it was at the end, and the DVD, although not entirely clear, appears to show a wound with some swelling underneath. However the evidence from both the Player and Borthwick was that there was no wound and that the blood had dripped from elsewhere; it is impossible for the panel to gainsay that evidence. The panel also noted the lack of any reaction from the members of the crowd who watched the incident from a few feet away, any of the players or Borthwick himself. Had there been contact with the eye or eye area it is likely that there would have been. **In all the circumstances, therefore, the panel concluded that on the balance of probabilities the offence did not occur –**

there was no contact with the eye or eye area - and we dismiss the citing. The Player is free to play with immediate effect.

11. The Player should not have become involved in the melee and his intervention extended its length and led to other players taking action against him on the ground. We considered whether the charge should be amended to reflect this misconduct, but decided that it would be unfair for us to single him out from the rest of the participants at this stage of the proceedings. However, we left him in no doubt that his actions did him no credit and informally reprimanded him.

12. This melee, which occurred right up against the side of the enclosure, was an appalling spectacle involving several players from both clubs. It was a disgraceful way for the match to end and did nothing to enhance the image of the Game or either club. The essence of rugby is discipline and control and the players showed neither. Both clubs should examine what occurred and reprimand the players involved.

Costs

13. There is no order for costs.

Signed: **Jeff Blackett**
Chairman

Date: **5 May 2009**