RUGBY FOOTBALL UNION

APPEAL HEARING

COVENTRY M6, JUNCTION HOLIDAY INN

TUESDAY 26TH AUGUST 2009

Player: Daniel Hickin

Club: Coalville RFC

Match: Oadby Wyggestonians XV ("Oadby") v Coalville XV ("Coalville) on 3 April 2008

Party Citing: Oadby RFC (date unknown)

Citing Hearing: Leicestershire Disciplinary Panel on 5 June 2008

Outcome: Finding of kicking contrary to Law 10.4(c). Suspension 19 weeks.

Appeal Panel: John Brennan (chairman), Bob Rogers, Geoff Payne

Secretary Bruce Reece-Russel

Attendees: Daniel Hickin, David Burchell (Chairman, Caolville RFC"), Martin Ballard (Captain,

Caolville RFC), Chris De Luca (Oadby), Iain Pollock (Leicestershire Society Referees

Union).

Venue: Holiday Inn, Coventry

Date: 26 August 2008

Outcome: Appeal against finding dismissed. Appeal against sanction dismissed.

Decision of the Appeal Panel

1. This was an appeal against finding and sanction.

The Match

- 2. On 3 April 2008, a friendly match took place between at Oadby's ground between an Oadby XV and a Coalville XV. It had been agreed that each club would field a selection of players from their respective, 1st, 2nd and 3rd XV's.
- 3. The following is common ground. In or around the 28th minute of the second half, a fight broke out at a ruck. Within a few moments, about a dozen players were trading punches. The Oadby fly-half was some way away from the melee, he remained there with his hands on his hips taking no part in the violence. A Coalville player ran towards him and dealt him a vicious blow from behind. The Oadby fly-half immediately fell to the floor. As the Oadby fly-half lay motionless on the ground, another Coalville player approached him and kicked him. When the fight eventually subsided, the referee abandoned the match. At the time, the score was 17 45 in Coalville's favour.

The Citing Complaint

4. The Appeal Panel did not have a copy of the citing complaint. Suffice is it to say that Daniel Hickin was alleged to have been the player that kicked the Oadby fly-half. Further, it was alleged that the kick was to the head.

The Citing Hearing

- 5. The hearing took place on 5 June 2008.
- 6. Oadby called the following witnesses to give oral evidence: Sam McDonald, Sam Reid and Mr Pollock, the referee. In addition, the Disciplinary Panel were invited to read statements provided by Messrs Morgan, Arran and Beevers. For the avoidance of doubt, the Oadby flyhalf did not attend to give oral evidence or provide a statement.
- 7. Mr Hickin gave oral evidence himself in his own defence. He also called his team-mate Paul McMillan to give oral evidence on his behalf.
- 8. The Leicestershire Disciplinary Panel came to the following conclusion: "Having considered all of the evidence and attaching greater importance to the statements supported by actual attendance it has been decided that on the balance of probabilities the citing had been proven and that DH [Daniel Hickin] had deliberately kicked OW RFC 10 [the Oadby fly-half] in the head whilst lying prone on the ground."
- 9. The Leicestershire Disciplinary Panel categorised the offending as being at the top end of the scale of seriousness. The starting point it identified was 16 weeks. It found that four aggravating features were present namely, lack of remorse, player status, the need for a deterrent and the player's record. An additional one week suspension was added for each. It found that one mitigating feature was present namely conduct at hearing. One week was

deducted from the suspension. Balancing all material considerations, a suspension from playing for 19 weeks was imposed by way of sanction.

The Appeal on Finding

- 10. Mr Burchell invited the Appeal Panel to hold a de novo hearing.
- 11. The first issue to determine, therefore, was whether to hold a de novo hearing.
- 12. The Appeal Panel reminded itself of the relevant provisions within the RFU Disciplinary Regulations.
- 13. Regulation 11.1.3 provides:

"The Appellant should bear in mind that a de novo hearing shall only be permitted at the Chairman's discretion, if there is new evidence available."

14. Regulation 11.7.3 provides:

"If in advance of the day of the hearing itself, the Appellant makes submissions requesting a rehearing of his case, and the independent lawyer or chairman considers it appropriate, a de novo hearing may be held. This would normally only be the case where new evidence arises."

- In this case, the RFU Disciplinary Manager, Mr Reece-Russell sent an e-mail to Mr Smith, the Honorary Secretary of Coalville RFC dated 30 June 2008. It stated: "As a matter or urgency I need to know: (a) whether the appeal is against conviction and sanction or sanction only; (b) if against conviction and requesting a de novo hearing, please confirm what new evidence you intend to call and intimate why it was not heard at the original hearing. In this regard, I would draw your attention to the RFU Disciplinary Regulation 11.1.3; (c) the availability of the player and the name(s) of the person presenting the appeal."
- 16. Having received no response, Mr Reece-Russell sent a further e-mail chasing a response dated 4 July 2008.
- 17. By letter dated 24 July 2008, Mr Smith replied: "(b) We enclose a statement from the referee Mr Ian Pollock ... When at the hearing he verbally explained that Daniel could not have been the player involved in a further attack on the Oadby fly-half, as he recognised Daniel due to the manner in which he played and more importantly his hair style which made him stand out from all other players. Sadly these details were not considered at the Leicestershire Disciplinary Hearing. The referee has now made a further statement, which is not conflicting with his previous statement, it just explains what he recalls of the incident and the positioning of Daniel, due to the explanation above, and the non involvement with the incident that brought about the citing charge from Oadby Wyggs, relating to their Fly Half. (c) With

- regards to attendees to the hearing. I am able to tell you who we wish to attend which is as follows: ... Mr Daniel Hickin, Mr Paul McMillan and Mr Ian Pollock"
- 18. Mr Burchell, who ably presented the case on Mr Hickin's behalf, was unable to explain why Mr Smith had not stated directly that a de novo hearing was sought.
- 19. The Appeal Panel heard Mr Pollock's evidence before deciding whether to adjourn for a de novo hearing (i.e. to give Oadby an opportunity to call oral evidence).
- 20. Mr Pollock told that Appeal Panel that Mr Hickin was conspicuous by reason of the fact that he had bleached hair dressed and dressed it in a distinctive style. After having seen a Coalville player knock the Oadby fly-half to the ground, he was determined to follow him as he went into the thick of the fight. As he was doing so, he heard a whack. He recognised it to be the sound made when somebody is kicked. He did not see the kick being delivered. He does not know who kicked the Oadby fly-half. He had no recollection of Daniel Hickin being anywhere near the Oadby fly-half when he looked to see what had happened. There were players between him and the Oadby fly-half. It was mayhem. It was quite possible that Daniel Hickin might have been there to be seen and that his recollection was at fault in that regard. He had not thought to mention that he had no recollection of Daniel Hickin being in the vicinity of the Oadby fly-half when he gave evidence before the Leicestershire Disciplinary Panel because he had not appreciated, at that time, that the player facing the allegation was Daniel Hickin. It was only after it was explained that Daniel Hickin had rinsed out the bleach he had put in his hair and cut it short at the back and sides that he realised that they were one in the same.
- 21. The Appeal Panel's view was that Mr Pollock was an entirely honest and straightforward witness. It is to his great credit that he made himself available not once but twice to give evidence. What is more, Mr Pollock's evidence ought to be given considerable weight. He was a neutral observer, a match official and a serving police officer of considerable experience. He wrote an account of the incident on the day after the event.
- 22. The inescapable fact, however, is that Mr Pollock did not see who kicked the Oadby fly-half. If Daniel Hickin was not to be seen in the vicinity of the Oadby fly-half immediately after Mr Pollock heard the kick, one might properly infer that he did not kick him. However, the weight that can be attached to that inference is compromised by reason of the fact that Mr Pollock readily accepted that he may have been mistaken and that his recollection was at fault in that regard. That concession was plainly appropriate. Mr Pollock's focus was upon the player who had knocked the fly-half to the ball, he was in the midst of a violent confrontation between up to a dozen players doing his manful best to maintain order. It is hardly surprising that he could not be confident in the accuracy of his recollection.

- 23. The Appeal Panel's view was that Mr Pollock's evidence did not warrant a rehearing. There was no reasonable prospect that Mr Hickin would be able to prove that the finding of the Leicestershire Disciplinary Panel was wrong by reference to his evidence. It was clear from the account of the evidence it heard and the finding it made that the Leicestershire Disciplinary Panel placed great weight on the evidence of Mr Reid, accepted the evidence of Mr McDonald in substance, disbelieved Mr Hickin and disbelieved Mr McMillan. The evidence that Mr Pollock gave had been accepted but had no bearing on the finding because he was unable to say who had kicked the Oadby fly-half. Given that little weight that could be placed on Mr Pollock's evidence, it was not realistic to suggest that there was a real prospect that the finding at a rehearing would be any different from the finding made by the Leicestershire Disciplinary Panel simply because it would have the benefit of the account Mr Pollock gave to the Appeal Panel. There was no other new evidence. The Appeal Panel were reinforced in this conclusion by the fact that a rehearing would have necessitated an adjournment.
- 24. In the light of that decision, Mr Hickin abandoned his appeal against the finding made by the Leicestershire Disciplinary Panel.

Sanction

- 25. Before Mr Hickin began his appeal against the sanction, he was advised in clear terms that the Appeal Panel would not necessarily be bound by the period of the suspension imposed by the Leicestershire Disciplinary Panel by way of sanction.
- 26. It was submitted on Mr Hickin's behalf that the offence ought to be categorised as being at the lower end of the scale of seriousness by reason of the fact that there was no medical evidence to suggest that the Oadby fly-half had been injured.
- 27. The Appeal Panel had no hesitation at all in rejecting that submission. Its view was that the offending plainly fell within the top end of the scale of seriousness.
- 28. As to the criteria at regulation 8.2.5:
 - (a) It was deliberate.
 - (b) (n/a)
 - (c) Mr Hickin kicked another player in the head, immediately after he had been knocked to the ground, when he was lying motionless on the pitch, very possibly unconscious. There was no provocation or any sort. Nor was there any retaliation. Short of stamping or kicking the victim repeatedly, it is difficult to conceive of a more serious offence.

- (d) It was difficult to assess the effect of the kick on the Oadby fly-half. The referee's report stated that his face was very red and very swollen. Mr De Luca told the Appeal Panel that the victim felt groggy immediately after the game and was taken to the hospital by his parents as a precautionary measure, that he looked badly bashed up on the day after the game, and that was apprehensive for some weeks thereafter about any form of physical contact. Whether these were symptoms of the punch or the kick was impossible to say. At all events, it appeared to be common ground that he suffered a minor head-injury and soft tissue injuries to his face as a result of the violence to which he was subjected. He suffered no permanent injury. The gravamen of the offence was the manner in which occurred: not its consequence.
- (e) Mr Hickin's action was a major contributory factor in the referee's decision to abandon the match. Mr Hickin's kick was the most violent incident in what the referee described in his report as "the worst I have witnessed in 40 years of watching, playing and refereeing rugby."
- (f) The Oadby fly-half could not have been more vulnerable.
- (g) Mr Hickin participated in what amounted to a joint attack on the Oadby fly-half. Quite literally, he put the boot in.
- (h) It was not an attempt.
- (i) (n/a)
- 29. The Appeal Panel reminded itself of the provisions of regulation 8.2.6. The entry point at the top end of the scale of seriousness for the offence of kicking an opponent contrary to Law 10(4)(c) was 12+ weeks. The maximum sanction was 52 weeks. Taking the matters referred to above into consideration, the Appeal Panel determined that the appropriate starting point was 20 weeks.
- 30. It was said on Mr Hickin's behalf that there were no aggravating features.
- 31. As to regulation 8.2.7(a), Mr Foxon, who chaired the Leicestershire Disciplinary Panel on that occasion, explained that one week had been added because Mr Hickin had shown no remorse or contrition. The Appeal Panel took the view that a denial of the allegation ought not automatically serve to aggravate the offence. Mr Hickin did explain to the Appeal Panel, but possibly not to the Leicestershire Disciplinary Panel, that he would certainly have apologised if he had been guilty of the alleged offending.
- 32. As to regulation 8.2.7(b) and (c), Mr Foxon explained that two weeks had also been added because, having been sent off in an under 17 game in 2000, Mr Hickin was regarded as a persistent offender and a need was perceived for a deterrent to combat a pattern of offending.

The Appeal Panel disagreed. As the footnote to regulation 8.2.8 makes clear, offences committed before a player attains his 18th birthday should be disregarded. In any event, it was an isolated incident committed a long time ago.

- 33. As to regulation 8.2.7(d), Mr Foxon explained that one week had been added because of the gravity of the offence. The Appeal Panel's view was that such consideration was relevant only to the entry point and/or starting point. In conclusion, the Appeal Panel agreed with the submission that there were no aggravating features.
- 34. It was said on Mr Hickin's behalf that there were mitigating features. The Appeal Panel was told the following. Mr Hickin had played rugby for Coalville since he was 7 years old. He was now in his early twenties. He had never been in trouble with the police and was from a good family. He was a stalwart of the club, as members of his family had been for a great many years before him. He had behaved properly during the course of the hearing. The Appeal Panel's view is that the starting point ought thereby to be reduced by 1 week.
- 35. The upshot is that the Appeal Panel came to the same conclusion as the Leicestershire Disciplinary Panel, albeit by a different route. Accordingly, the sanction imposed of a suspension from playing for 19 weeks was upheld. Mr Hickin remains suspended from playing from 30 August 2008 until 9 January 2009 (inclusive). Mr Hickin will be free to play again on 10 January 2009.
- 36. In addition, Mr Hickin will be required to pay the £100 administration fee for his appeal. The cheque tendered on his behalf in advance of the appeal will be presented for payment in order to settle that liability.

27 August 2008 John Brennan