RUGBY FOOTBALL UNION DISCIPLINARY HEARING

At Holiday Inn, Filton, Bristol

On 17 December 2008

JUDGMENT

Player: John Andress ('the Player')

Club: Exeter Chiefs RFC

Match: Doncaster RFC v Exeter Chiefs RFC

Venue: Doncaster

Date of Match: 6 December 2008

Panel: Christopher Quinlan (Chairman), Mike Curling and

John Doubleday

Secretariat Bruce Reece-Russel, RFU Disciplinary Manager

In attendance: John Andress ('the Player')

Peter Drewett, Director of Rugby, Exeter Chiefs RFC

Chris Over, Solicitor, representing the Player

Preliminaries

1. There was no objection to the composition of the Panel.

Charge and Plea

2. The Player denied the charge of striking an opponent with his knee contrary to Law 10(4)(a) during the match played between Doncaster RFC and Exeter Chiefs RFC on 6 December 2008.

Evidence

3. The Player was sent off in the nineteenth minute of the second half of the above match. The referee's report is dated 7 December and records the touch judge's (Barry Dalby) account of the incident. It reads thus:

'59 MINUTES INTO THE GAME, A SCRUM IS FORMED 5 M INSIDE DONCASTER HALF AND 15 M FROM THE TOUCH LINE.DONCASTER WIN THE BALL AND START TO ATTACK UP THE FIELD, AFTER THE SCRUM HAS BROKEN UP A NUMBER OF PLAYERS FROM BOTH SIDES INCLUDING MR ANDREWS [sic – throughout the report the Player is called Andrews; his surname is Andress] ARE INVOLVED IN AN INCIDENT AT THE INITIAL POINT OF THE SCRUM. MR ANDREWS THEN DETACHES HIMSELF FROM THIS INCIDENT AND RUNS UP TO A DONCASTER PLAYER WHO IS STANDING APPROXIMATELY IM AWAY FROM THE INITIAL INCIDENT. MR ANDREWS AND THE DONCASTER PLAYER THEN GRAPPLE WITH EACH OTHER. DURING THIS MR ANDREWS PLACES HIS RIGHT HAND ON THE BACK OF THE DONCASTER PLAYERS HEAD AND BRINGS THE DONCASTER PLAYERS HEAD DOWN. AS THIS IS HAPPENING MR ANDREWS RAISES HIS RIGHT KNEE AND CONNECTS WITH THE DONCASTER PLAYERS HEAD IN THE REGION OF THE FACE. THIS HAPPENED ONLY ONCE.

I HAD INFORMED THE REFEREE VIA THE RADIO SYSTEM TO STOP THE GAME AS SOON AS THE FIRST INCIDENT TOOK PLACE, THE REFEREE THEN BLEW HIS WHISTLE TO STOP THE GAME.'

- 4. The touch judge gave evidence by way of conference call. He confirmed the content of the above report. He was questioned by Mr Over and Mr Drewett. He was about fifteen metres from and directly in front of the incident. He had an unobstructed view and was not shifted in his account.
- 5. The DVD recording (with very careful analysis) captured something of the incident. We return to this aspect of the evidence later in this decision.
- 6. The other evidence of the incident came from the Player and a witness, the Doncaster 4 (D4), Brynn Griffiths. The Player said he saw the D18 'getting stuck into' an Exeter player. He went to assist his colleague and became embroiled in a struggle with D4. He said they converged on each other, D4 punched him and they were then 'grappling'. As he was so engaged he saw the D8 running towards him. He was scared

- 7. The Player relied on a photograph we were told was taken during the game and which we were told was published in a local Exeter newspaper. The said photograph was presented to us in the form of a simple photocopy of the image. It was not a press cutting (i.e. an extract from the newspaper) or a photocopy thereof. It was simply the image without more. It showed the Player holding and being held by (we were told) D4. We were told D8 can be seen moving towards the two of them; he appears to be not far from them. They are standing up, more or less face to face, upper bodies in contact and the Player's head over (roughly) D4's left shoulder. D4's face appears to be very close or in contact with the Player's upper right arm/shoulder. The Player's right arm is round the left side of D4's face, and he appears to be gripping the back of D4's shirt. The Player's right leg is raised off the ground, his foot more or less level with his left knee. His right knee is bent towards and may be in contact with D4. The Player told us his right knee was never any higher than shown in that photograph.
- 8. In an email dated 15 December timed 10.07 Justin Bishop, Doncaster Knights backs coach said, '...Brynn Griffiths has confirmed that there was no contact made during this incident.'
- 9. By conference call we heard evidence from Brynn Griffiths. Mr Over asked him about four questions in all. He confirmed to Mr Over that he 'struggled' with the Player. He said the Player did not strike his head with his knee or at all. We asked him some questions. He confirmed he was playing in the second row wearing the No.4 shirt. His recollection was somewhat incomplete. He was not sure how the incident started; he did not think he threw a punch; he could not remember any of his

players becoming involved; he could not remember the Player being struck; or the Player going to the floor.

Finding

Evidence

- 10. During the course of our deliberations Mr Doubleday's gimlet eye identified a passage of footage which, on further analysis, we concluded was part of the incident seen by the touch judge. Not for the first time we were in his debt.
- 11. If the Player and his representatives had spotted it before Mr Doubleday, they did not bring it to our attention during the course of the evidence. Since on our analysis it was not consistent with his case, we took the view they should have the opportunity to address us upon it, before we concluded our deliberations. We called them before us.
- 12. We played the crucial passage to the Player and his representatives, frame by frame. The crucial footage is caught on the extreme left of the frame. On the DVD we were provided with, it is to be found at Chapter 13, timed at 59.29. One sees the D4 bent at the waist, his upper body almost parallel to the ground and his shirt pulled up from his shorts. One cannot see D4's head and shoulders. He is being held by someone who cannot be seen at that stage; later it is clear it is the Player.
- 13. Moving frame by frame, one sees D4 begin to straighten his upper body. As he moves so one sees a vertical flash of white. That 'length of white' is vertical and parallel and close to D4's shorts, running the full length of the shorts; within a frame or two one discovers it is a white (Exeter) sock on the right leg of the Player. The knee of that leg is bent. D4 is bent so that the knee is close to his chest. As the frames move on, the leg continues to move down so that the foot eventually comes to

rest on the ground. As the leg moves down, so D4's body moves more upright. The two players are holding onto each other. Other Doncaster players converge and the Player is on the receiving end of a blow or two.

- 14. The Player agreed with our analysis of what the footage showed; he agreed with the description given in the preceding paragraphs. No issue was taken with what it showed; the question was one of interpretation. We therefore called for his explanation. He said he saw the Doncaster players converging on him and was afraid he was going to be attacked. Fearing that he tried to get away from D4, and raised his knee to push him away.
- 15. Asked why he thought three Doncaster player descended on him, from some distance (twenty or so metres), at pace, passing another melee (involving a number of players) to get to him, he could offer no reason. He insisted he had done nothing to provoke them or cause them to want to 'become involved with him'. Mr Drewett suggested it was motivated by a desire for revenge, because Exeter was so dominant in the scrum.

Decision

- 16. Unanimously, we were satisfied to the requisite standard (balance of probabilities) that the Player committed the act of foul play contrary to Law 10 (4)(a), namely used his knee to strike another player. We rejected the Player's account.
- 17. We accepted the touch judge's evidence. It was clear, consistent and cogent from a witness close to the scene, with an unobstructed line of sight. That which the DVD reveals is materially consistent with Mr

Dalby's account. It is inconsistent with Mr Griffiths's account and the Player's.

- 18. Mr Griffiths was no doubt doing his best to recall an incident which occurred some little time ago, but his was an incomplete picture and one which was not consistent with other evidence, namely the DVD and touch judge's account.
- 19. The photograph did not assist us. It is, as we pointed out during the course of the hearing, literally a snapshot, a fraction of a second freezed in time. It shows nothing of what preceded or followed its taking. Further, accepting for these purposes it relates to the incident, it captures one moment of a moving scene. It is entirely consistent with the evidence from Mr Dalby, for example it having captured a moment *after* impact.

Mitigation

- 20. The Player told us he was twenty-four years of age, had been a professional rugby player for four years. He has played representative rugby for Ireland U19 and U20 and is well-thought of by his club. He received four yellow cards last season and a week's suspension.
- 21. Mr Over invited us to suspend commencement of the suspension until 5 January 2009 so as to enable the Player to participate in 'important' league fixtures the club has to play over the Christmas period. Invited by us to take us to the *RFU Disciplinary Regulations* ('the Regulations'). which permitted us to do that (if we were so minded) he said (as we understood his submission) it was a matter of inference from Regulation 8.2.15(b)

Sanction

- 22. We undertook an assessment of the seriousness of the Player's conduct (Regulation 8.2.5). We found it was a deliberate act of foul play, which act was completed. However, it was in the context of a struggle between the two players, was spontaneous reaction and not premeditated and we note it had no effect on the game. It did not cause injury.
- 23. In those circumstances we concluded the offence merited a **lower end** entry point, namely three weeks.
- 24. We considered there to be no aggravating factors within Regulation 8.2.7.
- 25. Pursuant to Regulation 8.2.8, the Player did not have the mitigation of an acknowledgment of guilt. His disciplinary record is not unblemished but it would be harsh (and wrong) to describe it as bad. He has played age-group international rugby and his conduct before us, which was good.
- 26. In all the circumstances we determined (perhaps generously) he was entitled to some credit for those factors. We assessed the appropriate period to be one week. Accordingly, we concluded that the appropriate sanction is a period of suspension of two weeks.
- 27. We declined Mr Over's invitation to read Regulation 8.2.15(b) in the way he contended, namely suspending commencement to enable the Player to participate in important fixtures. Its meaning and purpose are clear: it provides for particularity of periods of suspension by reference to specific dates so all are clear when a player is prohibited from playing. In any event to accept Mr Over's invitation would be to ignore

and render otiose Regulation 8.2.13: 'for cases involving illegal and/or foul play, a Disciplinary Panel may not suspend the effect of any sanction to be imposed.' There are other very good reasons why Mr Over's contention for 'suspension by election' should be rejected as unworkable, impractical and unfair but we need not add to the length of this decision by setting them out.

- 28. For the sake of completeness we are well aware of the Regulations which provide for the imposition of suspended sanctions in 5.12 cases (Regulation 8.2.14) and the inclusion or exclusion of the whole or any part of the closed season (Regulation 8.2.12). There is good reason for both and they do not apply in this instance.
- 29. The Player's Club held an internal disciplinary hearing on 8 December. The Club determined the appropriate period of suspension (notwithstanding that he denied the act of foul play) to be one week. In light of the Club's action we concluded that the period of suspension should start on 9 December, the day after the Club's disciplinary hearing (Regulation 8.2.12(a)).
- 30. Accordingly, the Player was suspended from playing rugby union for a period of two weeks from 9 December 2008 (when his Club suspended him) to 22 December 2008 inclusive. He is free to play again on 23 December 2008.

Costs

31. The Player is ordered to pay the costs of the hearing, namely £200.

Right of Appeal

32. The Player is reminded his right of appeal against this decision.

Chlh Ilml

Christopher Quinlan (Chairman)

20 December 2008