RUGBY FOOTBALL UNION DISCIPLINARY HEARING

At Holiday Inn, Filton, Bristol

On 29 April 2009

JUDGMENT

Player: Olivier Azam ('the Player')

Club: Gloucester Rugby

Match: Gloucester Rugby v Cardiff Blues

Venue: Twickenham

Date of Match: 18 April 2009

Panel: Christopher Quinlan (Chairman), John Doubleday and Terry

Vaux (WRU)

Secretariat Bruce Reece-Russel, RFU Disciplinary Manager

Liam McTiernan, RFU Disciplinary Department

In attendance: Olivier Azam ('the Player')

Dean Ryan, Director of Rugby, Gloucester Rugby

Ian Dixey, Counsel for the Player

Preliminaries

- 1. There was no objection to the composition of the Panel.
- 2. Gloucester Rugby did not raise a preliminary point as such but the Club was 'interested to know' the genesis of the citing complaint. In light of our finding, it is unnecessary to set out in any detail the evidence we heard on that point. In summary, there was a deal of hearsay evidence as to who and in what circumstances the incident in question was brought to the attention of Robert Norster, Chief Executive Cardiff Blues, who relayed it to the Citing Officer's attention. None of it invalidated the citing complaint and no purpose is served in relating it here.

Citing Complaint

3. The citing complaint related to an incident in the 56th minute of the EDF Energy Cup Final played between the clubs at Twickenham on 18th April. It was not spotted by any of the match officials. The terms of the citing report are as follows

Details of offence: Jamie Roberts (C12) And Olivier Azam (G2) were contesting a loose ball. As C12 puts his hands on the ball to pick it up, G2 reaches C12 and attempts to grasp C12. As C12 picks the ball up and attempts to pull away from the clutches of G2, the arms of G2 ride up the body of C12, forming a 'loop' around the left arm, shoulder and head of C12. As C12 begins to shrug off G2 with the ball in his hands, the fingers of G2 curl round into a bowling ball-type grip are then dragged up the face of C12 until they meet the brow, at which point C12 drops the ball and jerks away from G2 in obvious discomfort.

I spoke to Jamie Roberts in the changing room 30 minutes after the game had finished, who remembered the incident in question. He admitted something had come into contact with his eyes, but had closed them tightly for protection, so he had no idea what it was that caused the discomfort. He recalled panicking a little at something attempting to get at his eyes and pulled away as quickly as he could. On viewing the DVD, Roberts was in no doubt that the incident he was viewing showed clearly the contact he experienced with his eyes and/or eye area. He was also satisfied that it had been the fingers of Olivier Azam which had found their way to his eyes and/or eye area.

The contact was fleeting, and apart from an immediate feeling of discomfort, Jamie Roberts was not injured and did not receive any treatment. He continued to play the rest of the match with no illeffects. When I asked how he was in the tunnel after the game he made no complaints.

Action, if any taken by referee: The referee was close to the incident, but looking at the ball on the ground and his view of the face of Jamie Roberts was obscured by the bodies of the two players, whom were both facing away from the referee.

Provide details of discussion with referee/touch judge (mandatory): Alain Rolland and his assistant referees confirm that they did not see the incident and were looking at the ball.

Date: 20^{TH} APRIL 2009 Time: 1310HRS

- 4. In consequence the Player was charged with an offence contrary to Law 10(4)(k) namely an act contrary to good sportsmanship.
- 5. Before us he pleaded not guilty to that allegation. In short he accepted his finger made contact with the player's eye but said it was neither intention nor reckless: it was accident.

Jurisdiction

The Regulations

6. This was the EDF Energy Cup Final. That competition is subject to its own Regulations, which include Disciplinary Regulations. The Disciplinary Regulations are set out in Appendix 5. Paragraph 1 thereof provides

Procedure.

The disciplinary regulations and sanctions applicable to the Competition are those set out or referred to in Regulation 17 of the IRB Regulations relating to the Game save insofar as they are amended by these Disciplinary Regulations. Any disciplinary hearing will adopt the procedures set out in the said Regulation 17.

7. Paragraph 3 provides

Citing.

The citing procedure applicable to the Competition is set out in the Annexe to these Disciplinary Regulations.

8. Paragraph 5 of the Annexe provides

A Citing Officer alone shall have the power and responsibility to cite a player where the Citing Officer believes the independent video shows that player to have committed an act of foul play whether or not it has been detected by the match officials. Such citing, to be effective, must be made in writing (the citing report) to be received by the RFU Disciplinary Manager at Twickenham within thirty six hours of the receipt by the Citing Officer of the independent video or within seven days of the conclusion of the Competition Match, whichever shall be the earlier. Transmission of the citing report may be by fax or email, provided that a print is posted by first class post within twenty four hours of the fax or email being sent.

The Evidence

9. The evidence in this case was as follows. Shortly after the game finished the Citing Officer was alerted to the incident by Mr Norster. Thirty or so minutes

after the game finished the Citing Officer spoke to the Cardiff Blues player whose eye was touched. Thereafter, as is clear from his report, he showed that player the DVD. The game kicked off at 14.30. The evidence we heard was that the citing officer had the match DVD from the BBC within an hour or so of the conclusion of the game. Mr McTiernan who was at the game with the citing officer told us that he would have had it, 'at the latest' by 17.30.

10. The citing report is timed and dated 13.10, 20 April 2009. We were told and accept that the citing report was received by fax the RFU Disciplinary Manager at 13.33 on the afternoon of Monday 20 April.

Decision

- 11. Paragraph 5 is clear in its terms. Three points arise. The first is the form of the report. It must be in writing. So we are concerned with the citing report, not any oral notification.
- 12. The second is timing. From when did time run and for what period? The paragraph provides for the effluxion of time on two events. The first is thirty-six hours from the time when the citing officer received the DVD. He collected it at the ground after the match finished. On any view that was well before the time when the fax was sent and received by RFU Disciplinary Manager.
- 13. The second event is seven days from the end of the match. However, paragraph 5 refers to which ever of the two events is the 'earliest'. It is not the *latest*. Put another away: it is the *first* not the *last* of the two events which stops the clock. Here, it is thirty six hours from the time when the citing officer received the match DVD.
- 14. The citing report was out of time. What is the consequence? Paragraph 5 states that a citing 'to be effective must be..'. It is mandatory ('must') not directory ('should'). It is not an effective citing unless it is in writing and in time. It was out of time and therefore, to adopt the wording of the relevant regulation ineffective.

- 15. Can we adjudicate upon an ineffective citing? The EDF Disciplinary Regulations do not provide us with any discretion to extend or otherwise vary the time limits nor to override them.
- 16. Appendix 5, paragraph 1, provides that 'the disciplinary regulations and sanctions applicable to the Competition are those set out or referred to in Regulation 17 of the IRB Regulations relating to the Game save insofar as they are amended by these Disciplinary Regulations'. IRB Regulation 17.32 provides for 'technical non-compliance' and 17.32.1 reads

Any procedures pursuant to disciplinary processes under these Regulations or proceedings, findings or decisions of Judicial Officers, Judicial Committees, Disciplinary Committees and/or Appeal Committees and Appeal Committees and Appeal Officers shall not be quashed or invalidated by reason of any departure from the procedural Regulations, defect, irregularity, omission or technicality unless such departure, defect, irregularity, omission or technicality raises a material doubt as to the reliability of the findings or decisions of these bodies or results in a miscarriage of justice.

- 17. That regulation is not reproduced in the EDF Disciplinary Regulations. It might be argued that it is incorporated by virtue of paragraph 1, Appendix 5. However, this irregularity goes to the foundation of any jurisdiction we may have. Jurisdiction is founded upon the citing complaint which must, we find, be in time to be effective. It was not. If the time limits can be set aside, ignored or not heeded then they have no purpose.
- 18. The citing complaint was out of time. It was ineffective. Accordingly, we can make no determination upon it.
- 19. This point was not taken by Gloucester Rugby. They did not know of the timings. The point arose when the Chairman asked to see and was provided with a copy of the relevant Regulations. Once the RFU Disciplinary Manager informed us of the relevant facts, we drew it to the Club's attention and gave the Player and his representatives time to consider the same. They took the point. It is right that we record in this decision that the Chairman warned the Player and his representative's that the RFU Disciplinary Officer might seek

to exercise any power he may have under RFU Rule 5.12. Knowing that, they pursued the point.

Postscript

- 20. Two matters before we leave this decision. First, we make it absolutely clear that we made no determination on the merits of the citing complaint. This was a serious allegation the merits of which should, if at all possible, be determined for the benefit of the Player (who may take little comfort from what many will see as an acquittal on a 'legal technicality'), the alleged victim and the Game at large.
- 21. This point arose because of the diligence and honesty of the RFU Disciplinary Manager. He alerted us to the point and so ultimately Gloucester Rugby. It would be wrong of us not to acknowledge that characteristic integrity.

Christopher Quinlan (Chairman)

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29 April 2009