

**RUGBY FOOTBALL UNION**

**DISCIPLINARY HEARING**

**VENUE: Holiday Inn, Bloomsbury**

**DATE: 8 March 2010**

**JUDGMENT**

**Dinos ALEXOPOULOS – Ealing RFC**

**and**

**Alex BIRKBY – Shelford RFC**

**Match:** Shelford RFC v Ealing RFC

**Venue:** Shelford

**Date of match:** 13 February 2010

**Panel:** Jeremy Summers (Chairman), Peter Budge and Philip Evans (“the Panel”)

**Secretary:** Liam McTiernan

**In attendance:**

**Ealing RFC**

Dinos Alexopoulos (“DA”)  
Dick Craig – Vice President  
David Steen – Senior Chairman

**Shelford RFC**

Alex Birkby (“AB”)  
Colin Astin – President  
Mark Haslam – Solicitor  
John Boatman - 4<sup>th</sup> Official  
Fe’of’aki Lea – 1<sup>st</sup> XV player

**DECISION**

- 1. On the evidence available, the Panel was unable to uphold a citing brought by Ealing RFC alleging that AB had made contact with the eye and/or eye area of an opponent contrary to Law 10. 4 (m) of the Laws of the Game 2010.**
- 2. DA was found guilty on his own admission of an offence of striking an opponent contrary to Law 10. 4 (a) of the Laws of the Game 2010. He was suspended from playing rugby for 1 week. Having already served a similar suspension imposed by Ealing RFC he is free to play again with immediate effect.**

## **PRELIMINARIES**

1. The Panel convened to consider the dismissal of DA for striking AB in the 34<sup>th</sup> minute of the match. DA subsequently alleged that his conduct had been caused by the actions of AB in making contact with his eye or eye area. This claim was made the subject of a formal citing brought by Ealing dated 24 February 2010 (and so within the time limits prescribed by the RFU Disciplinary Regulations ("DR")). Charges were subsequently issued by the RFU in respect of both matters.
2. The Panel determined to hear the cases against both players together in light of the fact they arose out of the same alleged incident.
3. The parties did not object to the composition of the Panel. The Chairman explained the procedure to be followed and no other preliminary matter arose.
4. The charges were formally put to each player by the Secretary to the Panel. DA admitted the charge against him (striking). AB denied the charge brought against him (contact with the eye area).
5. The Panel considered:-
  - a. The written citing complaint sent to the RFU Disciplinary Manager dated 24 February 2010.
  - b. The match recordings supplied by both clubs.
  - c. The match officials sending off report in relation to DA.
  - d. Oral evidence from DA.
  - e. Oral evidence (by telephone) from the Assistant Referee
  - f. Oral evidence from AB.
  - g. Oral evidence from Mr Boatman.
  - h. Written statements of fact and medical opinion contained in the bundles prepared by the RFU and provided to all parties.
  - i. A series of 6 digital photographs submitted on behalf DA.
  - j. Submissions from Mr Craig and Mr Steen on behalf of DA.
  - k. Submissions from Mr Haslam on behalf of AB.

## **THE CHARGES**

6. The material part of the citing complaint against AB recorded as follows:

*"An Ealing player, in possession of the ball was tackled by [AB]. A ruck formed and [DA], the Ealing No.3, entered the ruck and cleared out [AB]. In so doing [DA] fell on top of [AB] on the Shelford side of the ruck. It was at this point that [AB] proceeded to gouge the Ealing No.3 despite [DA's] attempts to evade the hands and fingers of [AB]. [DA] fearing serious damage to his eyes, punched [AB] more than once in an attempt to dissuade any continued gouging."*

7. The citing complaint then referred to the fact that the alleged gouging itself had not been seen by the match officials and confirmed that DA had been suspended for 1 week in light of his dismissal but having regard to the provocation involved.

8. The Sending off Report in respect of DA recorded as follows:

*"I was Asst. Referee on the side of the pitch opposite the club house. Play developed with Ealing attacking playing from my right to left. Following a tackle a ruck/maul developed between the half way line and the Shelford 10m line, approximately 12m in field. As the ball was moved away from the breakdown by Ealing I noticed the Ealing 3 AD was on top of an unidentified Shelford player. I saw AD deliver at least 3 punches with a closed fist to the upper chest and head of the defenceless Shelford player. I saw no incident which may have provoked the punches."*

9. Before hearing evidence as to fact the Panel viewed the match recordings provided by both clubs. Neither showed the incidents concerned in any clear detail. The Ealing footage was however of greater clarity generally and Shelford was therefore content for this to be relied upon to the extent that this was possible.

## **EVIDENCE AS TO FACT**

10. In the absence of any discernable assistance from the match footage the Panel was reliant upon oral testimony.

11. DA gave evidence in support of the citing and by way of mitigation following his guilty plea. He is a serving police officer, although currently on a career break to

look after his two daughters. He has been playing for 14 years and, with the exception of some yellow cards, has an unblemished disciplinary record. He has represented Wasps and London Irish at 1<sup>st</sup> XV level, England at U.16 through to U.21 and the Barbarians. He is presently coaching at a local school.

12. He confirmed that he had cleared out AB as recorded above, and then gave clear evidence that AB had made contact with his eye and eye area. His recollection was that AB had first scraped downwards and across his left eye with two fingers. He (DA) had then thrown a punch to stop the assault which had connected with AB's chest. AB had then put a finger onto his right eyelid with sufficient pressure to cause immediate and significant discomfort. He (DA) had then punched AB again in reaction to the attack, although he was unable to recall where that blow had landed. He was certain that he had been attacked as described and that his assailant was AB. He described the attack as disgusting and horrific.
13. In cross examination he accepted that he had not made any complaint either to a team mate or to a match official immediately after the alleged incident. In this regard he agreed that there had been some delay between the end of the incident and his dismissal. The Referee had been following play from the breakdown and had to return to consult with his Assistant. He stated that he had been in a state of shock following the incident. It was because of that shock that he not brought the matter to the attention of the Referee, or his captain, when the reason for his dismissal was being explained to him.
14. He had not sought any medical attention at the time and had not done so until after the game when he suffered from a stinging sensation around his eyes whilst showering.
15. He had similarly not notified any Ealing official, other than the physiotherapist, after the game because his Director of Rugby was ill that day and had left the ground immediately after the game.
16. He had later discussed the matter with his wife at home who was upset by the incident. His wife had suggested that the photographs before the Panel were taken and that a complaint was made. The photographs had accordingly been taken the day after the game at DA's home. He apologised for not having brought the camera to the hearing to verify the position.

17. He disagreed with the assertion made by Mr Haslam that AB's body position was inconsistent with DA's description of the alleged assault. He also believed that if one studied the match recording carefully, the Assistant Referee could not have seen the entire incident.
18. It was put to DA that, on his own case, he had struck AB immediately after the alleged contact with his eyes. The Assistant Referee had seen the punches from DA. If therefore DA's evidence was correct, he would also have seen the contact with the eye and/or eye area. DA rejected this suggestion and passionately repeated his assertion that the exterior to both his eyes had been assaulted by AB.
19. Although he had not mentioned the alleged incident to the match officials or any other Ealing player or official (except the physiotherapist) during or after the game he had told a Shelford supporter about the incident whilst the game was still ongoing. Unfortunately this point had not been raised prior to the hearing with the result that the supporter concerned had not been asked by either club to give evidence.
20. The Assistant Referee gave evidence by telephone. He indicated that he had an unobstructed view from about 12 metres away. He had seen at least 3 blows from AD with a clenched fist.
21. He agreed that he had not seen AD's face throughout the incident but stated that he had not seen any sudden reaction from AD consistent with his being assaulted. No Ealing player had suggested to him, or the Referee, that there had been provocation. He was clear that he would have seen any provocation had it occurred. He had completed his written sending off report as soon as he had got home after the game.
22. The pictures referred to above (taken the following day) showed a number of abrasions around the left eye and an abrasion/bruise on the outside of the upper eyelid to the right eye.

## **DEFENCE CASE - AB**

23. AB is also a married man with children. In addition to playing rugby, he works for an investment bank. He has been playing for 15 years during which time in addition to playing for Shelford he has represented Wakefield, London Welsh and Cambridge University. During that time he has received one Red Card for retaliation, coincidentally whilst playing against Ealing 3 or 4 years ago.
24. He was surprised to have been cited but had a clear recollection of the incident. He categorically denied DA's allegations. He pointed to the video which he said showed him holding the ball at the point DA made contact with him. His body could then be seen on its right hand side with his back towards DA with DA lying on top of him. This positioning he claimed contradicted DA's evidence.
25. He said that he had multiple blows to his forehead that had caused bruising (there was no evidence that he had received treatment after the incident, but in any event he completed the game). He had done no more than try to grab DA's right hand in an attempt to stop the blows. Prior to that time he stated that he had not put his hands or fingers anywhere near DA's eyes.
26. On questioning from the Panel, he was unable to advance any reason why DA would have launched an attack that was apparently out of character and out of the context with the game up until that point. He claimed it was an unprovoked attack out of nowhere and that he had not previously made even unintentional contact with DA's eyes.
27. He had not seen any action from any other Shelford player that could have caused DA to act as he had. He had not been asked by the officials following the game about the cause of the incident and the matter had not been discussed within the Shelford squad after the match. He was notified of the citing about 10 days after the game and had been shocked. He again vehemently denied the allegation.
28. Mr Boatman gave brief evidence to the effect that, as the Shelford 4<sup>th</sup> official, he had followed DA to the Ealing dugout and recorded the dismissal. He had not seen any injury or treatment administered. DA had not complained to him.

However he accepted that, perhaps more logically, DA would have raised any concern with the Ealing 4<sup>th</sup> official.

### **SUBMISSIONS**

29. On behalf of DA and Ealing Mr Craig stated that the club had considered the matter very carefully and had not brought the citing lightly. It had a duty to protect DA and the extensive and committed membership of the club generally. Ealing was known as a club of impeccable quality. DA was a highly regarded and trusted member of the club. Having considered the matter carefully at length it had no hesitation in pursuing the matter on behalf of DA.
30. The Panel had been asked to read a number of written witness statements from Shelford players. He submitted that, when compared with the match footage, there were inconsistencies in all the statements which meant that they could not be relied upon.
31. In submissions on behalf of AB, Mr Haslam reminded the Panel of the standard of proof required and submitted that, on the evidence, it could not possibly have been satisfied. He referred in particular to the evidence of the Assistant Referee who believed he would have seen any provocation had there been any. In that regard he relied upon regulation 7.12 DR and the importance the Panel had to attach to a match official's evidence as an independent witness of fact. DA's case was that there were simultaneous incidents and yet the Assistant Referee had only seen DA's punches.
32. He did not believe that the pictures assisted the Panel given that they were taken on the day following the game. Both parties had submitted written medical evidence. This had been reviewed by Dr Mike England the RFU Community Rugby Medical Director. He had given an unbiased view that did not assist the Panel in reaching the conclusion required to uphold the citing.

### **FINDINGS**

33. The Panel had more than a little sympathy for DA. Having heard his evidence it was satisfied that he believed something had happened, and indeed that some

form of incident had probably occurred that led him to react in the way that he did.

34. However weighed against that evidence the Panel had to consider the following features:

- a) The clear evidence of the Assistant Referee and the importance that had to be attached to such evidence.
- b) The uncertainties produced by the match recording.
- c) The absence of a complaint immediately following the incident, and in particular whilst the Referee was speaking to DA prior to dismissing him.
- d) The fact that there was no reaction from any other Ealing player.
- e) The delay in seeking medical attention and reporting the matter to Ealing officials.

35. The Panel found that the photographic evidence referred to at paragraph 23 above showed injuries that could have been caused by an act of foul play. However as indicated by Dr England it was not possible to determine the cause of the injuries, and as submitted by Mr Haslam, they could have been caused as part of the normal wear and tear of a competitive game. There was ultimately no evidence before the Panel that enabled it to exclude that latter possibility.

36. Therefore having regard to the seriousness of the alleged offence and taking into account all available evidence, the Panel was not able to feel satisfied, to the standard required, that the alleged offending had taken place.

37. In the circumstances the citing was not upheld and the deposit lodged with the citing fee is to be retained by the RFU accordingly. No criticism of Ealing or DA is intended or should be inferred from this ruling.

#### **SANCTION - DA**

38. Whilst the Panel could not conclude DA had been assaulted as alleged, it concluded that he believed he had been provoked in a way that caused him to react in a way that was wholly out of character.

39. The Panel considered the criteria set out at 8.2.5 DR and found as follows:
- a) The offending was intentional. However that intention had to be properly viewed in the light of DA's belief at the time.
  - b) DA was no more than reckless as to the risk of injury that could have resulted from his foul play
  - c) The offending consisted of a series of blows with his fist, but DA believed he had been severely provoked.
  - d) There was no tangible evidence of any significant injury. AB continued playing and any bruising to his forehead could have been sustained in the 45 minutes of play that followed.
  - e) There was no adverse effect on the game other than on Ealing
  - f) There was some vulnerability as DA was on top on AB
  - g) There had been no premeditation
  - h) The offending was complete
  - i) There were no other relevant factors
40. Whilst intentional offending of this nature might perhaps ordinarily give rise to a mid range entry point, on the precise facts of this case, the Panel determined that a low end entry point was appropriate. The low end entry point for striking is a suspension of two weeks
41. There were no aggravating features and having regard to DA's plea and previous record the Panel determined that he was entitled to a 50 % deduction from the entry point. He was accordingly suspended from playing rugby for 1 week. Having already served a week's suspension pursuant to internal club disciplinary proceedings, he is free to play again with immediate effect.

### **COSTS**

42. Pursuant to 8.3.1 DR DA and/or his club shall pay the costs of the hearing of £150 in accordance Appendix 6 DR, to be paid within 21 days of receipt of this judgment<sup>1</sup>.

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<sup>1</sup> 8.3.2 DR

## **RIGHT OF APPEAL**

43. DA is advised of his right of appeal. Such appeal must be lodged with the RFU Discipline Department within 14 days following receipt of this judgment.<sup>2</sup>

*Jeremy Summers*  
Chairman  
10 March 2010

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<sup>2</sup> 11.2.3 DR