## **RUGBY FOOTBALL UNION**

# **APPEAL HEARING**

**At:** Holiday Inn, Brighouse, West Yorkshire

On: Monday, 12<sup>th</sup> April 2010

# **JUDGMENT ON APPEAL**

Player: DEREK EVES

**Club:** Pontefract RUFC ("the Club")

**Match:** Ilkley v Pontefract

**Date:** 23<sup>rd</sup> January 2010

**Appeal Panel:** Antony Davies (Chairman), David MacInnes and Peter Rhodes

**Secretary:** Liam McTiernan (RFU Disciplinary Department)

**In attendance:** Derek Eves ("the Player")

Alan Boyd (Club Chairman, Pontefract RUFC)

John Kaye (Chairman of Discipline, Pontefract RUFC)
Paul Lowery (First Team Touch Judge, Pontefract RUFC)

Richard Matthews (Secretary, Yorkshire Constituent Body

Disciplinary Panel)

## **Decision**

1. For the reasons detailed below, the Panel dismisses the appeal brought by the Player and upholds the primary finding of Yorkshire CB Disciplinary Panel. Thereafter, and pursuant to D.R. 11.1.1, the Panel varies the dates of application of the eight week suspension imposed upon the Player. This varied sanction is detailed at paragraph 24 of this Judgment.

## **Preliminary Issues**

2. There was no objection to the composition of the Panel and all parties confirmed

they had had sight of and had considered the Appeal Bundle.

- 3. The Panel convened to consider the Player's appeal against a decision of Yorkshire RFU Constituent Body Disciplinary Panel dated 15<sup>th</sup> March 2010 purporting to impose an eight week suspension on the Player for an offence of verbal abuse of a Match Official. The Player maintained in his notice of appeal that the Referee did not attend the CB Panel hearing, despite being asked to do so by Pontefract RUFC and that a witness statement, which was not made available to the Player or the Club prior to the hearing, was read out and considered by the Panel. Mr. Matthews was able to assist us in confirming that he had indeed received a written request from Pontefract RUFC that the Referee attend to be questioned as his evidence was not accepted. The Referee had been available by telephone, but unfortunately, due to logistical difficulties, telephone conferencing facilities were not available. He was able to confirm also that the additional witness statement had been misplaced prior to the hearing. The CB Panel had elected to proceed on the basis of seeking the best evidence of the events in issue as it was perfectly entitled to do under D.R. 7.1.5.
- 4. Principles of natural justice and fairness apply to the conduct of disciplinary procedures. This is a case where the Referee is not to be regarded as an independent eye witness of what occurred. The Player and his Club had requested that the Referee give oral evidence so that they could question him, as they did not accept his written evidence. We do not think that it was desirable in this case that the matter should have proceeded on the basis of a written report which was challenged when better evidence could have been available by the CB Panel using its discretion to adjourn the hearing in order to obtain the attendance of the Match Referee in person or by telephone conference to clarify the conflict of evidence.
- 5. In these circumstances, we determine that the interests of natural justice and fairness require a de novo hearing and therefore quash the decision of the Constituent Body.

## **Charge and Plea**

6. The Player was charged with an act contrary to good sportsmanship, contrary to

Law 10(4)(m), the particulars being that on the 23<sup>rd</sup> January 2010, in the match Ilkley v Pontefract, Derek Eves verbally abused the Match Official, Ian Morris, by calling him a "Welsh prick" on three separate occasions. The Player denied the charge.

## The case against the Player

- 7. The Match Referee, Ian Morris, gave evidence by telephone conference. He confirmed and expanded upon his written Match Official Abuse Incident Report. He had ordered his thoughts on the matter on the Saturday evening after the game and completed the form and submitted it the following day whilst matters were still fresh in his mind. The Referee described the game as a hard fought encounter. As he blew his whistle to end the game, the Player approached him and called him a "Welsh prick". He initially ignored this comment, putting it down to disappointment at having lost the game. As the Referee and Players walked off the pitch, the Player again turned to face him and repeated the same phrase. As the away team formed a tunnel in the traditional manner and clapped off their opponents, the Referee stood near to Mr. Eves who turned to him and said "Welsh prick" for the third time.
- 8. There was no question of mistaken identity. He and the Player were face to face on all three occasions. For the first, the Player was three to four metres away from him, the second two metres and the third only three or four feet. It was put to him that he may have misheard and that the word "twit" had been used. He was certain as to what he had heard and as to the suggestion that it was not addressed to him, he pointed out that he did not have a particularly strong Welsh accent. There had been a kit clash before the game and his normal strips were not suitable. He had therefore elected to wear the Welsh National strip to referee the game. The comments on all three occasions were clearly and deliberately aimed at him.
- 9. The Referee described the game as being hard fought and one in which Mr. Eves had played very well, though his team had had an off day. There had been a couple of yellow cards on each side for flare ups, but no lengthy stoppages for serious injury and he had not noticed any malicious or excessive foul play. His assessment of the game had been confirmed by his assessor's report. He had confirmed the identification of the Player with a Pontefract Official because the team sheets were not always accurate as to

which numbers were being worn by which players, but in any event he said he would not easily forget Mr. Eves' face.

- 10. Mr. Morris was asked why he had not elected to take disciplinary action against the Player on the field if the comment had been made three times to him. He said such things were a rarity. The last time he had anything similar was some ten years previously. He had played scrum half for many years to a high standard and such things were said from time to time. With hindsight now, he should have dealt with the matter differently by awarding first a yellow card and, when the comment was repeated, a red card. However, he felt that the Player's motivation for the abuse came from his own disappointment at his team's performance and he had hoped to be able to deal with the matter sensibly by way of apology in the Clubhouse afterwards.
- 11. After the game, Mr. Morris approached the Pontefract Official who had acted as Touch Judge and asked him to pass his concerns to Mr. Eves at what had been said and make it clear that he was prepared to consider the matter closed if he received an apology from Mr. Eves. A short time later, whilst he was at the bar, Mr. Eves approached Mr. Morris and with a raised voice enquired as to why he wanted to see him. Mr. Morris was involved in another conversation and when they did speak a short time later Mr. Morris felt intimidated and upset because Mr. Eves refused to acknowledge that he had said anything at all to him on the field after the game.
- 12. Mr. Morris described himself as being shocked and offended by the comments made after the game and the manner and demeanour of Mr. Eves in the Clubhouse afterwards. He had offered Mr. Eves the opportunity to consider the matter closed by way of an apology, but it was as much his denial that he had said anything as the words themselves that had upset Mr. Morris and left him with no alternative but to make a formal report as he considered the language and behaviour unacceptable.
- 13. When asked specifically about Mr. Eves' demeanour, Mr. Morris described him as not conciliatory, using short sharp answers with a raised voice and approaching him in an aggressive manner. When questioned it was suggested to Mr. Morris by representatives from the Club that Mr. Eves' physical presence could be mistaken for aggression and be wrongly construed as intimidation. Mr. Morris confirmed that he did not have a particular problem with aggression, but was more upset with the denial by the

Player of what he had clearly heard on three separate occasions, face to face and from a short distance away.

14. Finally, the Referee reported that he had spoken to the Ilkley player, Hamish Pratt, who volunteered that he had witnessed Mr. Eves calling him a "Welsh prick". A statement from Mr. Pratt was produced, solicited by Yorkshire CB, confirming that he had heard a comment "Welsh '?'". The comment was made in close proximity to the Referee by Mr. Eves whilst players were shaking hands. He could not recall the exacting wording, but the Referee he described as seeming to be dismayed at the comment. Mr. Pratt was not available to give evidence orally, though attempts were made to contact him by telephone.

## The Player's Case

- 15. The Player felt that the Referee had had a good game. He is normally vocal and questions Referees' decisions, but did not have to in this game. His team had been well beaten on the day. He was not aware of the seriousness of injuries to his players at the time and he himself was not involved in any unpleasantness on the field, so had no reason to be upset with the Referee. He is well used to receiving his own verbal abuse and banter because of his history as a former World Cup Squad member and professional player then Director of Rugby at Clubs in Levels 1 and 2. He has had four seasons at Pontefract and is very successful at this level, despite his age. He describes himself as taking a lot of stick on a weekly basis because of his reputation and believes it is said that "If you can stop Derek Eves you can stop Pontefract".
- 16. He denied having spoken with the Referee after the final whistle. The first he became aware of anything awry was when one of his players, Matthew Hargreaves, had telephoned him in the Clubhouse saying that the Referee wanted an apology from him. He did not know what it was about, but went up to the Referee and asked why he wanted to see him. He was told aggressively by the Referee to go and stand somewhere else because he was busy. He did speak with the Referee a short time afterwards and denied that he had used the words described. He remembered the Referee saying words to the effect that he would see what a Disciplinary Panel would do if the Player did not apologise.

- 17. The Player felt that the Referee had had three chances to discipline him on the field of play and if he had used the words alleged then the Referee should properly have done so at the time. He maintained that the Referee was the one who was aggressive to him in the Clubhouse. He suggested that the Referee's assertion that he had been aggressive to the Referee in the Clubhouse was brought on by the Referee wishing to bolster his case against the Player because the Referee had been weak on the field and only later had realised he should have done something at the time. Notwithstanding this, he felt that the Referee had put in a good performance and had no reason to have any words with him at all.
- 18. As to why Hamish Pratt should have confirmed words were said, again he could not explain, though he did make oblique reference to certain advantages a Club at the bottom of the League may have if the Player were suspended.
- 19. In support of the Player's case a letter was submitted from David Howdle. He referred to a conversation where the Referee maintained that the Player had called him a "Welsh twit" three times after the game, but if the Player apologised to the Referee the matter would be forgotten. He spoke to the Player and escorted him to the Referee and introduced them. The Player had told him that he had sought the Referee's attention previously but had been told to "stand over there" like a little boy, and that he was older than the Referee. The Referee reminded the Player of the alleged post-match comments which the Player vehemently denied and then left. There was no apology if that was what was required. Mr. Howdle's letter went on to confirm that the Player suffers abuse from players and spectators alike during every game. In this particular game Pontefract players had received injuries from stamping by Ilkley players, which included one fractured scaphoid which had to be pinned, one broken wrist and one player received seven stitches from a boot to a badly blackened eye. The Player himself had been seriously "raked" with his shirt being torn beyond repair and thermal vest separated at the shoulder. The shirt had had to be replaced. He went on to refer to comments from Ilkley players and Committee to the effect that the Referee had done Pontefract no favours and that there had not been a fair result to the game.

## **Finding**

20. Having considered all the evidence, the Panel finds the case proved on the balance of probabilities. The Referee gave his evidence in a careful, concise, cogent and consistent manner. We do not believe he was mistaken in describing the comments heard as they were made face to face, from a very short distance. We can see no reason why a Referee in these circumstances should make up an allegation or be mistaken to such a material extent. His report was compiled and submitted within twenty four hours and we believe his evidence sufficiently compelling without needing to rely on any corroboration from Mr. Pratt; (though we would have found it extraordinary if a well respected RDO were to have put his career at risk by conspiring with a Referee to cause damage to Mr. Eves for little, if any, discernible gain.) We do not find it necessary to make a finding as to the Player's motivation for using the words or whether this was for the reasons Mr. Howdle described. The Referee's evidence itself was sufficiently clear and compelling.

## **Sanction**

- 21. The abuse was clearly intentional and used on three separate occasions. They were not the most serious words. They did upset the Referee but were not so serious that the Referee felt they could not be dealt with by way of an apology and no formal action. We therefore agree with the CB Panel assessment of the entry point as **LOW END**, giving a starting point of six weeks. The Player received a four week suspension on 16<sup>th</sup> February 2009 for racially abusing another player. We are helpfully supplied with a copy of the CB Judgment of 16<sup>th</sup> February 2009. He is a mature player/coach, who should know better, and again we see no reason to interfere with the CB Panel assessment that the entry point should be increased by two weeks on account of aggravating features.
- 22. As to mitigating features, we are informed that the previous suspension was as a result of a player, rather than his Club or the Match Officials pursuing a complaint. Noone else had heard the remarks and they had considered the CB decision to be wrong, but in view of the current climate had elected not to appeal, though the player still maintained his innocence.

23. We are asked to consider the contents of a written reference supplied by Mr. Lowery, which we have done, and also the Player's considerable commitment to charity rugby for the Wooden Spoon Society, England Legends and Cancer Research. He is due to play at varying times over the summer in these fundraising games.

24. Having considered the mitigating factors submitted, we find none which would persuade us to reduce the sanction imposed and in terms of the length of the suspension, we find the CB Panel decision sound and do not seek to interfere with it. However, we note that the Player is Player/Coach at the Club and this incident took place within the playing enclosure on a match day. As this was an incident in a League game, and we do not see why the charities should suffer the loss of Mr. Eves' contribution, we therefore feel it appropriate to vary the dates on which the suspension will take effect as follows:

The Player is suspended from 13<sup>th</sup> April to 11<sup>th</sup> May 2010 inclusive and from 4<sup>th</sup> September to 1<sup>st</sup> October 2010 inclusive. He may play again on 2<sup>nd</sup> October 2010.

- 25. By way of clarification, the suspension relates to playing or being within the playing enclosure on match days.
- 26. The Player forfeits his appeal fee.

## Antony Davies

Antony Davies, Chairman 13<sup>th</sup> April 2010