

admitted by the player although he could not recall using foul and abusive language to the referee. He nevertheless accepted he was responsible for verbal abuse. He denied physical abuse and pushing the referee. This alleged incident took place immediately after the abandonment of the game between Shipston on Stour –v- Old Yardleians which the panel had dealt with and determined immediately prior to this case.

5. The referee's written and verbal testimony was that immediately after the abandonment of the game, as a result of an all player participating brawl, the player is alleged to have walked over to the referee pushed him and said "this is all your fucking fault".
6. The referee stated that the player walked towards him put his right hand on his left shoulder and pushed him at the same time as telling him that "all this was your fucking fault". He was still shaken as a result of the brawl. He stated that he was only half a metre or so away from the player when he swore at him and pushed him. He confirmed that he in no way lost his balance or took a step backwards. He never felt he was going to be punched or injured, he took his card out of his pocket and asked the captain to come over and informed the captain that the player had abused him. Questioned by the player through the panel he confirmed that he had been pushed by the player and that he was sworn at.
7. The player's case was that he was playing no. 8. He had been playing for Old Yardleians since he was 13, he was now 29 years of age. He recalled the referee blowing the whistle and calling the two captains over as a result of the punching and the brawl. He recalled the referee abandoning the game. He then walked over to the referee, tapped him on his right shoulder and said somewhat sarcastically as well "that's a great game and that's all your fucking fault" The referee then asked me my name. I knew what was coming. I told him my name and left the field. He vehemently denied pushing the Referee.
8. Cross examined the player confirmed that he was right handed and that he did walk towards the referee and acknowledged that he swore at him but tapped him on his shoulder and there was an element of downward pressure as a result of tapping him on the shoulder, but he did not push him.
9. The panel then heard evidence from the Captain of the day, no. 8 Steven Grainger. He confirmed that the referee had abandoned the match as a result of the fighting and Ben Honey at the time then approached the referee. The referee was half turned towards Ben and he saw the player tap the referee on the shoulder and say in a sarcastic abusive manner "well done, that's all your fucking fault". The referee then issued him with a red card. The referee also stated that he was being sent off for verbal abuse of a match official. The referee did not speak to him. Cross examined he accepted responsibility for his players on the day. He confirmed he had a clear line of vision from when the player approached the referee to him tapping on his shoulder. He saw the tap on the shoulder, he didn't see him waving his fingers about nor did he see him push the referee. He acknowledged that the tapping was certainly deliberate contact and that he had no reason for him to tap him on the shoulder.

DECISION

10. Insofar as the allegation concerning physical abuse of the referee, the panel took into account all the evidence of the referee, the player and Steve Grainger. The evidence of Steve Grainger was consistent with the player's account of what took place. There was no further independent evidence on behalf of the referee for the alleged push on his right shoulder. The Referee's adviser Mr McKerlie did not see or hear what took place. The Panel reminded itself that allegations of physical abuse of match officials are very serious allegations. The standard of proof is the balance of probabilities and not, as in a criminal court, beyond reasonable doubt. The panel having heard the evidence were not satisfied that the push occurred in the circumstances described by the referee. The player had admitted verbal abuse. The player had admitted tapping the referee on the shoulder. This was supported by the captain. The referee was understandably shaken as a result of the brawl which immediately prejudiced this allegation. The referee however was candid to the point when he admitted that he was not in any way pushed backwards, nor did he lose his balance. Whilst the tapping of the referee on his shoulder and swearing at him was clearly verbal abuse and ill advised in the extreme, the panel were not satisfied to the required standard of proof that the player actually pushed the referee. In all the circumstances therefore the panel concluded that on the balance of probabilities the offence of pushing did not occur and the allegation of pushing is therefore dismissed. However, the panel did conclude in the circumstances for the purpose of sanction set out below in respect of the verbal abuse that the tapping of the referee on his shoulder simultaneously with subjecting him to verbal abuse immediately following or nearly simultaneously with the abandonment of a game of a mass brawl was totally unacceptable. The assessment under 8.2.5 was a feature of his conduct which would impact upon sanction under the regulations pursuant to 8.2.5 and 8.2.7.
11. Having determined the culpability of the player in respect of the allegation of physical abuse of the official, it was necessary pursuant to regulation 8.2.5 to assess the seriousness of the player's verbal abuse. The player advised the panel that he had been suspended on the 24 January 2009 for verbal abuse of an official and was suspended for a period of 6 weeks and prior to that for an unrelated offence of stamping he had been suspended on 29 January 2005 for a period of 2 weeks. He had played for Old Yardleians since he was 13 years of age, he was now 29 years of age. No other mitigation or explanation was offered.
12. In determining the seriousness of the player's conduct, to assess the entry point the panel found:-
 - i. The verbal abuse was admitted and intentional;
 - ii. The actual words spoken were not the most serious;
 - iii. The game had already been abandoned when the player abused the referee.
 - iv. The referee in this case was vulnerable having abandoned the game as a result of a mass brawl. He was shaken and uncertain as to what may or may not happen.
 - v. The player's participation in the offending was complete and there was an element of pre meditation, in that the player walked towards the referee immediately after the abandonment when there was absolutely no need to do so. There may have been an element of spontaneity.

- vi. The other factor was that in addition to swearing at the referee and accusing of him being responsible for the mass brawl, simultaneously tapping the referee on his shoulder at the same time is a feature of the player's conduct which the panel found unacceptable and aggravated a situation which has no place in Rugby Union in any event. Taking all these circumstances in to account the panel concluded that the appropriate entry point was mid entry namely a period of 12 weeks.
13. The panel considered the aggravating factors under 8.2.7 and found as follows:
- (1) There was no apology offered by the player of any description either before or at the hearing in respect of his words spoken and/or actions;
 - (2) The panel were of the unanimous view that there was a need for a deterrent to combat verbal and/or physical abuse of referees and that such matters were coming before constituent body disciplinary panels with increasing regularity. In the particular circumstances of this case, the panel concluded that an additional 6 weeks should be added to the mid entry point of 12 weeks making a total of 18 weeks;
- 14(i) The panel then identified the relevant mitigating factors which in reality were the players admission of responsibility in respect of the verbal abuse. He did not possess a good record, he was a player of considerable experience, he had previously been suspended on two occasions within the previous 5 years. There was no expression of apology or remorse to either the panel or referee and in all those circumstances, balancing the factors under 8.2.7 and 8.2.8, the panel concluded that there were no justifiable mitigating factors to reduce the 18 weeks.
- 14(ii) The club had held their own disciplinary hearing at which the player was not invited to attend. He should have been. The notes of the club's disciplinary hearing were not clear in that they referred to this as being Ben's third card of the season (two previous yellows) and he had been red carded for similar offences last season (which was not correct). The Club had effectively suspended him from 22 September for a period which was not certain. His suspension would start at that date in any event.
- 14. The player is therefore suspended for 18 weeks running from 22.9.09 to 26.1.10. The player is free to play again on 27.1.10.**

COSTS

14. The panel makes an award of costs against the player/club of £100.

RIGHT OF APPEAL

15. The right of and procedure on, appeal against this decision in accordance with the RFU Disciplinary Regulations(Regulation 12.1.1.

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Signed: *Mike Hamlin*

Chairman

Dated: **26 October 2009**