

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

VENUE: Park Inn Hotel, London Heathrow

DATE: 18 November 2009

JUDGMENT

Player: Jordan MITCHELL

Club: Wetscombe Park RFC

Match: Westcobme Park v Lydney

Venue: Westcobme Park

Date of match: 31 October 2009

Panel: Jeremy Summers (Chairman), Dr Julian Morris and Michael White (“the Panel”)

Secretary: Liam McTiernan

In attendance:

Lydney

John Nelmes – Chairman

Adrian Knox – 4th Official

Westcombe Park

Jordan Mitchell (“the Player”)

Steve Reynolds – Director of Rugby

Darren Molloy – Head Coach

DECISION

- 1. The Panel upheld a citing brought by Lydney RFC alleging that the Player had struck an opponent with his fist. For the reasons set out in this judgment the Panel determined that the Player should be suspended for a period of 24 weeks from Wednesday 18 November 2009 to Wednesday 4 April 2010 inclusive.**

PRELIMINARIES

2. The Panel convened to consider a citing brought by Lydney RFC alleging that the Player had been guilty of striking an opponent with his fist in the forty-seventh minute (second half) of the match. Although no formal charge sheet was issued, the allegation was of an offence contrary to Law 10 (4) (a) of the Laws of Rugby Union.
3. Foul play was admitted. However the Player contested the citing itself.
4. The parties did not object to the composition of the Panel. The Chairman explained the procedure to be followed as laid down by the RFU Disciplinary Regulations (“DR”) to both parties, and no other preliminary matter arose.
5. The Panel considered:-
 - a. A written citing complaint sent to the RFU Disciplinary Manager by e-mail dated 2 November 2009.
 - b. The match recording.
 - c. A caution report issued to the Player relating to the incident.
 - d. A written statement from the Victim.
 - e. Statutory Sick Pay Notices dated 2 and 11 November 2009
 - f. A letter from Gloucestershire Hospitals NHS Trust dated 12 November 2009.
 - g. 11 photographs of the Victim’s injury.
 - h. Oral evidence from the Player.
 - i. Submissions from Messrs Knox, Nelms, Reynolds and Molloy
 - j. A character reference on behalf of the Player from Mike Hyndard, Academy Manager Saracens RFC
 - k. A character reference on behalf of the Player from Langley Park School.

THE CITING

6. The written citing complaint from Lydney did not contain great detail but alleged that the Player had punched Lydney No. 3 (“the Victim”) in consequence of which he had sustained a very serious orbital floor fracture to his left eye that

required corrective surgery. Lydney had indicated its intention to cite the Player immediately after the match.

7. The match recording was viewed. This was incomplete and required careful analysis. In summary, the available footage showed a defensive Lydney scrum on the 22 metre line. Westcombe Park (WP) drove the scrum forward and wheeled to the left. The scrum broke up and play then appeared to be contested legally when the ball left the scrum. However, as the scrum broke up, the Victim and WP1 could be seen to stand upright and grapple with each other. As a result the pair moved a short distance up field (towards the half way line) with the ball being contested behind them. The Referee could be seen looking closely at the breakdown and appeared not to notice the skirmish between the Victim and WP1 to his left. The Player could also be seen following this skirmish, and to move towards the two players and thus away from the point of play. It appears possible that the Victim and WP1 then fell over each other but in any event both ended up on the ground with the Victim initially landing on top of WP1 before immediately falling off and landing on the ground on his right side with the left side of his face uppermost.
8. At this point the Player could be seen standing over the Victim. Unfortunately the footage did not include what happened next, but the Victim's legs could be seen to move up and inwards as if in reaction to something that had happened immediately before. The Player's action drew immediate reaction from two other Lydney players (one of whom, L13, was subsequently issued with a yellow card), and a minor fracas then ensued that involved players from both sides which moved further up field towards the half way line. The Referee regained control and blew for a break in play. The Lydney trainer was immediately on the field to treat the Victim who was then led from the field and took no further part in the match. The Victim had not moved to any extent from the point at which the alleged offending had occurred. In this respect the Panel was assisted in determining the Victim's position by a reference to a female supporter who could be seen by the pitch railing with a red scarf or coat hanging beside her.
9. Mr Knox then referred the Panel to an unsigned and undated statement from the Victim, who the Panel was informed, is in practice as an accountant. The Victim described the scuffle following the scrum, indicating that neither he nor

WP1 had thrown any punches during that skirmish. He then described the incident in the following way :-

"I could see the Westcombe Park tight head prop (number 3) coming towards me. I had no time to react and felt at least two/three punches land around my left eye, causing me instant pain. My instant reaction was to move away from the situation as quickly as possible".

10. The statement confirmed that he had been led from the pitch and had subsequently been advised by the WP doctor that the injury was likely to be a "blow out fracture".
11. He reported being left with severe headaches, constant double vision and pain in the left eye. He attended Accident and Emergency at Gloucester Hospital following the conclusion of the game. He then attended hospital on a further seven times culminating with an operation to repair an orbital floor fracture conducted on 16 November 2009.
12. The Panel was advised that the Victim had been discharged from hospital a few hours before the hearing and had reported that he was still suffering from double vision. It is believed that he will be off work for some time to come and any date upon which he can return to playing rugby is at present unknown.
13. No formal medical report was available, but in evidence was a statement from the Gloucestershire Royal Hospital issued for Statutory Sick Pay purposes which recorded that the Victim had sustained an orbital floor fracture. A total of 11 photographs of the Victim's injury were also submitted in evidence before the Panel.
14. The Panel was referred to the caution report issued to the Player and a report, in identical terms, issued to Lydney 13. The Panel was not greatly assisted by the narrative in that there was no direct reference to the Victim, although perhaps that could have been deduced. In any event there was no reference to WP1 and the Victim being on the floor or, significantly, to any injury.
15. Mr Knox indicated that he had been at the ground, and although he had been on the opposite side of the field, had a clear view of the incident. In his view, if

the match officials had detected the incident, a yellow card was clearly insufficient. Lydney had considered the appropriateness of the citing very carefully but believed that the club had a duty of care to its players following what was a very serious injury. He advised the Panel that the Victim was 31, had played for Lydney for the past seven seasons and had previously represented England Schools. During his career he had never been dismissed from the field of play and of his four yellow cards two were for technical offences.

16. When questioned by Mr Reynolds for WP, Mr Knox indicated that he had seen the Player throw two punches and believed it was these punches that had caused the Victim's injuries.

DEFENCE CASE

17. The Player gave evidence on his own behalf. He admitted striking the Victim but asserted that he could not recall where he had struck him and had not been aware at the time that he had caused any injury.
18. He went on to explain that he had initially taken up position in the defensive line following the disruption caused by the Lydney drive at the scrum concerned. He had then seen the scuffle between the Victim and WP1. He believed that during the scuffle the Victim had struck WP1. He referred the Panel to the video in this regard, although the footage was less than clear. However, he maintained that he had been concerned to protect his team mate and was only reacting to the actions of the Victim.
19. He claimed that, at the point at which he struck the Victim, the Victim was still on top of WP1. When shown the footage again he nevertheless accepted that the Victim had very quickly fallen off WP1 and landed on the floor. This was before he could be seen to have delivered any blow. Although he maintained that he was not aware of having caused the specific injury, or any injury, to the Victim he indicated that he had apologised to him on two separate occasions following the game. The second apology had apparently been made when he learnt of the severity of the Victim's injuries.

20. The Player drew the Panel's attention to the first of the 11 photographs showing the Victim's injuries. He noted that a scar was present above the left eye. He did not adduce evidence in this respect but questioned whether the scar related to a recent injury that could have been related to the Victim's injury. The Panel was fortunate to be able to call upon the medical expertise of Dr Morris. In his opinion, on the evidence available to him, the injuries were unrelated.
21. On questioning from the Panel, the Player stated that he had never played against the Victim before and that there had been no prior incidents during the match. Both clubs agreed they had always enjoyed a friendly relationship.
22. In submissions on behalf of the Player Mr Reynolds and Mr Molloy advanced two principle points:-
- a) That there was no evidence as to what had actually caused the injury and therefore the Panel should not uphold the citing.
 - b) In the alternative, even if the Player had caused the injury the Assistant Referee had seen what had happened and had advised the Referee that a yellow card was the appropriate sanction in the view of WP the incident had therefore been appropriately dealt with.
23. In support of the first submission WP asserted that it was simply not possible to tell how the victim had sustained his injury and this could have been caused, for example, by a stray boot or elbow in the melee that ensued. On questioning from the Panel Mr Reynolds indicated that WP had asked all relevant players whether they had caused the injury to the Victim and none had come forward to explain how the injury had occurred. Significantly, in response to a direct question from the Panel, Mr Reynolds stated that WP1 had not struck the Victim and had therefore not caused his injuries.
24. WP also stressed the fact that the Player had been reacting to punches thrown by the Victim at WP1. On questioning from the Panel it was though accepted that neither WP1 nor any other WP player was treated for any injury following the incident.

25. Whilst WP very much regretted the injuries sustained by the Victim the club felt that there was insufficient evidence to uphold the citing. Had WP taken a different view, the Player would have been banned by the club. The Player (who is 21) was not a dirty player, and had no previous disciplinary record.

FINDINGS

26. This was a difficult case, not least because the video footage was not as complete as might have been wished. The hearing was then adjourned so that the Panel could conduct a careful analysis of all available evidence. In so doing it was mindful of the test (balance of probabilities) prescribed by the RFU Disciplinary Regulations. Having considered all the available evidence the Panel reconvened the hearing and advised the parties that it had made the following findings:-

- I. The initial skirmish was between WP1 and the Victim with no other player involved.
- II. The evidence from WP was that WP1 did not hit Victim and/or cause the Victim's injuries.
- III. From the initial skirmish to the point at which both WP1 and the Victim fell to the floor, no other WP player came into contact with the Victim.
- IV. The Victim initially landed on top of WP1 and then immediately fell onto his right leaving the left side of his head exposed.
- V. The Player was then seen to stand over the Victim who was on the ground before the video cut off.
- VI. The Victim's legs, which were on the ground, lifted up and inwards consistent with a defensive reaction to having been hit.
- VII. On his own admission, the Player struck the Victim.
- VIII. Other WP players react to the Player's actions, and the ensuing fracas then moved up field towards the half way line. From the video evidence no WP player appeared to have then been in a position to have caused the Victim's injuries.
- IX. At the next break in play, the trainer came on to treat the Victim who had not moved any distance from the point of the incident.

- X. The Victim gave clear and unequivocal evidence as to the cause of his injury¹.
- XI. At the point at which the Player struck the victim:-
- (a) The Referee was away from the incident following play and therefore did not see the incident.
 - (b) The Assistant Referee was 5-10 metres up field with WP1 in between the Player and the Victim. Therefore, if he saw the incident, his view would appear to have been obstructed.
27. The Panel concluded that it was likely that neither of the match officials saw the actual incident but, if they did, the Panel had no hesitation in determining that a yellow card was an insufficient sanction and that the Player should properly have been dismissed from the field.
28. Having upheld the citing, the Panel invited submissions in mitigation on behalf of the Player. The Player is 21 and has played for WP for the past two seasons. Previously he has played for Saracens gaining 1st XV experience in EDF games and has been a replacement in Guinness Premiership matches. He has also represented England Schools. He helps coach WP U.16's and is generally well regarded by the club. The offending was regarded as being very much out of character.
29. The Panel again reminded itself of the standard of proof prescribed, and as required undertook an assessment of the seriousness of the offending having regard to the criteria set out in 8.2.5 DR. In this regard the Panel found as follows:
- a) That the Player had acted intentionally as to his actions, and therefore the likelihood that at least some injury would have resulted. The Panel nevertheless accepted that the Player had not set out to cause the severity of the injury that had in the event been sustained.

¹ The Panel had due regard to the fact that the Victim's evidence could not be tested by cross examination. However, having regard to the evidence that there had been no previous ill will between either the players or the clubs it could not readily see why a professionally qualified person would make an allegation, in unequivocal terms, knowing that allegation to be untrue.

- b) However, the Player actions had, on any view, been at the upper end of recklessness. When a person intentionally strikes another, and the point of contact is the head, there must be the risk that serious injury will be caused.
 - c) On the Player's own admission the offending consisted of at least a single strike. From the evidence available the Panel was not able to determine conclusively how many blows were delivered, but on the evidence of the Victim and Mr Knox it was at least two strikes. Whilst the Player's case was that he had reacted to the scuffle between the victim and WP1, in the Panel's view this did not amount to provocation. Put simply the Player should not have become involved.
 - d) As set out in paragraphs 9 to 13 above, serious injury was sustained to the orbital floor of the victim's left eye. This required surgical intervention. The prognosis is currently unknown.
 - e) The offence led to a minor fracas involving a number of other players which was happily dealt with by the match officials with commendable speed.
 - f) As noted the Victim was on the ground and the Player was standing over him at the point he delivered the offending blow(s). As such the Victim was in a position of clear vulnerability, and the offending had to be viewed accordingly. The phrase "cheap shot" was used during the hearing. The Panel considered that such characterisation was probably not misplaced.
 - g) There was no premeditation.
 - h) The conduct was complete.
 - i) There were no other relevant factors constituting the Player's offending.
30. In light of these findings, not least the intention and the serious injury that resulted, the Panel had no hesitation in categorising the offending as being at the TOP END of the scale of seriousness.
31. Having found that the offence merited a top end entry point, in accordance with 8.2.6 DR the Panel was then required to determine the appropriate starting point for the sanction to be imposed within the periods set out at Appendix 2 DR. For an offence of striking with the fist, the prescribed top end starting

points are a minimum suspension of 8 weeks and a maximum suspension 52 weeks.

32. In determining the appropriate starting point in this specific case, the Panel considered with care the Guidance issued by the RFU Disciplinary Officer set out at Note 3 to Appendix 9 DR. The Panel noted the clear intent, the nature of the injury and the fact that there was some, although not serious, reaction from other players all of which are factors referred to in the Guidance.
33. The Panel was assisted by the example given in the guidance although noted that this was not intended to be in any way prescriptive. It is though helpful to refer to the text of the example given:

Facts: A player runs twenty yards into a minor fracas and punches an opponent three times in the head. The victim player falls to the ground and requires treatment for about a minute.

Having made an assessment of the seriousness by applying the criteria in Regulation 8.2.5 the disciplinary panel decides that this is top end on the scale of seriousness. Suggested entry points within the range of 8 – 52 weeks might then be as follows:

Where there is no player, spectator or media reaction:

No injury after treatment - 8 - 10 weeks

Victim leaves the field but is fit the following week - 12 - 14 weeks

Victim is injured and cannot play for a few weeks - 18+ weeks

Victim is badly injured (eg broken jaw requiring surgery) - 36+ weeks

34. Whilst the facts can be differentiated in this instance, the Player not having ran in a premeditated way to join a fracas, there were nevertheless similarities with the instant offending. In any event, there can be no doubt that the guidance is intended to lead disciplinary panels to consider sanctions at the upper end of the prescribed range where serious injury is present and surgery is required .
35. In all the circumstances, the Panel determined that the appropriate entry point for this offending was a suspension of 32 weeks.
36. The Panel considered the aggravating features prescribed by 8.2.7 DR and concluded that none were present.

37. The Panel then considered the mitigation advanced on behalf of the Player, and by reference to the mitigating factors set out in 8.2.8 DR found that:
- a) The Player had only partially acknowledged culpability and in essence had contested the citing;
 - b) He had a clear record and was more generally of good character;
 - c) His age and experience were not of material significance to the offending;
 - d) His conduct at the hearing had been satisfactory ; and
 - e) He had expresses some remorse.
38. Taking those factors into consideration, in particular that this was his first offence, the Panel considered that the Player the merited a 25% discount from the starting point, and the period suspension was therefore reduced by 8 weeks.

SANCTION

39. The Player was accordingly suspended for a period of **24 weeks** from Wednesday 18 November 2009 until Wednesday 7 April 2010. He is free to play again on Thursday 8 April 2010.

COSTS

40. Pursuant to 8.3.1 DR the Player and/or his club shall pay the costs of the hearing of £150 in accordance Appendix 6 DR, such costs to be paid within 21 days of receipt of this judgment².

RIGHT OF APPEAL

41. The Player was advised of his right of appeal. Such appeal must be lodged with the RFU Discipline Department within 14 days following receipt of this judgment.³

Jeremy Summers
Chairman
20 November 2009

² 8.3.2 DR

³ 11.2.3 DR