RUGBY FOOTBALL UNION

DISCIPLINARY HEARING.

At: Bristol Filton Holiday Inn, Bristol.

On: Tuesday, 16th February 2010

JUDGMENT.

Player: Rikki Stout. Club: UWIC RFC.

Match: Hartpury College v UWIC.

Venue: Hartpury College. **Date of Match:** 7th October

2009

Panel: Robert Horner (Chairman), Mike Curling and Aurwel Morgan

(WRU).

Secretary: Bruce Reece-Russel.

Attending:

On behalf of Hartpury College: Allan Lewis (AL) (Director of Rugby).

On behalf of UWIC: The Player, Chris Davey (CD) (Director of Rugby), and Jordan Allers.

On behalf of Gloucestershire RFU Disciplinary Committee: Dave Chambers. (DC) (Hon Secretary).

Preliminary Matters.

- 1. The Panel was convened to consider a citing by Hartpury College of the No 17 of the UWIC XV for striking the Hartpury No 6 from behind in an off the ball incident.
- 2. The Player identified himself and confirmed that he, and not Jordan Allers, had been wearing the No.17 jersey. This was verified by CD.

- 3. There was not any objection to the composition of the Panel.
- 4. The Chairman explained the process to be employed for the hearing of the case.
- 5. The Panel has considered:
- 5.1: The statement of Geraint John.
- 5.2: The statement of Chris Dewsnap.
- 5.3: The statement of Phil Greenaway.
- 5.4: The statement of Angela Sells.
- 5.5: The statement of David McKee.
- 5.6: The medical notes of the Hartpury physiotherapist
- 5.7: The official scoresheet signed by the Directors of Rugby of both teams.
- 5.8: The oral testimony of the Player.
- 5.9: The oral submission of CD

The Background to the Hearing.

- 1. Shortly after the conclusion of the match, Hartpury decided to cite the UWIC No 17 for an act of foul play and AL so advised Chris Davey.
- 2. AL consulted with DC on how to proceed and was advised to lodge the citing with the WRU within 14 days of the match
- 3. The papers were delivered to the WRU by hand on $15^{th/}16^{th}$ October 2009, but the citing was rejected by WRU on the basis that the citing was out of time under WRU Regulations which require citings to be made within 7 days of a match.
- 4. AL appealed that decision on the basis that the match had been played under RFU Regulations which allowed 14 days for the submission of a citing and that this timescale had been observed.
- 5. On 11th November 2009, Martyn Rees of the WRU advised AL by email that the WRU had, upon review, still rejected the citing because it had not been submitted within the 7 day timescale prescribed by WRU Regulations.
- 5. By email of 19th November 2009, AL asked Martyn Rees to return all the citing papers to DC.
- 6. On 26th November 2009, DC, after taking advice from the RFU Disciplinary Manager, formally wrote to Mike Wall (MW), Sports Administration Manager of the UWIC School of Sport, giving full details of

the citing and giving the option for the matter to be dealt with in the Player's absence.

- 7. Not having received a response from UWIC, on 23rd December 2009, Gloucestershire RFU surrendered their delegated disciplinary powers in this case back to the RFU.
- 8. On 13th January 2010, the RFU Disciplinary Manager wrote to MW advising that the case against the UWIC No. 17, Jordan Allers as per the teamsheet signed by both Directors of Rugby, would be heard by an RFU Panel, sitting in Bristol, on 2nd February 2010.
- 9. On 18th January 2010, the Chairman of the Panel issued directions to facilitate the hearing. Hartpury complied with these directions on 25th January 2010.
- 10. On 21st January 2010, MW by email advised the RFU Disciplinary Manager the player wearing the No 17 jersey at Hartpury had been Rikki Stout, not Jordan Allers.
- 11. By email of 25th January 2010, Martyn Rees of the WRU confirmed to MW that Members of the WRU Regulatory Committee had agreed that the case should be dealt with by the appropriate RFU Disciplinary Committee in accordance with the disciplinary regulations relating to the competition.
- 12. By email of 27th January 2010, MW confirmed with the RFU Disciplinary Manager that he, the Player and Jordan Allers would attend the hearing on 2nd February 2010 in Bristol, subject to being satisfied as to the jurisdiction of the RFU Panel. He also expressed concern over a number of issues, including the delay which had ensued since the match and the fact that in previous cross-border matches involving UWIC in which disciplinary issues had arisen the WRU had dealt with the UWIC player.
- 13. By further email of 29th January 2010, MW advised the RFU Disciplinary Manager that the committee of UWIC RFC had determined that UWIC RFC and/or its representatives would not attend the hearing on 2nd February 2010. Reasons given for this decision included those mentioned in Paragraph 10.
- 14. By email of 1st February 2010, the Chairman of the WRU Disciplinary Committee, who had already accepted the invitation of the RFU to appoint one of their members to the Panel, confirmed that UWIC should appear before the Panel on 2nd February 2010 and address any jurisdiction issues which they might have at that time.

- 15. The Panel met on 2nd February 2010, but neither the player nor any representatives from UWIC attended. As a result the Panel made the following determinations:
- "1. The Panel, duly appointed by the RFU, had jurisdiction to hear the citing both by virtue of the preamble to the Rugby Union section of the BUCS regulations, coupled with RFU Disciplinary Regulations 2.1.1 (f), and 2.4 and iRB Regulation 17, and by the WRU having acknowledged that jurisdiction and having appointed a member of the Panel.
- 2. The hearing was adjourned until 16th February 2010, at a time and place to be advised, at which time both Jordan Allers and Rikki Stout are required to attend.
- 3. Both Jordan Allers and Rikki Stout are temporarily suspended from playing the game of Rugby Union Football for UWIC or any other club until such time as they appear before the Panel, such suspension to be enforced by the WRU and BUCS.
- 4. During the period of temporary suspension, any club playing against a club containing Jordan Allers and or Rikki Stout in their side or among their replacements will be committing an offence.
- 5. By not later than close of business on Friday 12th February 2010 Jordan Allers and Rikki Stout are to lodge with the RFU Disciplinary Manager at RFU Twickenham duly sworn affidavits evidencing their date of birth and identity and having annexed as exhibits copies of their passports and driving licences.
- 6. In the event that Jordan Allers, Rikki Stout and authorised representatives of UWIC fail to attend the adjourned hearing on 16th February 2010, the full hearing will proceed in their absence, and their failure to attend will be taken into account in any sanction which may be imposed."
- 16. Copies of the passports and driving licences of the Player and Jordan Allers were sent to the RFU Disciplinary Manager on 10th February 2010.

The Evidence.

1. The DVD: This did not show the actual punch, but it did show the Hartpury No.6, David McKee, falling to the ground and lying there, clearly unconscious. The Player then runs across and throws himself onto the shoulders and head of the prostrate player, where he is promptly set upon by Hartpury players. Shortly before the Hartpury No 6 is seen falling as the result of a punch, he is seen wrestling with the UWIC No.6, their captain. The camera, continuing to follow the ball, moves from them, and shortly afterwards, the downward falling Hartpury No.6 comes into the

foreground, with the Player's outstretched left arm behind the opposing No.6's head and left shoulder. He then turns and then runs and falls onto the prone No.6 as previously described. He then immediately becomes the recipient of punches himself before being pulled away. A mass brawl, lasting some 20 seconds then ensues.

- 2. For Hartpury: AL relied upon the written statements which had been submitted at the outset with the citing, and advised that two of those who had given statements were available, if required, by telephone.
- 2.1: The relevant part of the statement, written the day after the match, from Geraint John, High Performance Director of Rugby Canada, who had previously been Director of Rugby at both UWIC and Hartpury, read:

"During the second half with the game being close the following incident occurred which I observed and watched:

A ruck occurred where a number of players tried to win the ball.

At the ruck some players ended outside the ruck about three metres away from the ball.

With the ball won, those players were last to get themselves into the next movement and started to run across the field.

I observed the Hartpury College No.6 running across the field in front of No.17 from UWIC.

I then observed and watched UWIC No.17 change his direction of running and move towards the Hartpury No.16

The UWIC No 17 then swung his arm and punched the Hartpury No.6 from behind.

The No.6 fell to the ground at which time the Hartpury No.6 jumped on top of him to continue punching the player.

At that time other players ran in to get involved.

Unfortunately other players were sin-binned while the No.17 received no punishment.

However, in defence of the referee the incident took place away from the ball and both referee assistants were from both institutions and had no say in the game.

Finally, when I saw the incident I remember saying to the two people either side of me and I quote – "that was disgraceful – that was disgusting." ".

2.2. The relevant part of the statement from Chris Dewsnap, then Director of Applied Apprenticeship of Sporting Excellence at Hartpury College, read:

"When watching the 2nd half of the game, I had come down from the stand to the touch line to get some instructions onto the field. Whilst standing watching, a ruck occurred and the ball moved away; as I followed the play, directly in my eye line, number 17 came up behind David McKee

(Hartpury No.6) and threw a punch which David did not see. He fell to the ground in a manner that suggested that he was unconscious as there was no react (sic!) to protect himself against the fall. He did not move, and before anything else could happen the player dived on top of him as if to continue his attack. I did not see what happened after as I turned to get the physio's attention to provide medical support to David on the floor."

2.3. The statement of Phil Greenaway, Assistant Academy Manager at Gloucester Rugby Club, written on 13th October 2009, provided similar testimony:

"From a ruck near to the touchline the ball was passed in field with UWIC in possession. As the players left the previous ruck, the UWIC replacement prop, wearing jersey 17, attacked the Hartpury No.6 from behind in a completely unprovoked attack. The UWIC player threw a punch to the side of his head which appeared to knock him clean out, the UWIC player then continued the attack on the Hartpury player whilst he was out cold on the floor by jumping on top of him and continuing to throw blows to his head. The intent and severity of the attack prompted various other players to get involved in dragging the UWIC No.17 away from the incident whilst further punches were thrown. The level of violence on display was unprecedented in any game I have witnessed and has no place in Rugby, particularly when the victim is unable to defend himself in such a cowardly attack."

- 2.4. The statement from David McKee, the recipient of the punch was brief and to the point:
- "I was entering a ruck in the second half of the game in the opposition half, I counter rucked with my opposite 6 and pushed him off the ball in the ruck area, I then ran to get to the next ruck, and this is where I was hit from behind on the side of my head and fell to the ground knocked out. All I can remember after that was talking to the team physio."
- 2.5. The statement of Angela Sells, a Sports Academy Physiotherapist, seemingly written the day after the match, detailed the consequence of the punch:

"Following an off the ball incident during this match, I was required to facilitate immediate 1st aid to a Hartpury player, flanker No.6, David McKee, wh had been knocked out and unconscious. The player was face down on the pitch, unresponsive initially and not moving. After approximately 20 – 30 seconds, the player started to gag and became responsive to questions. An assessment was made as standard following concussion, as well as a cervical spine check. The player responded well to questioning and the cervical spine was cleared. However, as I was

medically responsible for the player I felt it necessary to remove the player from the pitch.

On reviewing the player on 08/10/09, he has reported an episode of sickness at 2.a.m. post match and generally not feeling himself today. He is requiring regular monitoring and may even need further medical attention if he has any further sickness or change in current symptoms." The physiotherapists notes up to 12/10/09 reveal that as at that date, David McKee was still suffering from the after-effects of the blow he had received and was struggling to eat; he had not then resumed training, although monitored exercise under the physiotherapist was having positive effects.

3. For the Player:

3.1. The Player gave evidence on his own behalf. While he had pleaded guilty to the charge, he disputed some of the detail in the Hartpury statements. In particular, he had not delivered further punches after falling upon the Hartpury No.6. Following the ruck, a fracas had developed between the two Nos.6. Others then joined in. He threw a punch while others were punching. He conceded that it was probably his punch which caused the Hartpury No. 6 to fall. He had subsequently fallen on to the prone player to stop him getting up to attack him; it was a matter of self-defence.

In response to questions from the Panel, the player stated that he was not aware that the Hartpury No.6 had been knocked unconscious until he was on top of him. He considered that he had slid onto him rather than crashing down onto him. He confirmed that he was right-handed. He did not play for any other club than UWIC. He concluded by expressing his regret at what had happened.

3.2. CD had little to add. The Player had not been a great distance from No.6 to start with; it was not a case of his having run a distance to deliver the punch. He was a good, competitive player and had not previously been an offender in this manner; the incident was out of character and the Player definitely regretted the incident. So far as he was aware, he had not previously been sent off or cited – this was confirmed by the Secretary to the Panel. He confirmed that he had spoken with AL after the game and, as a result, expected the citing. As a result, UWIC had not taken any action pending receipt of the citing.

Sanction.

- 1. The Panel undertook an assessment of the facts in accordance with RFU Disciplinary Regulation 8.2.5 (iRB Regulation 17.14.2) and determined:
- 1.1: the offending was intentional.

- 1.2: the offence was committed with a clenched fist and the blow was clearly forceful.
- 1.3: there was no evidence of provocation, and the Player was not acting in retaliation for any offence committed on him or in self-defence; the suggestion that he was coming to the aid of his captain lacked credibility.
- 1.4: serious injury was occasioned to David McKee, who was immediately rendered unconscious, was unable to take any further part in the match and was still suffering from after-effects five days later.
- 1.5: The punch thrown by the player certainly had an adverse effect upon the game. A prolonged brawl immediately occurred, centred around the Player as a result of which other players were sin-binned.
- 1.6: The victim, David McKee, was not able to defend himself from a punch delivered from behind to the side of his head.
- 1.7: There was not any evidence of premeditation.
- 1.8: the offence undoubtedly was completed.

In the light of these determinations, the Panel unhesitatingly determined that the offence was at the Top End of the scale of seriousness, and then proceeded to consider the appropriate entry point between 8 and 52 weeks. Given the fact that the blow had clearly been forcibly struck to an unsuspecting player, who was unable to take further part in the match and continued to suffer after-effects some days later, and that the game was then disfigured by a consequential brawl which resulted in other players being sin-binned, the entry point clearly had to be materially above the minimum. Taking all relevant factors into account, after careful consideration of the facts, the Panel resolved that an Entry Point of suspension from playing of 20 weeks was appropriate.

- 2. The Panel next considered whether there were any aggravating features as specified in Disciplinary Regulation 8.2.7 (iRB Regulation 17.14.3) which would warrant an uplift from the Entry Point:
- 2.1: there was not a lack of remorse on the part of the Player. While it is unknown whether he expressed remorse immediately after the match, he clearly expressed his regret at the conclusion of his evidence in a manner which the Panel accepted.
- 2.2: The Player was not a serial offender against the Laws of the Game.
- 2.3: This was a particularly forceful and damaging single blow to the head. Whilst "handbags" may be unduly prevalent in the Game, a punch such as this, happily, is not. The panel did not consider that a deterrent was necessary to combat a pattern of offending
- 2.4: There were not any other aggravating factors which would justify an uplift in the Entry Point. For the avoidance of doubt, the Panel wishes to make it clear that, while the refusal of UWIC to accept the jurisdiction of the Panel, contrary to the advice and direction of Martyn Rees of the WRU,

was of itself deserving of sanction, the Panel accepted that the Player was not responsible for the decision not to appear on 2nd February and that it would be inappropriate to increase his penalty for that reason. The penalty imposed relates solely to the conduct of the Player in the match, and subsequent events have not in any way been taken into account in determining it.

- 3. It remained for the Panel to consider what, if any, mitigating factors might properly be applicable under Disciplinary Regulation 8.2.8 (iRB Regulation 17.14.4), and the following conclusions were reached:
- 3.1: The Player had pleaded guilty at the outset of the hearing. Although UWIC had not responded to the Chairman's Direction of 18th January 2010 requiring a prior indication of the Player's plea, this default was not considered to be the responsibility of the Player, so the Panel was prepared to give him credit for his guilty plea.
- 3.2: The Player had a good record, never previously having been accused of an offence under the Laws of the Game.
- 3.3: The Player was a 21 year old student of considerable experience in the Game.
- 3.4: The Player's conduct before the Panel was acceptable.
- 3.5: Although there was not any evidence that he had expressed it on the day, the Panel accepted that the Player did feel remorse for what he had done.
- 3.6: The Panel was not aware of any other mitigating factors.
- 4. The Panel, having determined an Entry Point of 20 weeks suspension, was satisfied that there was not any need to increase it under Disciplinary Regulation 8.2.7. The Panel considered carefully its findings on the mitigating factors and determined that the principal ones were those recorded at 3.1 and 3.2 above. Accordingly, the Panel considered that a discount of 25% was appropriate in the circumstances of this case.

Sentence.

The Player is suspended from playing for 15 weeks from 3rd February 2010, the date from which his temporary suspension took effect and which he confirmed he had observed, until 18th May 2010 inclusive.

Appeal.

The Player has a right of appeal, exercisable in accordance with the provisions of RFU Disciplinary Regulation 11. The requirements of

Regulations 11.2 and 11.3 must be strictly observed in order to implement the appeal process.

Costs.

The Panel made no order as to costs. The fee paid by Hartpury College on lodging the appeal will be refunded.

Afternote.

- This case has revealed a serious defect in the BUCS Regulations for its Rugby Union Competitions which needs to be addressed as a matter of urgency. In particular, the current Regulations do not make any provision for the disciplinary process which is clearly required in a Competition comprising participants affiliated to three National Unions, each of which has its own Disciplinary Regulations which differ from one another. Where clubs affiliated to different National Unions play each other, all the players on the field should be subject to the same disciplinary code. way of an example, which caused major initial confusion in the instant case, the period within which citings may be made clearly has to be the same for both clubs; it is patently wrong that one should have 7 days more than the other. This is a matter which must be sensibly resolved before the start of the 2010/2011 season if the problems experienced with the current case are not to be repeated. If a solution is to provide clearly that the Regulations of any one of the three Unions involved is to apply, then it will be important to ensure that the requirements of that Union are readily available to all participants. The same will apply, mutatis mutandis, if it is decided that the Regulations of the Union of the host club It really is essential that immediate action is taken to ensure that the problems and delays encountered here are not repeated.
- 2. The unhelpful stance adopted by UWIC, contrary to the clear advice given by Martyn Rees, is to be deprecated. It served no purpose and its sole result, apart from increasing the cost of the disciplinary process, was the temporary suspension of Jordan Allers, which is, by definition, now revoked, and which would not have been necessary had UWIC attended on 2nd February 2010.

Robert Horner.

Robert Horner. Chairman. 18th February 2010.