

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

At : Marriott Hotel, Manchester Airport

On : Tuesday, 9th February 2010

Judgment

Player: **MARIKA VAKACEGU** **Club:** Sale Sharks RFC

Match : Sale Sharks v Northampton Saints

Venue: Edgley Park, Stockport

Date of Match: 29th January 2010

Panel: Antony Davies (Chairman), Barry O’Driscoll and Peter Rhodes (“the Panel”)

Secretary: Liam McTiernan (RFU Disciplinary Department)

Attending: Marika Vakacegu (“the Player”)
Kingsley Jones (Director of Rugby, Sale Sharks)

Citing Officer: Mike Rafter

Decision

1. The Panel are not satisfied that the foul play offence alleged was committed and the citing complaint is therefore dismissed.

Charge and Plea

2. The Panel convened to consider the citing of the Player by the Citing Officer in the above match for an alleged act contrary to good sportsmanship, contrary to Law 10(4)(m) (IRB Laws of the Game 2010 Edition), the particulars being that the Player was alleged to have made contact with the eye or eye area of an opponent during the above game.

3. The offence was denied.

Preliminaries

4. The Player did not object to the composition of the Panel.
5. Prior to the hearing, the Panel had been informed that no contact details were available for Joe Ansbro of Northampton Saints. He had been due to give evidence by telephone conference and those facilities were in place. The original citing letter despatched from the RFU Disciplinary Manager on 4th February 2010 contained the following direction :

*“For Northampton RFC. The Player (Joe Ansbro) will be required to take part in a conference call and the Club are to confirm the landline number, **not mobile**, by COP Monday, 8th February 2010”.*

That direction had not been complied with by the time the stipulated deadline expired. At 11.16 a.m. on 9th February 2010, the following e-mail was sent from the Disciplinary Department at the RFU to Paul Shields, Team Manager, Northampton Saints.

*“Subject LANDLINE ESSENTIAL.
Hello Paul, I need a landline I can call Joe on tonight for the hearing as stated in Bruce’s letter. Please ring me on my mobile asap with this information. If I am unable to answer for any reason, could you text this through. It is vital to the success of tonight’s hearing”.*

6. As at 7.00 p.m. on Tuesday, 9th February 2010, no number had been made available to the Panel Secretary. The Panel directed that all efforts be made to contact a representative of Northampton Saints, but there was no response from the available numbers. In the circumstances, the Chairman directed that a message be left to the effect that the Panel would commence the hearing at 7.30 p.m. on the basis of the best evidence then available to it.

The Prosecution Case

7. The Panel viewed DVD footage of the alleged incident and read the Citing

Officer's reasons for citing the Player. The Citing Officer stated that Northampton 12 (N12) went to compete for the ball as presented by a tackled player. Sale 15 (the Player) arrives at the breakdown at roughly the same time and can be seen to effect a removal of N12 from the contact area. In doing so, he appeared to grasp the face area of N12 and with a jerky/raking upwards motion he lifts/peels N12 away from the contact area, the two players falling to the floor on the Northampton side of the ruck. His attention was drawn to the incident by complaint from the player advanced on his behalf by Paul Shields, Northampton Team Manager, and corroborated by supporting statements from himself and the Northampton Team Physiotherapist.

8. In a signed statement dated 3rd February 2010, Joe Ansbro stated as follows :

“A tackle was made and I moved in and competed for the ball. A player grabbed my head and pulled me away from the contact area. I felt the pressure from a finger going into my eye and let go of the ball instantly. I complained to the Officials and went straight to the Club Physio. As a result of the incident I lost a contact lens and my vision was blurred for the next ten minutes or so.”

9. The statement of Matt Lee, Northampton Saints Physiotherapist, signed and dated the 3rd February, stated as follows :

“After approximately 60 minutes of the above fixture, I was called over by Joe Ansbro, who was complaining of an injury to his right eye. As play was continuing, Joe made his way back into play. However at the next break in play (a scrum on the tunnel side of the pitch) I attended to Joe who was complaining of on-going blurred vision in his right eye following the above incident. He was unsure as to whether this was due to a lost contact lens, but felt able to continue at that point. Following the game, Joe did not complain of any visual disturbance.”

10. In view of the player's assertion that he had complained to the Officials, a statement had been obtained from the Match Referee, Nigel Owens. This confirmed as follows :

“I do not recall anyone saying anything about a foul play incident to me during or after the match”.

11. The Panel considered the DVD footage of the incident and discerned the following:

N12 arrives at the tackle situation shortly before the Player and crouches with his head and shoulders below his hips, with his arms outstretched in front of him and pointing downwards. The Player makes contact with him almost immediately. The Player's right arm wraps around the left hand side of N12's torso and his left arm goes under N12's body, passing the right ear of N12 and a grip is made at or about the middle of N12's chest. The Player then seeks to lift and twist the torso of N12 upwards and backwards away from the ball. The Player is higher than N12 and his torso is at this point directly on top of N12's torso. As the Player lifts N12 backwards, he loses his grip with his left arm. Prior to both players separating contact and falling to the ground behind the ruck, the Player's left hand is seen outstretched and to ride up N12's body from his chest up the neck area and then over the top of the head. The DVD angles and views do not of themselves prove conclusively that contact was made with the face, eye or eye area.

12. The Panel viewed carefully the sequence of events following the incident. There was no reaction from any of the players. N12 got up and played on for more than one minute. He was seen to take part in defensive plays where he appeared to be communicating with other players. There was no evidence on the DVD of any treatment being received, nor as N12 had set out clearly in his statement, of him complaining to the Officials. It appeared no other Match Official saw any offence relating to contact with the eyes. The Match Referee had confirmed that no complaint had been made to him at the time or after the game.

The Defence Case

13. The Player gave evidence. He said that he was coming into the tackle situation to clear 12 before he turned the ball over, but he had executed this with a poor technique in that the player with the ball was lower than him. He had tried to get a grip underneath him and pull him upwards and backwards out of the way and away from the ball. He said he pulled what he managed to get hold of and then both fell over and backwards. He was very ashamed to have been accused of such a serious offence. He had never received any form of card in his career and he would not injure someone's eyes just to win the ball for his team.

14. He had not recalled the incident at the time, nor after the game. Nothing was said to him on the day of the game or afterwards by any player or Official and he had spoken to Joe Ansbro and shaken hands with him after the game but again nothing had been said. When he was shown the DVD by his Coach, he did recall the incident with embarrassment because of his poor technique, but for no other reason. He explained by reference to the DVD how he had tried to grab the shirt collar to give him purchase in pulling N12 backwards and away from the ball, but he had failed to get a grip and this had caused his left arm and hand to ride over N12's neck and head. He pointed out that he had done so with an open palm and his fingers outstretched and in one continuous movement. His hand did not linger near the face area. He could not recall having made contact but was prepared to concede the possibility that he had, but maintained that any such contact with the eye or eye area was accidental. He conceded that the incident looked untidy and clumsy, but what he was doing had a genuine rugby purpose but was badly executed.

15. On behalf of the Player, Mr. Jones gave an assessment of the Player's character. He asked the Panel to bear in mind that fingers can go in eyes accidentally and not every case of contact with the eye or eye area had to be as a result of a deliberate or reckless act. He drew the Panel's attention to the inconsistencies in the statements from Northampton Saints and particularly N12's lack of reaction and continuing part in the game. The Physiotherapist had suggested that the blurred vision complained of was caused as a result of the loss of a contact lens and the Referee had stated that contrary to the assertions made, no-one had mentioned a foul play incident to him on the field of play or afterwards.

Finding

16. It is in our view entirely appropriate to bring this citing complaint before a Disciplinary Panel. The written statements of the Northampton player and Physiotherapist, together with the DVD are sufficiently compelling to present a prima facie case of contact with the eye or eye area. There are however a number of inconsistencies in the written statements and we are disappointed not to have had the opportunity of questioning those witnesses. Having heard and seen the Player give his explanation and applying the standard of proof set out in DR 6.5.1, we conclude that there may have been contact with the eye or eye area as alleged. However, given what we have seen on the DVD and had explained to us, we believe this contact to have been accidental rather than deliberate or

reckless. The contact was reasonable and proportionate in these circumstances, but the Player's actions were badly executed, untidy and clumsy, though not sufficiently so as to be reckless. In those circumstances, the Panel are not satisfied that the foul play offence was committed and the citing complaint is therefore dismissed.

17. Nevertheless, the Panel warned the Player to take care in future. Contact with the eyes is not only insidious, but carries potential risks of serious and lasting damage to the victim. Even where contact is made recklessly, and injury is caused, a player will face a very significant period of suspension.

Antony Davies

Antony Davies,

Chairman

11th February 2010

Comment

We have indicated elsewhere in this judgment that we were disappointed not to have the opportunity of questioning the witnesses from the Club which initiated the citing via the nominated Citing Officer. We do not know how that situation has come about, though the notice of hearing contains a specific direction to Northampton RFC with a deadline of COP Monday, 8th February 2010, which was not complied with and resulted in the RFU Disciplinary Department having to make further and frantic efforts to obtain a response. We trust that efforts will be made to ensure this does not occur again, but we wish to remind professional Clubs that even though their citing regime is governed by a nominated and independent Citing Officer, they still retain responsibility to assist with the citing process and this includes complying with written directions.