

RUGBY FOOTBALL UNION

DISCIPLINARY PROCEEDINGS

JAMES TUBASEI – ESHER RFC

15 March 2010

1. This matter concerns a citing brought by London Scottish RFC alleging that Mr Tubasei made contact with the eyes and mouth of an opponent during a game played on 30 January 2010 contrary to Law 10 4 (m). Serious injuries are said to have resulted from the alleged offending.
2. The hearing was due to take place at the Holiday Inn, Bloomsbury on 15 March 2010, and all parties were ready to proceed.
3. At 01.07 on the morning of the hearing Mr Martin Goudie, counsel instructed by LSRFC to present the citing, received the following e-mail from Mr Lee Rust the complainant in the citing:

“Martin,

Real apologies for this, I will not be able to attend the hearing.

My mother has contracted MRSA and is seriously ill in hospital. I have just returned to the North East tonight.

If you need anything/I can help tomorrow I will try and keep an eye on my mobile/voicemails:

Lee Rust”

4. In light of the perfectly understandable unavailability of Mr Rust, an application to adjourn the hearing was made by Mr Goudie who considered that he could not properly present the citing without Mr Rust being present and able to view the match recording. He further considered that Mr Tubasei would be prejudiced by the non-attendance of Mr Rust.
5. Mr Haslam, solicitor instructed on behalf of Mr Tubasei, opposed the application. He believed that he, and the Panel, was able to proceed on the evidence available. He also pointed to the delay that had already occurred in determining the matter, during which time the allegation, which was denied, had been hanging over his client. He made no criticism of Mr Rust, with whom he had every sympathy.

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6. This is a serious allegation and one, which if proved, would be likely to result in a significant period of suspension.

7. In light of that fact, the Panel determined that the matter had to be properly investigated. As such the presence of Mr Rust to give his evidence, and be cross-examined, with access to the match recording was plainly required.
8. The matter could be tested in this way. If the hearing proceeded and the citing was upheld, an appeal by Mr Tubasei asserting that he had been prejudiced by the non-attendance of Mr Rust would be likely to be viewed sympathetically. Mr Rust would feel similarly aggrieved if the citing were to be dismissed without his having been able to give evidence. Either way it is fundamental on an allegation of this nature that a panel is properly able to assess all relevant evidence.
9. The application for the adjournment was accordingly allowed.
10. The Panel¹ does not reserve the matter to itself, but directs that the matter should be relisted at the earliest practicable opportunity.

Jeremy Summers
Chairman
16 March 2010

¹ Chairman, Peter Budge and Dr Julian Morris.