RUGBY FOOTBALL UNION

APPEAL HEARING

VENUE: Holiday Inn, Bloomsbury, London

DATE: 12 October 2009

Club: Henley RFC

Panel: Jeremy Summers (Chairman) Peter Budge and Elizabeth Riley ("the Panel")

Secretary: Brenda Parkinson

In Attendance:

Noel Armstead – President Henley RFC ("the Club") Robin Taylor – National Clubs Association ("NCA")

DECISION

1. The Appeal brought by the Club against a decision of the NCA Executive dated 29 September was dismissed.

PRELIMINARY ISSUES

- 2. The Panel was convened to consider an appeal by the Club against the deduction of two league points imposed by the full Executive Committee of the NCA in a decision dated 29 September 2009.
- 3. The Club did not object to the composition of the Panel and no other preliminary issue arose.

THE FACTS

4. These are helpfully set out in the NCA's decision which records as follows:

On the 16th September 2009 the RFU reported to the NCA Secretary that Henley RFC had selected an ineligible player in their match against Clifton RFC on the 12th September 2009. The player concerned was DB¹ who was not shown on the registration list of Henley RFC.

On receipt of this notification the NCA Secretary notified Henley RFC of the ineligible player and advised them not to select the player until such time as his registration had been affected.

¹ It is not necessary to name the player concerned for the purposes of this judgment.

The NCA Secretary received an email from Mr. Noel Armstead, the President of Henley RFC, in which it was indicated that the club did not realise the player was not effectively registered simply because last season he had been registered with them as a loan player from Newbury RFC and they had overlooked the RFU Regulation that at the end of any season loan players are automatically deregistered by the RFU.

Henley RFC had been told by Newbury RFC that as far as they were concerned the player was no longer part of their set up and as he had no outstanding contractual obligations to Newbury the player was eligible to play for Henley. Henley RFC had applied (albeit after the event) to register the player and he was shown on the latest registration list as a pending player.

WRITTEN GROUNDS OF APPEAL

5. The Club appealed on the following basis:

"Henley Rugby Football herewith give Notice of Appeal with reference to the decision by the NCA Executive to impose a deduction of two league points with regard to the inclusion of DB in their team against Clifton RFC on September 12th.

The circumstances leading to his inclusion in the Henley XV are these:-

DB signed an approved contract on June 15th 2009 to play for Henley RFC until April 30th 2010. He did this stating that he did not wish to sign a new contract with Newbury RFC he having been on loan to Henley from that club since 18th November 2008.

Effective registrations for 2009/10 were possible from June 15th and Henley RFC acted in the belief that they had a valid contract with the player. From that date he has not been eligible to enter into a playing contract with another club. Newbury RFC confirm that they had no contact with the player prior to the start of season 2009/10 to discuss the renewal of his contract with them and have subsequently confirmed that the player has no obligations to them. He has been effectively Registered with Henley RFC since 25.9.09

In mitigation Henley RFC regret that technically DB was not registered with the RFU before that date but we ask the panel to consider our plea to have the penalty imposed reviewed in view of the circumstances explained above. In short we considered that we had a contractual relationship with DB to play for the club and no other club. We consider, therefore, that the decision to deduct two league points is harsh.

We ask the panel to consider suspending the imposition of the penalty for the reminder of the season provided there is no breach of registration rules in the intervening period"

SUBMISSIONS ON BEHALF OF THE CLUB

6. Mr Armstead spoke of his many years of clearly impressive service to both the Club and the game in general. He explained that he is responsible for player registrations at the Club and that he had been on holiday in the week leading up to the game in

question. He arrived at the ground close to kick off, and when given the team sheet, did not then appreciate that the player concerned had no effective registration. The player had not played the previous week in the first game of the season, and this again had contributed to his unregistered status not being detected.

- 7. There was no dispute that he, and so the Club, had been at fault, but he submitted that the penalty imposed was unduly harsh for what amounted to a technical breach of the regulations. Further, the Club had obtained no competitive advantage in consequence of the breach, it having lost the game in question.
- 8. He stressed that the player had signed a contract with the club, and this had led to the mistaken belief that he was registered. The player had no other links with any other club and there had thus been no risk of playing a dual registered player. The Club had in no way tried to hoodwink their opponents or the NCA and had acted entirely in good faith.
- 9. The fact that rugby is governed by regulations and not laws was submitted as being significant. Because of that, Mr Armstead urged that the ethos of the game was such that there was flexibility to deal with a situation in an appropriate manner rather than simply following a strict adherence to the letter of the law. In all the circumstances he asked the panel to vary the sanction and restore the deducted points.

SUBMISSIONS ON BEHALF OF NCA

- 10. Mr Taylor stressed that the regulations were very clear, and the fact that DB had not been effectively registered could have been easily ascertained by a search on Rugby First.
- 11. NCA always sanction such a breach with the deduction of league points, and its starting point is that a minimum of two points will be deducted for the lowest level of breach. The deduction will then increase according to the seriousness of the matter.
- 12. It was stressed that the decision had been taken by the full NCA Executive, and Mr Taylor submitted it would be unfair on other clubs within the NCA if the Club was not penalised in accordance with the approach set out above (in paragraph 11). In particular he pointed to a situation of another club being one point behind Henley at the end of the season, and so being relegated in effect because NCA had failed to impose the points deduction it had always previously imposed.

RULING

13. The test on appeal is that provided by Regulation 11.5.1 of the RFU Disciplinary Regulations:

In order to succeed on appeal, the Appellant must prove on the balance of probabilities that the decision appealed against was wrong or was one the Panel could not have reasonable reached.

14. The player registration requirements are in turn set out at Regulation 13 of the Game Regulations:-

13.1 Registration

- 13.1.1 A Club may only play or select as a replacement or substitute players who hold Effective Registration for that Club in accordance with the Player Registration Regulations. The only conclusive evidence of Effective Registration is the Computerised Listing held by the RFU as at the Kick Off time of the match in which such players play. Each Club is responsible for ensuring its strict compliance with this Game Regulation and must take all reasonable steps to ensure compliance.
- 15. This was an appeal against sanction only, the fact that this regulation had been breached not being in issue. The sanction had been imposed by the NCA's full Executive Committee and the Panel was informed that the NCA will always impose a deduction of not less than two league points in any case where a player is selected for whom no Effective Registration is in place.
- 16. In those circumstances, and having regard to the test to be satisfied on appeal as set out above, the Panel felt unable to uphold the appeal.
- 17. The NCA's decision of 29 September 2009 was accordingly upheld and the deduction of 2 league points will stand.

COMMENT

- 18. The Panel, despite its ruling, had no little sympathy for the Club. It noted, with some concern, that the policy adopted by NCA as to what it considers to be the appropriate sanction for a breach of this nature may be inconsistent with the approach taken by other bodies within the game.
- 19. The standard of proof to be satisfied on appeal as prescribed by the RFU Disciplinary Regulations, left the Panel unable to interfere with a decision taken by the full NCA Executive Committee. The Panel would nevertheless hope that the NCA may wish in due course to consider whether the deduction of league points is the only appropriate sanction irrespective of the circumstances of a particular matter.
- 20. It may also be that some form of guidance from the RFU might assist in achieving a uniform approach across the game when imposing a sanction following the use of ineligible players, and perhaps other administrative errors which likewise have no direct impact on the result of a particular game.

COSTS

21. The Appeal having been dismissed, the appeal fee paid is to be forfeited.

Jeremy Summers

Chairman 15 October 2009