

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

Venue: Holiday Inn, Leeds/Brighouse

Date: 25th January 2010

APPEAL JUDGMENT

Player: Callum Jennings

Club: Whitehaven

Match: Aspatria Eagles (2nd XV) v Whitehaven 1st XV

Venue: Aspatria

Date of match: 24th October 2009

Panel: Clif Barker (Chairman) and Barry O' Driscoll

Secretary to the Panel: Liam McTiernan

In attendance:

1. Callum Jennings (Player).
2. Paul Nicholson, Solicitor, representing the Player.
3. David MacInnes, representing the Cumbria Discipline Panel (CDP).
4. Tony Simpson, RFU Press Officer (Observer).

To consider: An appeal by the Player against a temporary suspension from playing imposed upon him by the CDP at a hearing on 2nd December 2009, pursuant to Regulation 6.1.7 of the RFU's Disciplinary Regulations (DR)

Decision: The Panel concluded that, as the period of the temporary suspension has now expired, the Panel had no jurisdiction to hear any appeal. Consequently, the Player is free to play at the present time.

Preliminary matters

The parties confirmed that they had no objection to the composition of the Panel and that they agreed to the matter being dealt with by a Panel of two.

Evidence as to fact

The Panel considered:

1. A letter dated 2nd November 2009 from John L Heyworth, the Chairman of Aspatria.
2. E-mail from the referee, Ray Fleming, dated 29th October 2009.
3. Written Judgment by the CDP dated 2nd December 2009.

4. Letter from D D Morton, the Secretary of the CDP, to the Player dated 3rd December 2009.
5. Notice of Appeal (in the form of a letter) from the Player's solicitors, Milburns, dated 10th December 2009.
6. E-mail from Milburns dated 25th January 2010, withdrawing the appeal.
7. Oral representations from Mr Nicholson on behalf of the Player.
8. Oral representations from Mr MacInnes on behalf of CDP.

The Background and Facts

1. By letter dated 2nd November 2009, Aspatria cited the Player for an act of foul play, which is alleged to have occurred during the match between Aspatria Eagles and Whitehaven at Aspatria on 24th October 2009. It is not necessary for the purposes of this Appeal Judgment to rehearse the facts in any detail but suffice it to say that the citing allegation is an extremely serious one of making contact with the eyes or eye area contrary to Law 10(4)(l). Sadly, the Aspatria player, Alan Hedworth, sustained an appalling injury to his left eye and present indications are that he is likely to lose the sight in the eye. Having said that, however, the Player strenuously denies the allegation of foul play, which is alleged to have occurred when the Player, running with the ball, handed off Alan Hedworth to the face, who was attempting to tackle him.

2. The citing was listed for hearing before the CDP on 2nd December 2009. However, by then, the police had embarked upon a criminal investigation and, thus, the CDP adjourned the hearing of the citing itself until the outcome of the investigation is known pursuant to 6.1.7 of the DR. The CDP then went on to consider whether or not it should impose a temporary suspension on the Player under 6.1.7 and, having received representations from the Player and his solicitor, the CDP decided to do so.

3. There appears to be an ambiguity in the CDP's Written Judgment relating to the actual length of the temporary suspension. In that respect, under "Decision" on page 1 of the Judgment, it reads that the CDP "suspended him from playing rugby from play (sic) until 20 January 2010 or earlier if the police enquiry was stopped. Thereafter, a full disciplinary hearing would consider the case in full as soon as possible." However, under "Decision on any Suspension" at the foot of page 2 and the top of page 3, the Judgment states that the Player "should be suspended until such time as the police enquiry is completed or abandoned and then a full hearing would be held in the normal way." Despite this ambiguity, however, we conclude that the intention of the CDP was to suspend him until 20th January 2010 because, according to Mr MacInnes, it was on that date that the CDP believed he was due to answer his police bail (as it now transpires, he is not due to answer it until 29th January). Furthermore, we are fortified in reaching this conclusion because, in his covering letter of 3rd December 2009 sending a copy of the Written Judgment to the Player, the CDP's Secretary, Mr Morton, wrote "I confirm that the temporary suspension is with immediate effect and will remain in force until 20th January 2010, unless in the meantime you are released from police bail requirements." Clearly, as well, Mr Nicholson believed that the temporary suspension was until 20th January 2010 because, in his Notice of Appeal (letter of 10th December 2009), he states that "The decision of the panel was to suspend Callum Jennings from Rugby until 20 January 2010 or earlier if the police enquiry was stopped."

We have no hesitation in concluding, therefore, that the temporary suspension was until 20th January 2010.

4. The Player's Notice of Appeal is dated 10th December 2009 and, in the normal course of events, the appeal would no doubt have been heard well before the temporary suspension was due to expire on 20th January. However, we understand that, in view of the recent heavy snow and the Christmas and New Year holiday periods, it has not been possible to list the appeal before now. Indeed, the Panel notes that, on the morning of this appeal hearing and by e-mail, the Player's solicitor, Mr Nicholson, announced that his instructions were to withdraw the appeal and stated that "The appeal was an appeal against a temporary suspension from 2 December 2009 until 20 January 2010. Due to weather conditions etc it has been frustrating that the hearing could not take place." However, having been subsequently informed that the CDP intended to extend the temporary suspension, presumably at a hearing to be convened at some stage in the near future, Mr Nicholson no longer wished to withdraw the appeal and both the Player and Mr Nicholson had, therefore, attended

Decision.

1. We regret that the circumstances have prevented this appeal from being heard before now and that the parties may well have had a fruitless journey. However, in the opinion of the Panel, there is no longer any temporary suspension to appeal against. In that respect, the temporary suspension expired on 20th January 2010 and, understandably, there has been no further order of the CDP. In these circumstances, we conclude that we have no jurisdiction to hear the appeal and that it would be a pointless exercise in any event.

2. The Player has, of course, been free to play since the filing of his Notice of Appeal and now remains free to play. No doubt the CDP will now convene a fresh hearing, at which they will ensure that they have before them up to date information as to the precise stage which the police investigation has reached and the likely timescale of that investigation. At that same hearing and if they decide to further adjourn the hearing of the citing itself, the CDP will be able to consider afresh whether a further temporary suspension should be imposed. Having said that, however, Mr MacInnes did inform us that, in view of the extremely serious nature of this citing, the CDP may well request the RFU to deal with all further aspects of this case, pursuant to Regulation 2.3.4 of the DR.

Costs

In all the circumstances, the Panel orders that the appeal fee of £100 be returned

Clif Barker

Chairman

Date: 28th January 2010