RUGBY FOOTBALL UNION

DISCIPLINARY APPEAL HEARING.

At: Hilton Hotel, Newbury North, RG20 8XY.

On: Wednesday, 24th March 2010.

JUDGMENT.

Player: Ryan Keary. **Match:** Winchester 3rd XV v Southampton 2nd XV.

Venue: Winchester RFC. **Date of Match:** 7th November 2009.

Panel: Robert Horner (Chairman), Michael Curling and Jonathan Dance.

Secretary: Liam McKiernan. (LM)

Attending:

On behalf of Southampton RFC: The Player, Graham Harris (Chairman), Steven Dewey (SD) (Hon Secretary) David Ward (1st XV Captain), Robert Greenaway (Club Disciplinary Officer) and Mark Mauger (2nd XV Captain on the day).

On behalf of Hampshire RFU Disciplinary Committee: David Creal. (DC)

Preliminary Matters.

- 1. The Panel was convened to consider an appeal by the Player, supported by Southampton RFC, under Disciplinary Regulation (DR) 11 against his conviction by Hampshire RFU's Disciplinary Committee, following a citing by Winchester RFC, for two alleged instances of Dangerous Tackles (Spear Tackles) contrary to Law 10(4)(e) for which his sanction was a period of four weeks suspension from playing, against which sanction the Player also appealed.
- 2. There was not any objection to the composition of the Panel
- 3. The Chairman explained the process to be employed for the hearing of the appeal. In particular he explained that as no application had been made under DR 11.7.3 for a rehearing of the case, it was now for the Player and/or his representative to establish on the balance of probabilities that the Hampshire

decision was wrong or was one that Committee could not have reasonably reached (DR 11.5.1).

- 4. The Panel has considered:
 - 4.1. The bundle of documents supplied by the RFU.
 - 4.2. The oral submissions of the Player and SD.
 - 4.3. The oral information given by DC.

Decision.

"The overriding consideration in the conduct of disciplinary procedures (is) that they should be fair and just" (DR 6.4.1.) Although the Player had not satisfied the burden of proof outlined by the Chairman at the outset, having heard the case for the Player and having considered the conduct of the Hampshire hearing as evidenced by its minutes and as amplified by DC, the Panel was satisfied that the overriding consideration could not be accomplished without an adjournment followed as soon as possible by a de novo hearing. Although it was clear from an email from the referee to the Player that the referee was fully prepared, and, indeed, expected to give evidence, he had not been notified of the date of the Hampshire hearing nor had he been invited to attend it. Given the provisions of paragraph 4.6 of Schedule 7 of the DR, and the provisions of DR 6.5.2, a Panel cannot come to a valid decision without first ascertaining whether or not the referee saw the conduct of which complaint is made, and, if he saw it, how he interpreted it. Accordingly, in citing cases, evidence from the referee must always be obtained. The referee's evidence will be of significant importance in this case, as it was the case of the citing club, accepted by the Hampshire Committee, that the referee had not seen the incident, whereas the Player was confident that the referee had witnessed the tackles of which complaint was made and had not considered them to be worthy of the issue of a card. the Player was unable, for business reasons, to attend the Hampshire hearing, and, although he had signified that he consented to it proceeding in his absence, in the circumstances, his non-attendance was clearly prejudicial to him. witnesses were called for his defence, although witness statements on his behalf have been lodged in connection with the appeal, and SD, who spoke on his behalf there, had not attended the match and was not in a position effectively to challenge the evidence which had been given in support of the citing.

Against this background, the Panel resolved that, in order to give effect to DR 6.4.1, it was obliged to adjourn the appeal to enable a de novo hearing to take place at which the evidence from both clubs could be properly tested and evaluated, and the appropriate burden of proof applied, depending upon the referee's evidence. The adjournment is to be to the earliest convenient date at which:

- a. The Player is able to attend (he gave acceptable dates to LM after the hearing),
- b. The referee is able to attend, and
- c. The principal witnesses for both clubs are able to attend.

In addition, to the extent that they have not already been supplied, statements from witnesses for both clubs and from the referee must be lodged with the RFU Disciplinary Manager by not later than close of business four working days before the date of the adjourned hearing.

Costs.

Costs were reserved pending the final determination of the Appeal.

Robert Horner.

Robert Horner. Chairman. 25th March 2010.