

RFU APPEAL HEARING

Gareth Delve

v

RFU

Held at: The Office of the Judge Advocate General, 81 Chancery Lane

On: 28 September 2009

Before: HHJ Jeff Blackett

Representing the Appellant: Rob Burgess

Background

1. This is an appeal on behalf of Gareth Delve (the Appellant) against a sanction of three weeks suspension imposed by an RFU disciplinary panel (chaired by Christopher Quinlan) on 21 September for an offence of striking. It is normal for an appeal to be heard by an independent lawyer in accordance with RFU Disciplinary regulation 11.6. However the Appellant indicated in advance that he was content for the matter to be heard by the RFU Disciplinary Officer sitting alone as an independent member was not available at short notice.

2. The sanction related to an incident in the 79th minute of the match between London Irish and Gloucester on 13 September 2009. George Stowers (London Irish 20) tackled an opponent dangerously with a stiff arm, the Appellant (Gloucester No 8) ran to the incident and pushed Stowers over, they grappled and then struck each other and a brawl involving several players from either side erupted. Both Stowers and the Appellant were temporarily suspended. Subsequently Stowers was cited on two counts for a dangerous tackle and for striking the Appellant. The Appellant was cited for striking Stowers. Stowers was suspended for two weeks for the dangerous tackle and one week for the strike, the suspensions to run consecutively; the Appellant was suspended for three weeks for the strike.

Submissions on behalf of the Appellant

3. The sole basis of the appeal was that the panel erred in assessing the offence as Mid Range on the scale of seriousness. That entry point is five weeks suspension which was reduced to three weeks to reflect the mitigating factors in the case. Mr Burgess submitted that the offence should have been classified as being Lower Entry (entry point of two weeks) and, taking account of the panel's treatment of aggravating features and mitigating factors, should be reduced to one week. The player has already served one week of the sanction and Mr Burgess effectively asked that the remainder of the suspension be quashed.

4. The facts of the case are set out in full in the original judgment. Mr Burgess provided an analysis suggesting that both offences of striking should have been assessed on the same level on the scale of seriousness. He said that both the Appellant and Stowers were involved in a fight with each other, they struck each other simultaneously and they both subsequently pleaded guilty to striking. The panel concluded that both intended to strike each other, and did so a number of times, and neither was injured by the other. Stowers reacted to a violent attack by the Appellant; the Appellant reacted to Stowers' dangerous tackle on a fellow player which he found provocative. Mr Burgess submitted that the only matter which distinguished them was that the Appellant ran about nine metres to engage with Stowers. This was reflected in paragraph 47 of the judgment which reads:

“What aggravated this offence of striking was the distance travelled by him to become involved and thereafter the sustained, repeated nature of his conduct; pursuing the player and then punching him more than once.”

5. Mr Burgess submitted that the judgment was also inconsistent in concluding that the late tackle by Stowers “precipitated the chain of events” (paragraph 43) while also concluding that the Appellant's action was “the catalyst for both Stowers's reaction and the brawl which followed” (paragraph 46e).

6. In all the circumstances there was insufficient to distinguish the two players involved in the fight and their sanctions for striking should have been the same. Any sanction should be consistent within the game and, although there was an understandable temptation for the panel to apply the same sanction to the two players, the Appellant's overall offending was less serious than Stowers' who was cited for two separate offences.

Decision

7. In my view the gravamen of the Appellant's offending was that he decided to remonstrate with Stowers after the dangerous tackle. He ran a short distance and pushed Stowers who fell over. He then bent down and pushed him again. Neither of these pushes constituted a strike. Other players surrounded the Appellant and Stowers and they then started to strike each other. None of the blows were very forceful and none caused any injury (the injury to Stowers being caused either by a blow from one of his own players or a clash of heads during the altercation). The Appellant did not run towards Stowers intending to strike him – that is apparent from the DVD footage which shows that when he arrived he pushed him with open palms – and thus the offending, though intentional was not premeditated. He did not strike him until the fight started. Having pushed him a second time Stowers stood up and started to grapple with the Appellant – neither were prepared to back down. It was then, some five seconds after initial contact, that they began to punch each other. From that stage both players were equally culpable.

8. The panel's conclusion that Stowers's dangerous tackle precipitated the chain of events was not inconsistent with their conclusion that the Appellant's action was the catalyst for the ensuing brawl. Stowers's dangerous tackle provoked the Appellant into conflict with him, but the Appellant's actions then clearly caused the mass brawl to erupt.

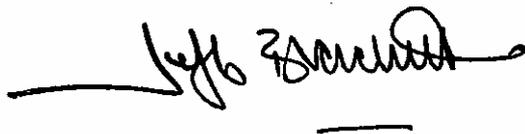
9. In my view the Appellant's actions in running towards Stowers and pushing him over were insufficient to justify a different classification of the seriousness of the offending between the Appellant and Stowers. Had he run over and struck Stowers immediately then a different classification would have been merited. In those circumstances I allow the appeal to the extent that the panel erred in classifying the offending as Mid Range. This offending was at the Lower End of the seriousness for striking.

10. The Lower End entry point for striking is 2 weeks suspension. The panel found that there were no aggravating factors. However, as already noted, the gravamen of this offence was that the Appellant effectively "took the law into his own hands" after one of his colleagues was the victim of foul play. That led to a spectacle which tarnished the image of the Game. This sort of flare up is increasingly prevalent and there is a need to impose sanctions which serve as a deterrent to other players who may overreact in similar situations. The sanction is, therefore, increased to three weeks to reflect the need for a deterrent and then reduced to two weeks to reflect the mitigating factors in paragraph 50 of the judgment. The differentiation between Stowers who was cited for two offences and the Appellant who was cited for one is thus reflected in the two sanctions.

11. The sanction is, therefore, reduced to two weeks – the Appellant is suspended from 21 September to 4 October. He is free to play again on 5 October 2009.

Costs

12. As the appeal is partially successful the costs of the hearing is £250. The Appellant deposited £500 in advance of the appeal and £250 will be returned.

A handwritten signature in black ink, appearing to read 'Jeff Blackett', with a horizontal line underneath it.

HHJ Jeff Blackett
RFU Disciplinary Officer

28 September 2009