

RUGBY FOOTBALL UNION

DISCIPLINARY APPEAL HEARING.

At: Mercure White Hart Hotel, Salisbury.

On: Wednesday, 11th November 2009.

JUDGMENT.

Player: Ngapaku Ngapaku.

Club: Bournemouth RFC

Match: Bournemouth v Chinnor.

Venue: Bournemouth RFC

Date of Match: 5th September 2009.

Panel: Robert Horner (Chairman), LeRoy Angel and Jonathan Dance.

Secretary: Liam McTiernan.

Attending:

On behalf of Bournemouth RFC: The Player, David Dunn and Dennis Eveleigh

On behalf of Chinnor RFC: Glyn Davies, Rob Walsh and Doug Humphries.

On behalf of Dorset & Wilts RFU Disciplinary Committee: David Dove and Stuart Morrow.

Preliminary Matters.

1. The Panel was convened to consider an appeal by the Player, supported by Bournemouth RFC, under Disciplinary Regulation (DR) 11 against his conviction by Dorset & Wilts RFU's Disciplinary Committee, following a citing by Chinnor RFC, for a dangerous tackle under Law 10(4)(a) for which his sanction was a period of six 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 why, with reference to DR 11.1.3, the Panel considered a de novo hearing was appropriate. In particular, DR 11.5.7, one of the special provisions relating to appeals in citing cases, required the citing club to prosecute the case, while under DR 11.5.8 the citing club was to call its evidence first; these DRs implied that a de novo hearing was appropriate in appeals in citing cases such as this. The Chairman then emphasised that it was for Chinnor RFC to establish, on the balance of probabilities, that the offence as cited had been committed, and also explained that, as the referee had seen the incident and taken action in respect of it, Chinnor RFC also had to prove, under Paragraph 4.6 of Appendix 7 of the DRs, that on the balance of probabilities, the referee was wrong in taking the action he did.

4. The Panel has considered:

4.1: All the Documents comprised in the packs provided by the RFU Disciplinary Administrator, and in particular the written statements of Glyn Davies, Doug Humphries and Matt Kiely and the Caution Report of the referee.

4.2: The oral evidence of Glyn Davies, Doug Humphries and the referee.

4.4: DVD evidence of the incident as provided by Chinnor RFC and Bournemouth RFC.

4.3: The submissions of Rob Walsh and David Dunn.

The Citing.

The relevant part of the citing submitted by Chinnor RFC to the Disciplinary Officer of Dorset and Wilts RFU read:

“Chinnor RFC are looking to cite Mr Ngapaku under Law 10.4 (e) Dangerous tackling of an opponent including early or late and including the action known as “the stiff arm” tackle. This dangerous action has caused injury to Toby Prescott (Scrum Half). He left the pitch and was taken to Stoke Mandeville Hospital in Aylesbury. They diagnosed that his jaw is fractured in 4 places. He was then sent to John Radcliffe Infirmary in Oxford. This hospital has a specialist in maxillofacial surgery. Toby had an operation to correct his upper jaw, replace 4 teeth and fit substantial wiring across the whole of his jaw. Toby is unable to provide written testimony as he does not recall the event. He remembers only a few snippets of the game. His memory begins to recover while sitting on the touchline being attended by Chinnor’s physios. His parents, who were at the match, drove him to hospital. I have asked Toby to obtain a

medical report when he returns for a follow up appointment on the 24th September 2009." The letter containing the citing was accompanied by four statements, web-site reports and photos.

The Case for Chinnor.

This was presented by Rob Walsh, who emphasised that Chinnor had not instituted the citing lightly; it was the first time the club had taken such action.

The DVD was then shown. At a ruck following a drive from a line-out, Bournemouth were penalised for a hand in the ruck. This was taken quickly by Toby Prescott, the Chinnor scrum-half (C9) who ran quickly through the retreating Bournemouth players. Meanwhile, the Player, Bournemouth's outside half, was coming across the pitch to tackle C9. C9 had seemingly avoided a tackler and side-stepped onto his left foot. His body then lowered as the Player came in to make the tackle. The player was at full stretch, with his right arm out straight to reach C9. The Player's left arm was not by his side, as alleged in one of the Chinnor statements, but raised and slightly crooked. There was a forcible impact between the Player's straight right arm and C9's chin/mouth and both players went to ground together, with C9 then lying there, still.

Glyn Davies then verified his written statement of 15th October 2009 in which, after describing some earlier breaks by C9, he had written: "About 30 minutes into the game, Toby made another such break and was clearly in a position to score or create another try. The Bournemouth No 10 was covering across behind his defending backline when Toby went through a gap, however he was immediately floored by a straight swinging arm by the No 10. I saw this incident clearly, about 15 metres away from me and expected the No10 to be red carded for his very cynical high tackle and was amazed when the referee only awarded a yellow card. In my opinion, the Bournemouth No 10 knew what he was doing; it was definitely not accidental." In reply to questions, Glyn Davies indicated that, as team manager, he was in the technical area of the visiting team, some 15 metres from where the tackle took place. He saw the player come across with a straight arm (his right) and with the right fist clenched. He then caught C9 with that right arm as C9 was darting left. He considered that it would have hit C9's windpipe had he not ducked. He considered that the time lapse from the taking of the tap penalty by C9 to the tackle was 2 seconds which was sufficient time for the Player's thought process to react.

Doug Humphries verified his written statement. He was running touch on the line nearest to the incident. His written account was: "Chinnor were awarded a penalty which the scrum half took quickly and darted through the Bournemouth defence. I ran along the line keeping up with play and was about 2 metres behind the scrum half. The Bournemouth fly half ran across to tackle the scrum

half bringing his right arm up and striking the head of the scrum half with the forearm of his straight arm rather than with his upper arm and shoulder associated with a more conventional tackle. A melee followed with players from both sides grabbing and hitting each other. I tried to intervene as did some of the replacements to restore order. After both sides had calmed down, the referee awarded the fly half a yellow card. During the second half when I was running the opposite touch the mentor to the referee asked me if I thought that a red card should have been awarded. I replied "Yes". After all, a yellow card is awarded for (repeated) technical offences such as off side and not for foul or dangerous play which warrants a red card." In reply to questions from Bournemouth, Doug Humphries confirmed that he was close to the incident. He did not see any other contact with C9 before the tackle by the Player. He thought that it was a red card offence because the arm came up straight into the face. A yellow card was used as an excuse for not using a red.

The Case for the Player.

David Dunn (DD) presented the case for the Player and began by expressing his and the Bournemouth Club's condolences to Toby Prescott for the serious injuries which he had suffered. The Dorset and Wilts Judgment Sheet showed that the Committee had considered the offence worthy of an eight week suspension although this was reduced to six by mitigating factors which were present. Although the Player was entitled to play once he lodged his appeal, he had not done so. He was nevertheless anxious to clear his name as he did not believe that he was guilty of a dangerous tackle which was deserving of a suspension. It was the first time that the referee had refereed at Bournemouth; he was close to the action and had a clear recollection of what had happened, having written at the time notes from which he subsequently compiled a Caution Report which described the incident in detail and set out the reasons of the referee for taking the actions which he did, namely the issuing of yellow card to the Player and the award of a penalty kick to Chinnor at the point of infringement.

DD then showed a DVD. This was the one which had been taken by Chinnor and sent to Bournemouth, but which he had adapted so that it could be shown in a frame by frame mode. This was most revealing and established, which was not clear at normal speed or in normal slow motion, but which had been asserted by Matt Kiely in his written statement, that a Bournemouth player had just managed to tap C9's right heel, the result of which was that C9's right foot, instead of passing through adjacent to his left leg, in fact hit, and momentarily stuck behind, that left leg. The inevitable consequence, given the speed at which C9 was running, was that he immediately began to fall forward towards the ground. It was for this reason that the arm of the Player caught him across the face. It was acknowledged that the Player's right arm at that time was held out, but DD

submitted that it would have hit the rib-cage but for the tap tackle causing C9 to fall. It was also clear from this DVD that the Player's left arm was coming round to complete a grasp of C9. The frame by frame advancement also showed that the right arm gave at the shoulder at the moment of impact, evidence, it was submitted, that it was not swinging forward into C9.

DD then called the referee to give evidence over the telephone. In reply to questions from the Chairman, he confirmed his view of the incident as set out in his Caution Report. He had not, however, noted the tap tackle and had assumed that C9 had lowered his body position in an attempt to avoid being tackled. He explained that, in his view, the tackle was not intentionally high and that the intended point of contact was changed because of the lowered body position of C9. He confirmed that, at the time of impact, the Player's arm was straight; this was not legal and worthy of a yellow card, which he would have awarded even if the contact had been with the upper body. In his assessment, although the arm was stiff, the action was not malicious. He remained of the opinion that the actions of the Player did not warrant a red card. Questions from Rob Walsh did not result in any change in the referee's view of the incident.

The Player then gave evidence on his own behalf. He ran forward to make a tackle and tried to come on the right path. He was definitely intending to complete a tackle, and was expecting the initial contact to be with the shoulder, after which he would have grasped him with both arms. Suddenly C9 was not there, because he was falling, and the outstretched arm hit C9 in the face. The fracas promptly following their going to ground together prevented him from saying sorry to C9 at the time, and after the match, there was no opportunity because C9 had already left for hospital.

Determination.

After a careful consideration of the evidence, especially that revealed by the DVD when shown in frame by frame mode, and that of the referee, who had not given evidence at the Dorset and Wilts hearing, the Panel was in no doubt that Chinnor, as the citing club, had not discharged the burden of proof imposed upon it in the DRs. The referee had clearly seen the tackle and had taken action in respect of it. The requirement on Chinnor therefore was to prove, on the balance of probabilities, that the referee was wrong in issuing a yellow card and should have issued a red. They had not done so; indeed, in the assessment of the Panel, considering carefully all that happened in the two seconds between the tap penalty being taken and the tackle being made, the instant decision making of the referee was correct, and no grounds had been adduced which persuaded the Panel to take a different view. It must be borne in mind that Law 10.5 (a) clearly envisages the issue of a yellow card (temporary suspension) for a dangerous tackle, and, in the totality of the circumstances here, the Panel did not consider that the referee was wrong in imposing that sanction. In these

circumstances, while the Panel fully understood, and sympathised with, the anguish and emotion suffered by Toby Prescott, his family and fellow members of Chinnor RFC, it had no option but to allow the appeal.

Costs.

The Panel made no order as to costs. The fee paid by Bournemouth RFC on lodging the appeal will be refunded.

Robert Horner.

Robert Horner.

Chairman.

12th November 2009.