RUGBY FOOTBALL UNION

APPEAL HEARING

At: Holiday Inn Express, Newcastle City

On: Monday, 14th December 2009

Player: STEPHEN SMITH ("the Player")

Club: Blaydon RFC ("the Club")

Appeal Panel: Antony Davies (Chairman), David MacInnes and Derek Morgan

Secretary: Liam McTiernan (RFU Disciplinary Department)

In attendance : John Pacitti (Chairman of Youth Rugby, Blaydon RFC)

Tom Rock (Director of Youth Rugby, Blaydon RFC)

Robin Wannop (RFU Council Member, Durham)
John Dove (Discipline Secretary, Durham County RU)

Decision under

Appeal:

Durham County RFU Disciplinary Hearing Judgment dated 4th November 2009, Robin Wannop (Chairman), Bryan Dodds and

Chris McLoughlin ("the CB Panel")

APPEAL JUDGMENT

Decision

- 1. The appeal was dismissed insofar as it related to the issues of jurisdiction, procedure, composition and independence of the Durham County Panel.
- 2. The sanction against the Player was varied by reducing the suspension imposed from seven matches to five matches.

Preliminary Issues

3. There was no objection to the composition of the Appeal Panel. All parties agreed to accept the jurisdiction and decision of the Appeal Panel.

4. The Club was aware that in order to succeed on appeal it had to prove on the balance of probabilities that the decision appealed against was wrong, or one the CB Panel could not reasonably have reached or did not have the jurisdiction to reach.

The Background and Facts

- 5. On 27th September 2009, Percy Park RFC Colts played Blaydon RFC Colts. All parties are agreed that this was a Club Under 18 fixture. An incident occurred in that game whereby David Owens, a Percy Park player, received an injury to his face. The Referee did not see how he came by that injury. He was forced to leave the field of play and as the North Tyneside General Hospital Accident & Emergency notes confirmed, was treated for an injury to his nose later that afternoon. The nose appeared swollen and bruised, with bruising round the eyes. It was suspected that the nose was broken.
- 6. On 5th October 2009, Northumberland RU notified Durham RU that Percy Park were intending to pursue a citing in relation to the incident. At that stage, Percy Park had only the number of the player it was alleged had carried out an act of foul play (a punch to the face). Blaydon RFC ("the Club") confirmed that the Player, Stephen Smith, was wearing number 5, but that he was not on the field of play at the relevant time, having been substituted earlier. The Club was given advice by the Constituent Body to undertake its own internal enquiry into the matter.
- 7. On 11th October 2009, Mr. Pacitti, as Chairman of Youth Rugby, sent an e-mail to John Dove, the Disciplinary Secretary of Durham RU. This was to the effect that neither the Club, nor the Player would accept any blame for the incident and denied the allegation of foul play. In view of this stated position, Durham CB Disciplinary Committee then convened a hearing. On 4th November 2009, it heard live and written evidence from Percy Park, the Club and the Player, and found the allegation of foul play proved. It imposed a period of suspension of seven matches in accordance with the Schools and Youth Tariff (Appendix 3 Disciplinary Regulations). The Club now appeals against that decision.

Grounds of Appeal

8. The Club's appeal was against jurisdiction, composition of the Panel, independence

of the Panel, the finding that the case was proved, and, in the event that those appeals were unsuccessful, against the sanction imposed. Mr. Pacitti informed the Appeal Panel that the Player was seventeen and had already served his seven match ban – five matches at his Club and two at his School. The appeal had been lodged because the Player, his parents and the Club felt an injustice had been done and it was their intention to clear the Player's name.

- 9. The grounds of appeal can be broken down as follows:
- (i) Under DR 10.2.2, if a player is sent off or cited in a Club Youth match, that player's Club Secretary (via the Club Disciplinary Panel) shall be responsible for taking disciplinary action against him or her under the guidance of the CBYSDS/CBYDS. The Club maintains that it was not offered or given the chance to use its Club Secretary or Club Disciplinary Panel, or to take its own actions.
- (ii) Under DR 10.4.3 the hearing is to be heard by a Panel convened by the Headteacher, Club Disciplinary Panel or Union as appropriate. The Club maintained that it was not given the opportunity to convene a Panel to hear the evidence.
- (iii) Under the Summary for Disciplinary Action provisions of the Disciplinary Regulations set out on page 379 of the current Handbook, the body responsible for dealing with a player sent off in an Under 18 Club match was the Youth Club Disciplinary Panel under the Schools and Youth Tariff. The Club maintained that because this had not happened, the finding of the CB Panel was void and unenforceable.
- (iv) DR 10.4.5 required a Panel to consist of three people, at least one of whom was to be independent. The Club maintained that there was no-one independent on the CB Panel which heard the case.
- (v) On an examination of the evidence heard by the CB Panel, it could not reasonably have come to the conclusion it did. It had missed the clear and irrefutable fact that the Player had not carried out the act of foul play as alleged.
- (vi) The sanction imposed (seven matches) was disproportionate because it failed to

accord sufficient weight to a number of mitigating features.

- 10. Mr. Pacitti submitted that the provisions were quite clear. Jurisdiction lay with the Club and the CB could not use the regulations as a back door means of taking jurisdiction away from the Club. The Player had found the process very daunting. He is only seventeen and was put in front of a Senior Panel. This had affected his schooling, home life and his view of rugby. He had been playing since twelve and had never previously been spoken to on a rugby pitch, let alone received any cards. He was not aware of any incident in the game for which he could be reproached, and his feelings generally had been ignored. As all members of the CB Panel were members of the Durham Disciplinary Committee, they could not be regarded as independent.
- 11. Mr. Pacitti further submitted that, even if the CB Panel did have jurisdiction to deal with the matter, then it could not reasonably have come to the decision it did because it failed to consider the possibility that the Player did not carry out the act of foul play. They accepted the medical evidence that there was the injury complained of, but just because the victim player had informed the Hospital he had been punched in the face, did not give the medical notes the status of independent corroborative support for that allegation. Of the evidence considered, three of the witnesses from the citing Club were treated with caution. A minority of two, including the injured player, did have their evidence accepted, but there was sufficient doubt within the statements and evidence given, that the injury was caused by a punch. It could have been caused by a clash of heads. There were four players within arm's length of the Player who could have caused the injury. The victim player was only 95% convinced that it was Blaydon 5 who had punched him. Mr. Pacitti felt that the Player had been identified because he was the only one wearing a scrum helmet.
- 12. As to the mitigation, the Player's disciplinary record is exemplary. He has received no previous yellow cards, red cards or warnings. His playing programme meant that he would miss seven matches up to Christmas, when there would be a break at School and at the Club until the new League season started in February. This equated with a ten week ban, which was disproportionate in Mr. Pacitti's view.
- 13. When asked why, if the evidence was so compelling as to the Player being wrongly accused, Percy Park would have gone to the trouble of initiating the citing procedure, Mr.

Pacitti suggested that there was antagonism towards Blaydon because they were top of the League and Percy Park were second. Furthermore, Percy Park had a reputation and history, and he felt the citing may have been taken to deflect attention away from that. He felt that if the Club, the Player or his parents had thought there was any case to answer, they would have imposed their own period of suspension. As the Player had no idea what the allegation was about, and denied it, that was sufficient so far as the Club was concerned. Once the Club was aware that the CB Panel was to be convened, it did hold its own internal inquiry, which included Mr. Pacitti, Mr. Rock, Mr. Knight, the Chairman of Rugby, and Mr. Graham, the Colts Manager. The internal inquiry concluded that there was no evidence of foul play. No oral evidence was considered. The Player was not there. The statements were read and no credible evidence found to support the allegation. So far as the Club was concerned, they wanted the slate cleared and all reference to foul play against Stephen Smith removed.

The CB Position

- 14. Mr. Wannop explained that this was the first citing his Committee had dealt with without video evidence and was the first one contested. They had therefore sifted the evidence very carefully and been clear that the responsibility for proving the foul play lay on the citing Club. It had borne this in mind when carefully examining the written statements and the witness evidence presented to it.
- 15. As to the circumstances in which his Panel came to be convened, he explained that his Panel has two Secretaries. John Dove is the Secretary of the Senior Disciplinary Panel. Brian Watt is the Secretary of the Junior Disciplinary Panel. When Northumberland RU notified Durham of the citing, Mr. Watt became involved immediately, and as only a number had been given, Mr. Wannop visited Blaydon on the 10th October 2009 and spoke with Mr. Pacitti in an attempt to identify the player. Mr. Pacitti told him that the player was Stephen Smith but that he was not on the field at the relevant time. The following day, Mr. Pacitti sent an e-mail to Mr. Dove confirming that neither the Club nor the Player accepted any blame at all. Mr. Watt and Mr. Dove then discussed the case and, based upon the Blaydon response, interpreted it as a contested citing. They therefore applied DR 10.4.2. That provided that if a player disputed his sending off or an allegation in a citing, a hearing must be convened to be heard by the Headteacher, Club Disciplinary Panel or

Union, as appropriate. In view of Blaydon's stated position, he felt it inappropriate for that Club to conduct a hearing and therefore convened a CB Panel at a neutral venue geographically close to Blaydon.

- 16. In the process leading to the convening of the Panel, he had considered DR 10.2.2 which he felt was qualified and explained in 10.4.2. He believed the powers to convene a Panel to hear the case were delegated to the Headteacher, Club Disciplinary Panel or Union "AS APPROPRIATE" in consultation with the CBDYDS. He had interpreted the words "as appropriate" to mean what was appropriate for the disciplinary process to have fairness and transparency rather than the more restricted meaning that the Panel convened had to be the Club Disciplinary Panel. The former interpretation allowed Percy Park the opportunity of presenting its case to an impartial body and did not put the Club in the invidious position of effectively hearing its own case.
- 17. As to the allegation that his Panel was not independent, Mr. Wannop clarified that the interpreted the word "independent" as being independent of the Clubs involved and not independent of the County Disciplinary Panel. As none of his members were associated with either of the Clubs, they could be regarded as independent.
- 18. When questioned as to why Mr. Watt was not allowed to get on with the process, he explained that Mr. Watt had expressed himself lacking in confidence to follow the procedure through in view of the nature of the allegation. Mr. Wannop had originally intended Mr. Watt would be a member of the CB Panel, but after the date was fixed he became unavailable and was replaced so as not to inconvenience the Clubs and their witnesses who were already committed to the hearing date.
- 19. Mr. Wannop then explained the procedure which had been carried out at the hearing and how his Panel had come to the unanimous view that the foul play had been proved on the balance of probabilities. He had also, he felt, done as much as was possible to make the procedure user friendly, given the ages of the protagonists and witnesses. He regarded his Panel as entirely independent and as much sympathy as possible had been afforded to all participants. As to the allegation that the Panel was not competent to deal with a youth case because it was a Senior Panel, he pointed out that he was the Chairman

of the RFU England Under 18's Group. He was well used to dealing with seventeen year old players.

Decision

- 20. We have some concern that the CB Senior Panel proceeded with the hearing in the absence of the CBYDS and we feel that it would have been better had there been a representative of Youth Discipline on the Panel. It is important that if Mr. Watt could not be there, he be offered the opportunity of sending a representative. However, we do not feel such absence undermines either the independence or the competence of the Panel.
- 21. As to the point raised concerning jurisdiction, it is clear that by 11th October 2009 (Mr. Pacitti's e-mail) the Club and its Player would not be accepting any blame. The following day, the Club reviewed the evidence on paper and dismissed the citing. We feel the CB Panel was justified in taking the view that the disciplinary process could not in those circumstances be dealt with fairly, openly and transparently within the Regulations. We do not find that Mr. Wannop was wrong to interpret the words "as appropriate" in the way that he did. He had little doubt (and so do we) that had the process been conducted by Blaydon RFC in the light of its stated position, and its conduct [*Note*] the fundamental principles of a fair disciplinary process would have been undermined. We therefore find that it was appropriate in view of the evidence it had and the investigations made that the CB Panel was correct in assuming jurisdiction.

[Note: It had originally stated the Player was not on the field of play at the relevant time – this was untrue]

- 22. As to the procedure at the CB Panel hearing, we note that Mr. Pacitti was somewhat surprised that he and his Player were appearing before a Senior Panel. However, we are satisfied that it was explained prior to the hearing that he could object to the composition of the Panel. He did not. He could have raised the issue of jurisdiction prior to the Panel hearing the evidence, but he did not. Mr. Pacitti was content for the hearing to proceed.. In fact, Mr. Pacitti did not become aware of the jurisdictional issue until after the Panel had given its decision and he was looking for grounds to appeal.
- 23. We cannot agree with the submissions that this CB Panel was not sufficiently experienced, competent or independent to be seized of the matter. The Panel was independent of the Clubs involved, which gave it the necessary objectivity. Mr. Wannop is

an experienced Disciplinary Chairman and Panel member. Mr. Dodds is a former National Level Referee and County President. Mr. McLoughlin is likewise experienced and a County Secretary. We have considered the manner in which they sifted and tested the evidence placed before them. We can find no procedural irregularities. We believe every effort which could have been taken to ensure the proceedings were appropriate to those involved was so made and therefore conclude that the Club has not surmounted the hurdle of proving to us on the balance of probabilities that the decision the Panel reached was wrong, or one which it could not reasonably have come to.

24. Turning to the question of sanction, in response to our questions, Mr. Wannop did concede that no detailed examination had been carried out as to the Player's playing commitments, and particularly the ending of one League prior to Christmas and a break. He accepted that this gave a result which meant the Player had a break of some ten weeks and was honest and candid enough to accept that on reflection more credit might have been afforded on this account and for the mitigating features. Having reconsidered the matter, we feel that it would have been appropriate for the eight match entry point to be reduced by three weeks, rather than one, and we therefore substitute that finding. Accordingly, the Player will be regarded as having served a five match suspension.

Costs

25. We have considered the Regulations in some detail and we do find areas in which neither the CB Panel nor the Club would have been assisted in identifying the process clearly. In view of this, we find that the Club was fully justified in taking the jurisdictional points which it has and also in asking us to examine whether the decision was one which could reasonably have been reached. Although it has not succeeded with the majority of the appeal, we nonetheless order that the appeal fee be returned to the Club.

Antony Davies

Antony Davies,
Chairman
17th December 2009

Comments:

- (1) We believe, having heard this case, that Clubs would be assisted by a clearer statement of the Youth Disciplinary process within the Regulations. Had we been unable to accept Mr. Wannop's interpretation of 10.4.3, then in order to achieve what we felt would have been a fair outcome, we would have had to invoke the provisions of 12.3.2 which we regard as an absolute last resort. Those with responsibility for the Regulations may wish to consider clarifying those Regulations, particularly where citings are required to be brought by Clubs against other Clubs. Where a Youth player is dismissed from the field of play by a Referee, there is some degree of detachment in that the Referee will normally be independent. In the case of a citing, that pits one Club against the other and it does not seem to us to be desirable in those circumstances that the Club whose Player is accused of foul play should be effectively in charge of the disciplinary process. It would in this case have been better if the Regulations had clearly stated that in the event that a citing is contested in the youth process, jurisdiction may pass to the CB rather than remain with the Club. That affords additional safeguards to ensure a transparent process
- (2) The summary for disciplinary action on page 379 of the Handbook currently relates only to matches in which players are sent off. There is no separate reference to citing, though we assume sending off is to incorporate citings. The process set out appears rather complex and does not, to our mind, assist Schools, Clubs or Constituent Bodies in seeing a clear way through the process. For example, it appears possible for a seventeen year old player to commit an act of foul play in the following five versions of the game. The act of foul play would remain the same, characterised under DR 8.2.5. However, the player may be dealt with as follows:

Age of Player Match		Responsibility	Regulations
17	School U18	School – Headteacher	SAY
17	Club U17	Youth Club Disciplinary Panel	SAY
17	Club U18	Youth Club Disciplinary Panel	SAY
17	Club U19	СВ	Adult
17	Club open age	СВ	Adult

Whilst this may be appropriate for sendings off, we feel further consideration is warranted as to whether the system is appropriate for contested citings.