

RUGBY FOOTBALL UNION

DISCIPLINE HEARING

Venue: Holiday Inn, Junction 2, M6.

Date: 12th October 2010.

JUDGMENT

Player: Sione Kalamafoni

Club: Nottingham RUFC

Match: Rotherham Titans v Nottingham

Venue: Rotherham

Match Date: 18th September 2010

Panel: HHJ Sean Enright, Geoff Payne and John Brennan

Attending: Liam McTiernan, Secretary to Panel
HHJ Robert Blomfield, Observer.

Sione Kalamafone, "the Player"
Glenn Delaney, Director of Rugby, Nottingham RFC.

By Telephone: Andre Bester (Presenting for Rotherham.Titans)
Martin Jenkinson, Chairman of Rotherham Titans.
Jonny Hepworth, Rotherham Player.
Richard Welding, Rotherham Player.

Considering: The Panel convened to consider two charges against the Player, contrary to Law 10(4)(a), alleging that he had struck an opponent with his knee during the 57th minute (Charge 1) and 67th minute (Charge 2) in the game played between Rotherham and Nottingham on Saturday 18th September 2010.

Preliminary Matters

1. The Player did not object to the composition of the Panel.

Charge and Plea

2. The Player denied both charges.

Evidence as to Fact

3. We considered the following evidence:
 - (a) DVD of the incident, supplied by Rotherham Titans;
 - (b) Reverse angle DVD, supplied by Nottingham RFC;
 - (c) Statement from Andrew Sweeney, physiotherapist for Rotherham;
 - (d) Statement from Dr Chris Myers, Rotherham club doctor, dated 21st September 2010;
 - (e) Evidence from the Player.
4. In respect of Charge 1, the DVD evidence showed Nottingham attacking on the edge of the Rotherham 22m line. The Player was running with the ball from left to right, towards the Rotherham line in an arc. As he approached the oncoming tackling player, Hepworth, he swung his right leg forwards and upwards into contact. The DVD was not conclusive as to what part of the Player's body made contact with the tackler, but immediately after the collision occurred, the tackler was knocked unconscious and fell to the ground.
5. No action was taken by the referee, who was nearby, but on the wrong side of the two players and not well placed to see the detail of what took place.
6. The incident was witnessed by Andrew Sweeney, the Rotherham Physiotherapist who was behind the Rotherham posts. He described an incident in which there was severe contact between the Player's knee and the head of Hepworth. Although the Panel recognised that he was some distance away, the DVD showed that he was watching the incident and was clearly close enough to appreciate the gravity of what had taken place.
7. Mr. Sweeney immediately went over and found Mr. Hepworth was only just responding to verbal command, he had drifted into unconsciousness and started to gag, losing his airway. A chin thrust had to be applied to restore his airway. Oxygen was administered and it was 5–6 minutes before the player was consistently responding to commands. He was unsteady on his feet, had poor balance and co-ordination and a vacant expression. He had no recollection of the incident or the game. He was assessed two days later and still had no recollection of the game. He had suffered severe loss of movement in the spine and stiffness and tenderness.
8. Dr. Myers was present at the game. He did not witness the incident but also attended on Mr. Hepworth shortly thereafter. He was unconscious, his breathing was compromised but a jaw thrust restored breathing. Oxygen was provided within 90 seconds of the incident and the injured player regained consciousness a minute later. The Doctor noted no other injuries and after a couple of minutes the injured player was able to walk off with support. In the opinion of the Doctor, the

injured player had suffered significant concussion and would not play again for the mandatory 3 weeks.

9. Mr. Hepworth told the Panel on the telephone link that the ball had come out of a ruck 'pretty quick.' He said 'I went in on him low and felt a massive blow to my forehead.' Mr. Hepworth told the Panel that he had suffered headaches, loss of movement in the neck and that he had only just started training again on the night of the hearing, when he took part in a non-contact session.
10. The Panel found that the evidence of Dr. Myers, Mr. Sweeney and Mr. Hepworth to be reliable on the nature and extent of injuries sustained by the injured player. On the issue of how the injury was caused the Panel found Mr. Hepworth to be honest but unreliable. The Panel have no doubt that he has seen the DVD, but doubted that he had any actual recall of the moments leading up to impact having regard to the medical evidence.
11. In relation to Charge 2, the DVD showed the Player running from right to left along the touchline with the ball in hand. He engages in a slight adjustment of footing and lowers his shoulder as he runs into Mr. Welding, the Rotherham No.15, who was attempting a head-on tackle.
12. It was contended by Mr. Bester that the Player deliberately altered his stride pattern and raised his knee into the tackler.
13. Mr. Welding told the Panel that the Player had come towards him with a raised knee which had just missed his face and impacted with his shoulder. This caused a significant injury and Mr. Welding only started training again on the evening of the hearing, 24 days later. He was plainly aggrieved.
14. It was contended by Mr. Bester that both Rotherham players had been injured in the same way by the Player. Both had sustained significant injuries which had kept them out of the game for over three weeks. Mr. Bester contended that both of his players had significant experience of Championship and Premiership Rugby and their technique was not lacking, either in general terms or in relation to the particular tackles which had resulted in injury.
15. The Panel considered that, for reasons which will become apparent, there was a case to answer on Charge 1 (the Hepworth incident). In relation to Charge 2, the Panel felt that the angle of view on the DVD did not give sufficient detail to make a finding adverse to the player. Although the Panel listened to Mr. Welding with care, we felt that there was nothing which took this incident outside the ambit of what is acceptable in the context of the modern game. The Panel did not think that this allegation would have surfaced but for Charge 1, and did not think that there was a sufficient degree of similarity to warrant using the evidence on one charge to support the other, or vice versa.

16. The Panel thought that Mr Bester's submission about the alteration of the stride pattern was at best speculative and was consistent with an attempt by the Player to wrong-foot the tackler. The Panel decided that the evidence on this charge, taken at its highest, was tenuous and uncertain. The Panel dismissed Charge 2 for these reasons at the close of the citing club's case.
17. The Panel heard evidence from the Player, who told us that he was the captain of the Tongan national team and that he had never previously received a red or yellow card. This was confirmed by the Panel Secretary. He was very sorry about the incident and did not intend to injure the player. The Panel accepted his evidence on these points.
18. The Player told us that, in relation to the Hepworth incident, he had been trying to burst through the tackle and his right thigh came into contact with Mr. Hepworth. He was asked whether he was trying to go around the player or through him and he replied 'through him.'

Finding

19. Although neither DVD was conclusive on the issue, the Panel found on the balance of probability that there was contact between the Player's knee and Mr. Hepworth's head, and that this was the mechanism by which the injury had been occasioned. In making this finding, the Panel rejected the submission of Mr. Delaney, namely, that Mr. Hepworth had been knocked out as a result of a collision between his head and the Player's right hip. His submission was inconsistent with the player's own account and appeared to be based entirely on Mr. Delaney's own interpretation of the footage.
20. The Panel found that in driving his knee through and upwards with the force and speed shown in the DVD, when running directly at an oncoming tackler in such close proximity to him, the Player knew, or should have known, that there was a risk that his knee would strike his opponent in the head. Therefore, the Player's conduct was reckless. Had the Panel been invited to find that the Player's conduct was accidental, we would not have done so. This was not a technical offence in any sense. There is an obligation on every player to try and avoid injury to others and the Panel felt, having regard to our experience of the game, that, although the conduct was on the cusp of what is acceptable, it falls on the wrong side of the line.
21. The Panel found on the balance of probabilities that the referee's decision not to send the Player off was wrong.
22. Accordingly, the citing complaint was found proven in relation to Charge 1.

Seriousness

23. The Panel assessed the level of seriousness and determined the offending was not intentional but reckless; it involved the use of the knee. This was not a case where provocation was in issue. The injuries were serious and the injured player had to leave the field. It was not suggested that this incident affected the result of the game. The injured player was to an extent in a vulnerable position at the point of impact but no more than is usual in such circumstances. The offence was completed, not merely an attempt. The Panel therefore determined the entry point as mid-range, that is, 8 weeks.
24. The Panel considered the criteria in 19.8.2.7 and found there to be no aggravating features.

Mitigation

25. The Panel considered the criteria in 19.8.2.8 and found the following mitigating features: the Player had, until now, an impeccable playing record at the highest level; the Player was of good character, both on and off the field. He regretted the injury caused and his evidence was candid.

Sanction

26. Taking into account the mitigation, we reduced the proposed sanction and imposed a ban from playing for 5 weeks. The Player is free to play again on 17th November.

Costs

27. The Panel make an award of £250 costs against the Club.

Right of Appeal

28. The Player is hereby advised of his right of appeal. Any such appeal must be lodged with the RFU Disciplinary Office not later than 1000hrs on the 14th day following receipt of this judgment.

Signed: SEAN ENRIGHT (Chairman)

Date: 12th October 2010