

**RUGBY FOOTBALL UNION**

**DISCIPLINARY HEARING**

**At:** Holiday Inn Brighouse, Leeds

**On:** Tuesday 9<sup>th</sup> November 2010

**JUDGEMENT**

**Players:** Adan Smith                      **Club:** Thornensians RFC

Scott Berry                              **Club:** Thornensians RFC

Robert Moffatt                      **Club:** Thornensians RFC

**Venue:** New Lane, York – York RI RUFC                      **Date of Match – 18.9.10**

**Panel:** Mike Hamlin (Chairman) Antony Davies. David McInnes

**Secretariat:** Liam McTiernan

**In Attendance:** Tony Simpson – RFU Communications Officer

Austin Newman – RFU Observer

John Shephard – Yorkshire Safeguarding Officer

Sean Smith – Acting Secretary of York RI RUFC

Martin Legg – Solicitor/Club Member of York RI RUFC

Dr Brian Willis – President of the Thornensians

Mark Lloyd – Director of Rugby at Thornensians

The Panel was convened by the Rugby Football Union to consider a citing report against ;-

- (i) Adan Smith that he struck an opponent no. 8 Adrian Horwell of York RI RFC;
- (ii) Scott Berry struck Robert Taylor of York RI RFC and Tuui Radravu of York RI RUFC;
- (iii) Robert Moffatt that he struck Tuui Radravu of York RI RFC

All offences allegedly to have been committed during the match between York RI RFC and Thornensians RFC on 18.9.10.

The citing had been filed with Yorkshire RUFC and forwarded to the RFU Disciplinary Department. As a result of the allegations the police were also conducting a criminal investigation into the incidents during the match on Saturday 18<sup>th</sup> March 2010.

**PRELIMINARY ISSUES:**

- 1 The charges – the Panel amended the charges after consultation with those representing the citing club, York RI as follows:-
  - i. That on the 18<sup>th</sup> September 2010 Adan Smith, No 5 of Thornensians RFC struck an opponent no. 8 Adrian Horwell during the match York RI RUFC –v- Thornensians RFC.
  - ii. On 18<sup>th</sup> September 2010 Scott Berry No. 2 of Thornensians RFC struck an opponent Robert Taylor and No. 4 Tuui Radravu during the match York RI RUFC –v- Thornensians RFC;
  - iii. On 18<sup>th</sup> September 2010 Robert Moffatt No. 8 Thornensians RFC struck No. 4 Tuui Radravu opponent during the match York RI RUFC –v- Thornensians RFC.
  
2. The Panel on behalf of Thornensians raised the issued of the filing of the citing report within the prescribed time limits as set out in the RFU regulations. As a result of information supplied by the RFU Disciplinary Secretary, the Panel were satisfied that the citing brought by York RI (the citing club) were compliant with the regulations.

3. The Panel raised with the representatives of Thornensians the absence of the three players Adan Smith, Scott Berry and Robert Moffatt. All three players were currently on police bail due to reappear at York Police Station on 16<sup>th</sup> November. The Panel were advised that a report had been submitted to the Crown Prosecution Service for a decision as to whether or not any of the players were to be charged with a criminal offence arising out of the incidents during the game on 18<sup>th</sup> September 2010. The Panel were concerned that all three players had not appeared. Upon enquiry the Panel were advised that Robert Moffatt was in Scotland on a pre arranged holiday which had been booked and paid for prior to the disciplinary hearing being fixed for 9<sup>th</sup> November. Scott Berry was abroad working for his employers in Denmark and was unable to attend. As a result of Messrs Berry and Moffatt not attending Adan Smith had in the absence of his fellow players decided not to attend. All three players due to surrender to their bail at York Police Station on 16<sup>th</sup> November 2010.

It was indicated to the Panel by the representatives of the players that the allegations would be denied save that Robert Moffatt had indicated that he would admit striking the York RI no 4 Tuui Radravu in the face only. There was an allegation that Tuui Radravu had been struck in the face by Robert Moffatt and in the back of the head by Scott Berry.

The Panel were concerned that none of the three players were present in view of the alleged seriousness of the allegations against them particularly in respect of the significant injuries sustained by Tuui Radravu. Upon enquiry from the Panel it transpired that Tuui Radravu following the incident had collapsed and been admitted to hospital. He was detained in hospital in a protective coma and remained in intensive care for approximately one week after the incident and was subsequently released. He was making a recovery but was still suffering from severe headaches and loss of consciousness (black outs).

The Panel were concerned that the medical condition of the victim player Tuui Radravu was not the subject of any medical evidence before the Panel and his present medical condition was not confirmed within any report or statement from the victim player. The allegation of assault upon Tuui Radravu was two fold he had been subjected to two occurrences of assault by Messrs Berry and Moffatt who were alleged to have respectively assaulted the victim player at the back of the head and also in the face. The consequences of the alleged punching were serious.

The absence of any statement from the victim player and/or medical evidence given the nature of the allegations was of concern to the Panel. In the first instance, a medical report may be of assistance to the Panel in determining which assault caused or may have caused the serious head injuries. Therefore medical evidence may assist in determining liability given the serious consequences of the alleged punch or punches. Secondly, it may ultimately be of assistance to the Panel should liability be proved in assisting the Panel in determining sanction bearing in mind the serious consequences arising out of this incident.

Whilst the Panel were aware of the ongoing criminal investigation, it was of the opinion that the disciplinary hearing should proceed but due to the absence of the three players and also the absence of any form of medical evidence it was considered that in those circumstances it would be fair to all concerned if the hearing was adjourned to a further date. Whilst recognising that it was for the citing club to adduce the relevant evidence before the Panel, as this was the first hearing of this matter, it was the Panel's unanimous view that the matter should be adjourned to enable the three players to attend, for a copy of the medical report obtained in connection with the criminal proceedings to be obtained if possible and/or a statement from Tuui Radravu, should the citing club deem this necessary in support of the citing and/or, with the consent of

Tuui Radravu a medical report dealing with the medical issues above, and the longer term prognosis.

The Panel further concluded that given the alleged circumstances of this case the matter be referred to the Disciplinary Officer of the Rugby Football Union for consideration at his discretion as to whether or not the Rugby football Union should deal with the citing of this case.

### **DECISION**

1. The citing allegations against all three players Adan Smith, Scott Berry and Robert Moffatt are adjourned to 6<sup>th</sup> December 2010 at 6:30 pm at the Holiday Inn, Brighouse, Leeds, West Yorkshire.
2. All three players shall attend the adjourned hearing.
3. If any player or witness is not available to attend on that day, they shall by no later than 4pm on 19<sup>th</sup> November notify the Disciplinary Manager of Rugby Football Union.
4. That the citation and matter be referred to the Disciplinary Officer of the Rugby Football Union pursuant to regulation 19.2.3.6 for consideration at his discretion as to whether or not the conduct of this case should be dealt with by the Rugby Football Union.
5. The Panel determining that medical expert evidence is necessary as to (a) causation and (b) condition and prognosis, the following directions shall apply;-
  - (a) Rugby Football Union Disciplinary Department shall use their best endeavours to obtain a copy of the medical report on Tuui Radravu and obtained by the authorities during the criminal investigation and distribute the content of that report if obtained, to all parties. In the event that for whatever reason it is not possible to obtain the medical report the following directions shall apply;-

- (b) The player Tuui Radravu shall be invited to provide his written consent for a medical report to be obtained upon the injury he sustained and also dealing with the issue of causation, his current condition and prognosis. The written consent should be addressed to his consultant responsible for his medical treatment. The letter of instruction to Tuui Radravu's Consultant shall be jointly prepared by the parties and approved by the Chairman of this disciplinary Panel.
  
- (c) The Report shall be disclosed to all parties upon receipt and the report shall be provided by the consultant to the Disciplinary Department of the Rugby Football Union by no later than 4pm 2<sup>nd</sup> December 2010.
  
- (d) The Citing Club (York RI RUFC) shall be responsible for payment of any experts costs and fees in the first instance subject to any eventual costs Order which may or may not be made in these proceedings.

Signed .....

M J Hamlin, Chairman

Dated this 11<sup>th</sup> Day November 2010