

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

At: Holiday Inn, Swindon.

On: Tuesday 5 October 2010.

JUDGMENT.

Players: Tim Payne **Club:** London Wasps

Brett Deacon **Club:** Gloucester Rugby

Match: Gloucester Rugby v London Wasps

Venue: Gloucester **Date of Match:** 25 September 2010

Panel: Christopher Quinlan (Chairman), Mike Curling and John Doubleday

Secretariat: Bruce Reece-Russel, RFU Disciplinary Manager
Liam McTiernan

Attending: The Players
Kevin Harman, Wasps Rugby 1st XV Manager
Chalky Meek, Team Manager, Gloucester Rugby

Preliminaries

1. The Players were content for their cases to be heard together.
2. There was no objection to the Panel, nor any member of it.

Charge and Plea

3. Tim Payne pleaded guilty to the following two charges, each brought by way of citings:
 - a. Stamping or trampling, contrary to Law 10(4)(b)
 - b. Punching or striking, to Law 10(4)(a).
4. Brett Deacon pleaded guilty to striking an opponent, contrary to Law 10(4)(a).
5. All three acts of foul play were committed in the same match, arising out of the Aviva Premiership match played between Gloucester Rugby and London Wasps on 25 September 2009, and during the same passage of play.

The Citing Complaints

Tim Payne ('TP')

Facts

6. The act of foul play occurred in the 21st minute of the first half. The Citing Officer's (Alan Mansell) helpfully detailed citing report, dated 18 September 2010, stated:

"A maul goes to ground close to the touch line on the halfway line. Tim Payne approaches the maul and stamps with his left foot onto or close to the ankle joint of a Gloucester player who is lying on the ground. He leaves his foot in position and then presses down onto the ankle area a second time. Brett Deacon of Gloucester appears to witness the act and engages illegally with Tim Payne and a fist fight ensues where several heavy blows are exchanged between the players. One particularly heavy punch by Brett Deacon is seen to connect with Tim Payne's face. No other players become involved and the fight peters out after 10 seconds. The referee stops play, consults with his assistant close by who had seen the incident and had flagged. He receives a description of the incident which culminates in a recommendation to impose a yellow card on both players.

"Having spoken with the referee Andrew Small, he confirms that he did not see Tim Payne's stamp but witnessed the fist fight that ensued. I have also spoken with Paul Dix, the assistant referee, who confirmed that he had thought that the stamp by Tim Payne had connected with the lower leg. He further confirmed that his ability to take the wider view in some respects was limited by his very close proximity to the incident. Neither had had the opportunity to review the ESPN coverage at the time of our discussion."

7. The two citings against TP arose out of that passage of play. The player (TP) did not contest that report and (as is clear from the introduction above) admitted both acts of foul play. Broadcast footage of the incident reflected the report.
8. The Player admitted stamping on an opponent's leg. Mr. Harman told us the opposing player was Jim Hamilton; that the stamp did not cause him any injury and that he played on after the incident. Mr. Chalky Meek, Team Manager, Gloucester Rugby, confirmed that was correct. Mr. Payne told us he did so, frustrated by Hamilton's repeated efforts to prevent or slow down the ball being recycled. Mr. Harman contended that the yellow card was the appropriate punishment.
9. As for the striking allegation, he accepted his guilt, admitted throwing a number of blows, and invited us to view the incident in context: some of the blows were a reaction to the blows being thrown by Deacon.

Decision on the citings

10. Law 10(4)(b): It is clear from citing report and indeed the available footage, that the match referee issued a yellow card to TP for the stamping offence. He did so following a report from the assistant referee. RFU Disciplinary Regulations ('the Regulations'), Appendix 4 paragraph 14 provides:

"...where the offence was detected by a match official, but the cited player was not awarded a red card, the Disciplinary Panel must dismiss the citing unless it is satisfied on the balance of probabilities that the referee was wrong in not sending the player off."

11. Match officials do not have the luxury of time and opportunity to analyse closely and carefully the incident; they may not see it all. Referees have a number of specific game management considerations when making split second decisions in relation to the appropriate on-field sanction. The Citing Officer applies an objective test addressing the incident in question; disciplinary panels do the same.
12. The officials did not (and could not) know what we were told by TP, namely that the stamp was deliberate. In our judgment, the deliberate stamp on an exposed lower limb was an act of foul play meritorious of a red card. It follows that we were satisfied on the balance of probabilities that the referee was "wrong" (to use the language of the Regulations) in not sending him off. Accordingly, we upheld the citing.
13. Law 10(4)(a): the matter was detected by a match official in the sense that the referee told Mr. Mansell that he saw "the fist fight". He was not awarded a red card in respect of it, the match officials understandably concentrating upon his first offence, namely the stamping. In our judgment, having the benefit of reviewing the footage (which the officials did not), we were satisfied to the requisite standard that the Player committed an act of foul play meritorious of a red card. Accordingly, we upheld the citing.

Brett Deacon ('BD')

Facts

14. The act of foul play occurred in the 21st minute of the first half. The Citing Officer's report is reproduced above. Brett Deacon did not contest the report and admitted the act of foul play, namely striking TP. Broadcast footage of the incident reflected the report.
15. The Player accepted his guilt; he admitted throwing a number of blows, reacting inappropriately initially to TP's stamp on Hamilton and then the blows being thrown by Payne. As Mr. Meek described it to us: "he took the

law into his own hands". Mr. Meek invited us to conclude that the yellow card issued by the referee was the appropriate punishment.

Decision on the citing

16. The match referee issued a yellow card following a report from the assistant referee. Pursuant to paragraph 14 of Appendix 4 to the Regulation, the citing must be dismissed unless the Disciplinary Panel is satisfied on the balance of probabilities that the referee was wrong in not sending the player off. With the twin advantages of footage to study and time to do so, we concluded that the admitted act of foul play merited a red card. Put another way, and adopting the language of the Regulation, the referee was "wrong" not to do so.

Sanction

Tim Payne

Law 10(4)(b) - Stamping

17. Initially, we undertook an assessment of the seriousness of the Player's dangerous tackle (Regulation 19.8.2.5). We concluded:
- a. It was deliberate (19.8.2.5(a)) and so recklessness in the context of the *act* of foul play does not arise (19.8.2.5(b)).
 - b. It involved the use of the boot on an exposed lower limb (19.8.2.5(c)(i))
 - c. There was no provocation, nor was it was a retaliatory act (19.8.2.5(c)(ii)).
 - d. It did not cause injury and the opponent player carried on playing (19.8.2.5(d)).
 - e. It had an effect on the game in that it was the catalyst for Deacon's reaction (19.8.2.5(e))
 - f. The opposing player vulnerable in that:
 - i. The stamp connected with a vulnerable exposed lower limb
 - ii. he was lying on the ground, could not see what was coming and was not in any position to defend himself (19.8.2.5(f))
 - g. It was not premeditated, save for the thought necessary to decide to commit the act (19.8.2.5(g))
 - h. It was a completed act of foul play (19.8.2.5(h))
 - i. There is no other relevant feature (19.8.2.5(i))
18. This was a deliberate stamp on an exposed limb. Disciplinary Panels in a number of previous cases have spelt out that a deliberate stamp on an exposed limb can cause serious and long-term injury: *Visagie*, 13 November

2005; *Hoadley*, 22 April 2006; *Deacon*¹, 18 May 2006; *Finegan*, 8 November 2006; *Grewcock*, 4 January 2007; and *White*, 18 May 2008.

19. We were not satisfied on the balance of probabilities that contact was made with the ankle. We were satisfied it was with the calf. It caused no injury. In light of the factors set out above, we were just persuaded that the appropriate entry point was LOWER END. Pursuant to Appendix 2 of the Regulations, that is a starting point of 2 weeks.
20. We were satisfied that there were no aggravating features, within Regulation 19.8.2.7.
21. As for mitigating factors (Regulation 19.8.2.8), we determined that he was entitled to credit for the following features:
 - a. his acknowledgement of culpability (19.8.2.8(a));
 - b. his good record (one previous sending off following two yellow cards for technical offences does not detract from the force of that point for a person who has played the game for as long and at the level TP has) (19.8.2.8(b));
 - c. his good character – we accept what we were told about his work for his club and in the community (19.8.2.8(b));
 - d. His conduct before and at the hearing: as one would expect (19.8.2.8(d));
 - e. His remorse: he apologised for his actions (19.8.2.8(d)).
22. In our judgment, those factors warranted a reduction of one week from the starting point of two weeks.

Striking

23. We carried out the same exercise for the offence of striking. In assessing the seriousness of that offence we found:
 - a. It was deliberate (19.8.2.5(a)); recklessness does not arise (19.8.2.5(b)).
 - b. He threw the first blow with his fist (19.8.2.5(c)(i)).
 - c. There was no provocation, nor was it was a retaliatory act justifying that first blow (19.8.2.5(c)(ii)).
 - d. It did not cause injury and the opponent player carried on playing (19.8.2.5(d)).
 - e. It had an effect on the game, in that it was part and parcel of a brawl involving him and Deacon (19.8.2.5(e)).
 - f. The opposing player was not vulnerable and able to (and did) defend himself (19.8.2.5(f)).
 - g. It was not premeditated (19.8.2.5(g)).
 - h. It was a completed act of foul play (19.8.2.5(h)).

¹ Not Brett

- i. There is no other relevant feature (19.8.2.5(i)).
24. In our judgment and in light of the features identified above, the appropriate entry point was LOWER END, namely 2 weeks.
25. There were no aggravating features, within Regulation 19.8.2.7.
26. The relevant mitigating factors are adumbrated above. All of those matters, together with the principle of totality (proportionality of the total suspension to the offending), enabled us to reduce the appropriate period of suspension to 1 week.

Total sanction

27. Thereafter, in considering whether the periods of suspension should be concurrent or consecutive, we remind ourselves that we must impose a sanction which is in all the circumstances proportionate to the level of the Player's overall conduct (Regulation 19.8.2.10). These were two consecutive and separate acts of foul play, albeit committed in short succession. The offence of striking warranted a sanction in addition to that imposed for the stamp. Therefore, we concluded that the suspensions should run consecutively.
28. Accordingly, we imposed a period of suspension from playing rugby union for 2 weeks (1 + 1). His Club had taken no action pending resolution of the citing and so the suspension starts from the date of the hearing. The suspension will commence today, namely 5 October 2010 and run up to and included 18 October 2010. He is free to play again on 19 October 2010.

Brett Deacon

29. In assessing the seriousness of the Player's conduct (Disciplinary Regulation 19.8.2.5) we found:
- a. The offending involved deliberate and repeated acts of striking (19.8.2.5(a)).
 - b. We accepted that he reacted to the stamp. We accepted he found that provocative (19.8.2.5(c)(i)) and thereafter become embroiled in a retaliatory exchange of blows (19.8.2.5(c)(ii)).
 - c. It did not cause any injury (19.8.2.5(d)) and TP played on (after the yellow card).
 - d. It had an effect on the game in that it was part and parcel of a brawl involving him and Deacon (19.8.2.5(e)).
 - e. The opposing player was not vulnerable and able to (and did) defend himself (19.8.2.5(f)).
 - f. It was not premeditated (19.8.2.5(g)).
 - g. It was a completed act of foul play (19.8.2.5(h)).
 - h. There is no other relevant feature (19.8.2.5(i)).

30. In light of those factors we concluded the appropriate starting point was LOWER END, namely 2 weeks.
31. There were no aggravating features within Regulation 19.8.2.7.
32. As for mitigating factors (Regulation 19.8.2.8), we determined that he was entitled to credit for the following features:
- a. his acknowledgement of culpability (19.8.2.8(a));
 - b. his good record – no previous matters recorded against him (19.8.2.8(b));
 - c. his good character – we accept what we were told about his character (19.8.2.8(b));
 - d. His conduct before and at the hearing: as one would expect (19.8.2.8(d));
 - e. His remorse: he apologised for his actions (19.8.2.8(d));
33. In our judgment those factors warranted a reduction of one week from the starting point of two weeks. Accordingly, we concluded that the appropriate sanction is the imposition of a period of suspension from playing rugby union for one week. His Club had not suspended him. The suspension starts from the date of the hearing, namely 5 October 2010 and runs up to and includes 11 October 2010. He is free to play again on 12 October 2010.

Costs

34. Costs of £500.00 are awarded against each Player/club.

Right of Appeal

35. Each Player is reminded of his right of appeal against this decision.



Christopher Quinlan (Chairman)
5 October 2010