RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

At: Marriott County Hotel, Durham

On: Tuesday, 2nd November 2010

Judgment

Player: MANU KIRKWOOD Club: Beverley RFC

Match: Darlington Mowden Park v Beverley

Venue: Darlington

Date of Match: 25th September 2010

Panel: Antony Davies (Chairman), Robin Wannop and Derek Morgan ("the

Panel")

Secretary: Liam McTiernan (RFU Disciplinary Department)

Attending: Kevin Robinson (Hon. Secretary and First Team Manager,

Darlington Mowden Park)

Peter Taylor (Head Coach, Darlington Mowden Park)

Manu Kirkwood ("the Player")

David Holmes (Chairman, Beverley RFC)

Malcolm Cunningham (Deputy Chairman, Beverley RFC)

Decision

- 1. The Panel found the citing complaint in relation to the one offence of lifting a player from the ground and dropping or driving that player into the ground whilst that player's feet are still off the ground such that the player's head and/or upper body come into contact with the ground, contrary to Law 10(4)(j) proved.
- 2. The Player is suspended from playing rugby for a period of two weeks, i.e. from 2nd November 2010 to 16th November 2010 inclusive. He may play again on 17th November 2010.

3. The Panel ordered the Player to pay the costs of the hearing in the sum of £125.00 and ordered that the citing Club's fee of £125.00 be returned to them.

Preliminary Matters

4. There was no objection to the composition of the Panel. The Panel raised one preliminary matter arising from the citing. This concerned the statement of offence which alleged dangerous tackling contrary to Law 10(4)(e). Having read the description of the incidents in the citing complaint, the Panel were of the view that the matter might more properly have been charged under 10(4)(j) or (k). There were no objections to the charge being amended and the Player indicated that he would enter not guilty pleas whether the matter was charged under 10(4)(j) or 10(4)(k). All present agreed to proceed on the basis of alternative charges pending the hearing of the evidence when the Panel would make a determination before making its primary finding.

The Citing

- 5. This is a citing by Darlington Mowden Park ("DMP") against the Player, which alleges two separate, but almost identical, acts of foul play in the game. They were alleged to have occurred in the 77th and 79th minutes of the match. Both occurred at rucks where both sides were competing for the ball. DMP alleged that the Player put his arm between the legs of one of their players who was involved in the ruck, lifted him up and off his feet and threw him back over the opposite side of the ruck. The second offence was alleged to have taken place only two minutes later when another ruck formed, and on this occasion the Player was alleged to have put his arm in between another DMP player's legs, lifted him up and off his feet and thrown him back over the opposite side of the ruck.
- 6. The citing was presented by Mr. Taylor. He explained that DMP had originally wished to deal with this matter between the Clubs. He had made enquiries through the RDO as to what action Beverley were going to take once he had raised his concerns with them. He had spoken with the Referee Development Manager and had been advised, in the absence of any apparent action on the part of Beverley, to initiate the citing process. They had done so reluctantly.

- 7. Mr. Taylor took the Panel through a DVD showing the two incidents. In the first, the Player could be seen putting his right hand on the right knee of an opponent who was on the Player's side of the ruck lifting up his right arm so his elbow was pointing upwards and the highest point of his body. The Player is seen to be tipped perpendicular so as to be in the vertical plane, with his feet uppermost and his head at the lowest point. The Player then pushes him back over to his own side of the ruck, though he does not land on top of him. It cannot be seen clearly in the DVD exactly where the Player lands, but it is either on the bodies of other players on his side of the ruck, or on the ground. The head or upper body come into contact first.
- 8. The second incident is very similar. On this occasion, the Player is attempting to remove another DMP player from the ruck. He puts his right arm in between the player's legs, grabbing hold of the groin area and lifting him up and backwards. Again, the DMP player is shown with his feet in the air and in the vertical/perpendicular before landing head or upper body first on his own side of the ruck.
- 9. Mr. Taylor had spoken with the Referee after the game, who informed him that he did not see either incident. Although the Referee was depicted in the DVD as looking at the ruck, Mr. Taylor felt he was too close to the ruck and was looking at the ground, not at what was going on above. Mr. Taylor submitted that had the Referee seen either incident, he would have issued an immediate red card.
- 10. The particular elements of the foul play Mr. Taylor asked the Panel to consider were the placing of a hand and arm underneath the opponent's body, the lifting of the players off their feet and the driving downwards. Of particular note was the position of the Player's elbow, which was high enough to suggest downward pressure, i.e. that the DMP players were driven, not dropped. Fortunately, there was no injury to either.
- 11. Finally, Mr. Taylor submitted that if the players had been dropped or driven, it did not matter whether they came into contact on their way down with a player or the ground first. The illegality of the DMP players' acts in the ruck were irrelevant to the issues the Panel had to determine. The Referee did not see either incident.

The Defence Case

- 12. The Player gave evidence in support of his case. He had joined the Club this season but had been in the second team after recovering from injury. He had come on in about the 65th minute as a substitute and was keen to impress. His role is to be strong and solid in the scrum and lineout. He also acts as guard at the ruck, but will go in to clear rucks where necessary. The Player viewed the DVD's of the incidents and explained in his own words what he was doing. Both DMP players were committing offences at the ruck. The first had come round and was interfering with the ball from an offside position. His hooker was attempting to wrestle him back. As the opponent was impeding his own side's attempt to compete for the ball, the Player assisted by picking up and driving the player back over to his own side of the ruck. This had the desired effect and the Referee had awarded a penalty against the DMP player. With regard to the second incident, he had carried out a very similar action because the opponent was over the top of the ruck with his hands in attempting illegally to steal the ball.
- 13. At the time, the Player did not consider, or foresee, the risk of injury. He confirmed that he is extremely strong and can easily apply the pressure required to lift a player out of a ruck. When viewing the DVD of both incidents, he candidly and honestly accepted that if a Referee had seen his actions in open play, he would have categorised it as a "spear tackle" and awarded a red card. The Player went on to say that there was no intentional driving of the players to the ground he was merely putting them on the other side of the ruck. Having had the opportunity to see the DVD's, he now realised the implications of what he had done and was prepared to accept that he had acted recklessly and without regard for the safety of the victim players or the consequences of his actions. He openly accepted that there was a serious potential for very serious injury to both.
- 14. The Player then went on to clarify that his intent was merely to clear the players out of the ruck to free up the ball. He apologised to the players he had put in danger and maintained that he would change his technique and not carry out this sort of contact again. He clarified that he did not drive the players into the ground, but he "put them over the back of the ruck". Finally, the Player confirmed that he had socialised with both opponents after the game and there had been no suggestion to him of foul play. Neither he nor Mr. Holmes and Mr. Cunningham could believe that the Referee had not seen the incidents.

Preliminary Finding

- 15. The Panel found the citing proved in respect of both allegations, contrary to Law 10(4)(j) on the basis of the evidence heard and the Player's admission. In relation to the first incident, the Player clearly has his hand on the knee of the opponent, lifts him up and, when the player is in the vertical, he releases him back over the other side of the ruck. In the DVD, the Referee is very close to the ruck and is looking down at the ground. He is badly positioned so that he can only see one part of the ruck. He does not see what is going on above him
- 16. In respect of the second incident, the DMP player is again in the vertical. The Referee is again close but is looking at where the ball is rather than standing back and looking at the entirety of the ruck.
- 17. The Panel does not find either incident malicious. The intent is to clear players out and the Player achieves this on both occasions, but is reckless as to how he achieves it.
- 18. The Panel finds that had the Referee seen either of the incidents, he would properly have awarded a red card. The Panel is supported in this conclusion by the Player's frank and candid admission that had the Referee seen him do this in open play, he would have issued an immediate red card.

Entry Point and Sanction

- 19. On the Player's behalf, it was submitted that he had kept control of the players and did not let them go until they were safely able to land on the bodies on their side of the ruck. Both victim players had been acting illegally in the rucks and needed to be moved. There was no animosity after the game and no acrimony on the field. The incidents were not even mentioned afterwards and had created no effect on the game. The Player and his Club had been very surprised at the citing. There had been no injury. The acts were reckless rather than intentional or deliberate, i.e. not committed with any malice or intention to cause injury.
- 20. The Player has played almost all his life in New Zealand, Australia and Portugal. He has representative honours at school and with development squads in the southern

hemisphere. He has been playing rugby in the northern hemisphere for three years and has

undertaken some coaching of a University side.

21. The Player accepted that he was over-exuberant in coming back from injury and was

out to make an impression and establish his credentials in the last few minutes of the game.

22. The Player has never been in trouble before. The Club did consider internal action

but they were of the view that the Referee had seen the incidents and did not feel they

merited any sanction at all. No internal suspension was imposed.

23. The Panel determined that the matter could properly be characterised as lower end

offending, with an entry point of three weeks. There were no aggravating features and on

account of the mitigation heard, and particularly the Player's previous good record, the

appropriate reduction on account of mitigation is one week.

24. Accordingly, the Player is suspended from 2nd November 2010 to 16th November

2010 inclusive. He may play again on 17th November 2010.

25. Costs of £125.00 are ordered to be paid by the Player/his Club.

Right of Appeal

26. The Player was advised of his right of appeal as set out in Disciplinary Regulation

19.10.

Antony Davies

Chairman

4th November 2010

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