RUGBY FOOTBALL UNION

APPEAL PANEL HEARING

At: Holiday Inn, Brighouse, West Yorkshire

On: Tuesday, 1st February 2011

Appeal Panel: Antony Davies (Chairman), Clif Barker and Austin Newman

Attending: MATTHEW HARDY ("the Player", Ryton RFC)

Bill Scott (President, Ryton RFC)

Secretary: Liam McTiernan (RFU Disciplinary Department)

Decision under Appeal

Decision of Durham County RFU Disciplinary Committee – Brian Dodds (Chairman), John Robinson and John Ker (Durham County Disciplinary Committee ("DCDC")) dated 9th November 2010 ("the Decision")

JUDGMENT

The Decision

- 1. On 9th November 2010 DCDC met to consider the sending off of the Player in the game Ryton v Horden on Saturday, 30th October 2010. The Player had been dismissed from the field of play by the Match Referee, Philip Walton, for an offence of punching or striking contrary to Law 10(4)(a). The Player pleaded not guilty to the charge. The Player was suspended for two weeks from 10th November till 24th November 2010.
- 2. In giving its written decision, DCDC referred to doubts expressed by the Match Referee about his own interpretation of parts of the incident, but extracted the following from the Referee's sending off report:

"Trading what I immediately observed to be punches"

"He seemed with my initial assessment to be pushing or punching the Horden 18 to the upper body"

"The Ryton 3 again directed his arm towards the Horden player with what seemed like a punch at the time".

3. DCDC declared itself satisfied on the balance of probabilities that the Player had been guilty of striking an opponent. It was noted that the Referee had, following the game, reflected as to whether his initial belief about the punches had been correct. Whilst accepting some of the punches may have been in self-defence, DCDC felt there was sufficient evidence of punching, which justified the decision to find the Player guilty.

Grounds of Appeal

- 4. Mr. Scott advanced two grounds. The first was that the Player had maintained his innocence from the outset and maintained that his actions had been entirely self-defence. He had denied punching or striking as alleged. There was evidence in the Referee's written sending off report, and subsequent e-mails, which corroborated the Player's denial of the foul play. The Referee had been requested to attend, but did not, and in his submissions the DCDC could not have fairly weighed his evidence in the absence of questioning from and on behalf of the Player. He suggested that the procedure had been unfair in that he did not have the opportunity of questioning the Referee an important and impartial witness, whose evidence was deemed under the Disciplinary Regulations to carry considerable weight.
- 5. The second ground of appeal related to the acceptance by DCDC of evidence they appeared to have heard in an earlier case of Rob Hebron, Horden RFC, who had been dismissed from the field of play for offences of striking the Player. Mr. Hebron's case had been heard immediately prior to that of the Player. Mr. Hebron was not present at his hearing, but had been represented by a Club Official, who made certain statements to DCDC, including statements to the effect that he had seen the Player punch Mr.

Hebron. A Mr. Bill Featonby, another Horden Official, had also confirmed in Mr. Hebron's case that he had been a spectator at the game and he corroborated the statements given by Mr. Hebron. On behalf of the Player, Mr. Scott submitted that they had not been present at the earlier hearing and so were ignorant of what had been said by Horden Officials on behalf of Mr. Hebron. They had not had the opportunity of challenging these statements. However, in the written decision which they later received, the statements were set out by way of background and so must have been in the minds of DCDC when it came to consider the evidence against the Player. It was unjust that evidence in another case at which the Player had not been present, should be referred to in his case. DCDC appeared to have accepted Mr. Hebron's assertions that he had been punched without the Player having the opportunity of disputing them.

Decision and Findings

- 6. In order to succeed with his appeal, the Appellant has to prove on the balance of probabilities that the decision appealed against was wrong, or was one which could not reasonably have been reached.
- 7. We have considered the Referee's sending off report. The Referee was some 20 to 30 metres away from the incident and saw the Player "trading what I immediately observed to be punches". The Referee went on to say that the Player "seemed", on his initial assessment, to be pushing or punching the Horden 18 to the upper body, with what seemed like a punch at the time. He said "With reflection, I feel that this action was more of a fending off/protective gesture than a punch". The Referee went on to say "With hindsight I have reflected that the Ryton player, considering his body position, height and greater arm reach, was not actually punching the Horden player, but attempting to push/fend off the blows and keep him out of reach."
- 8. We have considered the contents of an e-mail from John Dove, Hon. Secretary, Durham County RFU Disciplinary Panel to the Match Referee dated 7th November 2010. The e-mail asks the Referee to be present at the disciplinary hearing, referring to the Player denying having thrown any punches at all. Mr. Dove goes on "Though he has not specifically asked for you to attend, I think that based on the fact both players seem to be questioning your report, it is essential that you do so". We also considered the Referee's

response to the effect that he could not attend because of work commitments. The Referee further commented that he "could have mistaken his actions as fending off with his right outstretched arm".

- 9. It seems to us that affording the Player the opportunity of questioning the Referee and seeking clarification of the Referee's position was of fundamental importance in this case. The Referee's evidence carries considerable weight and where a Referee himself admits on reflection that he may have been mistaken and the Player could have been defending himself the Player's defence it seems to us quite clear that the Referee must be available to be questioned in order for there to be a fair hearing and the Disciplinary Committee to properly assess the weight to be attached to each piece of evidence.
- 10. We would further point out that where a Referee seems unsure as to whether he saw foul play, it is vital to the fairness of the process that the Player has the opportunity of close questioning him. Obviously, DCDC must have considered this because Mr. Dove, as Secretary, sent the e-mail to the Referee expressing his view that it was essential that the Referee attend. When he received the reply to the effect that the Referee could not be present nor contacted by telephone, the interests of justice dictated that the case should have been adjourned so that arrangements could be made for the Referee to attend or be available for questioning. By not doing so, DCDC has placed itself in the invidious position of having to interpret or "best guess" what the Referee really meant or had seen and this led to an unacceptable risk of placing too much or too little weight to either the Referee's first (punches thrown) or second (self-defence) observations and reflections.
- 11. We have considered also that the DCDC written judgment refers to Mr. Hebron in the earlier hearing being represented by a Horden RFC Official (un-named) and Mr. Bill Featonby, another Official. They made statements to the DCDC which were not challenged by the Player because he was not at that hearing. Neither of the Horden Officials were at the Player's hearing and we think it quite wrong that the judgment should refer to these statements. We do not know how much weight it placed on them, but it must have weighed on the minds of the DCDC members because otherwise they would not have seen fit to refer to the statements in their written decision. In our view,

there was a very real risk of manifest unfairness and injustice where statements made in another hearing which did not involve the Player appear in his written judgment.

- 12. In all the circumstances, we conclude that both these matters resulted in a breach of the rules of natural justice and the Player's entitlement to a fair hearing and we therefore allow the appeal on both grounds.
- 13. We have considered directing that DCDC re-list the matter for hearing de novo, with a requirement that the Referee attends to give oral evidence and be questioned. However, we note that the date of the match is as long ago as 30th October 2010. It is unfortunate that the matter comes before us now so much later and in the circumstances we do not think the interests of justice will be met by re-opening the matter now.

Decision

- 14. The appeal be allowed and the appeal fee refunded to the Player/his Club.
- 15. The red card and suspension be removed from the Player's record.
- 16. The award of costs of £25.00 against the Player be rescinded.

Antony Davies,

Chairman

8th February 2011