Judgment

RFU Appeal Hearing

Re: Joe Marler

Harlequins

Held at: Twickenham Stadium

On: 21 September 2011

Before: Gareth Rees QC sitting as a Judicial Officer

Representing the player: Geraint Ashton-Jones

In attendance with the player: Conor O'Shea, Director of Rugby, Harlequins

In attendance from the Disciplinary Secretariat: Bruce Reece-Russel and Rebecca Morgan

Decision under Appeal: Decision of a RFU Disciplinary Tribunal (Philip Evans, Chairman, John Doubleday and David Levy) ("the panel") on 13 September 2011 ("the Decision").

The player did not object to the appeal proceeding before a sole judicial officer.

Background

1. Joe Marler ("the player") was playing at prop forward in a premiership match against London Irish on 3 September 2011 at Twickenham. In the 17th minute of the match he struck an opponent, Max Lahiff, a prop forward, contrary to Law 10(4)(a). None of the match officials saw the offence. The citing officer, John Byett, reviewed the film of the incident and noted in his report that as Max Lahiff drove forward with the ball he was tackled and as he lay on the ground the player struck him in a downward movement in the area of the left eye. He confirmed that the match officials had not seen the incident and he cited the player.

- 2. The player accepted the charge and following consideration of the incident, the panel decided that the correct entry point for the offence was lower end which is 2 weeks suspension. The panel accepted that although there was medical evidence which showed an injury in the eye area there was insufficient proof that it was caused by the player's punch.
- 3. The panel then considered aggravating features. The player has two similar disciplinary offences against him. One at the Under 20 World Cup and one in April this year when his period of suspension was 2 weeks. The panel noted that the panel sitting in April had decided to overlook the prior offence and it was not regarded as an aggravating feature. The panel decided that both the prior offences were an aggravating feature and added two weeks to arrive at four weeks in total.
- 4. The panel then considered mitigating factors and, in particular, took into account the plea of guilty to reduce the four weeks to three weeks which was the period of suspension the panel imposed.

Decision

- 5. I viewed the film of the incident on a number of occasions before the hearing. I accept that the evidence was insufficient to allow me to conclude that the injury was caused by the player's punch. In those circumstances I agree that the punch was lower end entry of two weeks. It was a deliberate punch with some force but it was unclear if it made firm contact or was a glancing blow.
- 6. I then considered the aggravating features. The previous offending had to be taken into account. For a young player it was worrying that this was his third disciplinary offence. However it is my judgment that an aggravating feature should not have the effect of doubling the starting point period, in this case 2 weeks. It would be a disproportionate increase and as a matter of principle is too great. Therefore I limited the increase for aggravating features to one week.
- 7. The best mitigation for the player was the acceptance of the offence at the first hearing. I was also impressed by the way the player, as well as Mr Ashton-Jones and Mr O'Shea, sought to explain why a talented player should use foul play in this way so soon after a previous similar offence. The player is fortunate that the issue has been addressed with such care by his club. I am grateful to Mr Ashton-Jones and Mr O'Shea for the assistance they gave me in this regard.
- 8. In those circumstances I am able to allow the appeal to the extent that the period of suspension is reduced by one week to two weeks allowing the player to resume playing on 27 September 2011.

- 9. Costs of £500.00 were awarded against the player.
- 10. I note that the panel considered whether the original offence merited a red card. I ruled that this was not a matter that should be considered under the citing procedures. RFU Regulation 19 Appendix 4 (14), which sets out the procedure to be adopted on a hearing following a citing, stipulates that it is not the function of the Disciplinary Panel to decide whether a particular act passed a red card test apart from in certain circumstances which don't apply here. The same rule must apply to an appeal.

Gareth Rees QC 21 September 2011