

Disciplinary Hearing

Venue: The Holiday Inn, Bloomsbury, London

Date: 4th January 2012

Panel: Philip Evans, Dr Julian Morris, Gerard McEvilly

Player: Paul Barker

Club: Esher RFC

Match: Esher v Nottingham 2nd December 2011

Secretary to hearing: Bruce Reece-Russell

In Attendance:

Mr Paul Barker – The player

Mr David Page – Rugby Manager Esher RFC

Mr Mike Schmit – Director of Rugby Esher RFC

Mr Mark Haslam – Solicitor acting for the player.

Judgment

Preliminary matters

1. The player did not object to the composition or constitution of the panel.

Charges

2. The player was charged in relation to two separate incidents which took place during the same match, Esher RFC v Nottingham RFC on the 3rd December 2011. In relation to the first incident he was charged with:

Charge 1

Striking another player with the hand arm or fist, Contrary to Law 10(4) (a) or in the alternative,

Dangerous charging or obstructing or grabbing of an opponent with the ball including shouldering, Contrary to law 10(4) (g).

The particulars of the offence were that he struck or dangerously charged an opponent during the 2nd minute of the first half of the match.

Charge 2

Dangerous charging or obstructing or grabbing of an opponent with the ball including shouldering, Contrary to Law 10(4) (g). The particulars of that matter being that he struck or dangerously charged an opponent during the 31st minute of the first half of the match.

Mr Barker pleaded guilty to the 10(4) (g) matter in charge 1 and to the like matter which was the subject of charge 2. That left open the alternative matter in charge 1 contrary to 10(4) (a). The panel concluded that there was, given the guilty plea to the alternative charge, no need to hear evidence in regard to the outstanding matter and it was not proceeded with any further. The panel proceeded to consider the facts of the charges and the submissions made in regard to them.

Evidence as to fact

3. The panel had available;
 - i) The citing reports in regard to both incidents from Mr Ward;
 - ii) A letter from David Page from Esher, undated;
 - iii) A letter from Mr Page advising that Mr Barker would plead guilty to the 10(4) (g) charges;
 - iv) A letter from Matthew Taylor the Head of Medical Services Nottingham Rugby regarding injuries to Rhys Crane;

v) An email from Matthew Taylor dated the 14th December 2011 10:11 regarding injuries to Rhys Crane;

vi) Video footage of the incident.

Charge One

4. The citing officer Mr Ward noted the following in regard to this matter.

“Nottingham No 14 carries the ball into a tackle he steps back on the inside of Esher No12 and is struck in the face by the shoulder / upper arm of the Esher No 4 (Paul Barker).

..... The player didn't return to the game as he left the field after this incident. I have spoken to the match official who stated he had no knowledge of the incident; however he recalls the Nottingham player leaving the field.”

5. Mr Haslam began by setting out the essence of his factual submissions in regard to the first incident. In summary, he submitted the Nottingham player had cut inside and been half tackled by another Esher player. This had pushed the Nottingham player forward toward the oncoming Paul Barker who had been tracking across to defend. He said Mr Barker had ‘flailing arms,’ which made no contact. The contact was accepted to have been shoulder to face. Mr Haslam pointed out that the referee was positioned in a manner which did not appear to obstruct his view and that there had been no adverse reaction to the incident by any Nottingham player or from the crowd. He then elaborated on those submissions using the video recording of the incident.
6. The Nottingham player involved in this incident suffered a very serious injury as a result. The undisputed medical evidence confirmed that he suffered a fractured mandible (jaw bone), near the left angle of the jaw. He had had a plate inserted during surgery to hold the jaw in place and to allow the healing process to take place. The player had also suffered from numbness and pain near to a front canine tooth which has affected his sleep despite him being prescribed opiate based medication. Further medical assessment is in the process of taking place to establish whether the impact of the incident or the subsequent surgery has caused the reported nerve damage and whether there is a possibility of the tooth dying.
7. The player remained on a soft diet for three weeks and then as the fracture allows he will return to a normal diet. The fracture requires six weeks healing before he can play again but in total it was thought he would miss nine to ten weeks of playing.
8. Mr Haslam made submissions as to the assessment of seriousness which the panel had to undertake. He addressed each heading contained in regulation 19.11.9 of the RFU regulations 2011/12. Overall he asserted the panel should conclude that this matter was a

'mid range' entry point. He submitted that it was reckless rather than intentional; he accepted the incident was carried out with the use of the shoulder and there had been no provocation; he accepted the details of the injury and that the Nottingham player had to be removed from the game; he submitted there was no other effect on the game and that Nottingham went onto win; he conceded the injured player had been vulnerable but that there had been no premeditation.

Charge Two

9. The citing officer described this incident as follows:

"Nottingham No 12 carries the ball into a tackle against Esher No 12, he steps back inside when Esher No 4 tackles charges high with his shoulder at chin height of the Nottingham player. In this context he makes no attempt to tackle.

The referee plays advantage for the high tackle, he speaks to Esher No4 at the next stoppage, but no action was taken.

I have spoken to the referee who has stated that he can recall a high tackle but nothing more at the time."

10. Mr Haslam pointed out to the panel that Mr Barker had identified a mistake by the citing officer as the Nottingham player in question was in fact the Nottingham number 10. He

submitted that the Nottingham 10 had cut back in and was tackled toward Paul Barker who was tracking across. Both of Mr Barker's arms were down. He tackled high and made contact with his shoulder to the Nottingham player's head area. The referee gave a penalty for a high tackle and, it was submitted, had been in a position which would have allowed him to have seen the incident. Again these submissions were elaborated on reviewing the video footage of the incident.

11. There was no injury to the Nottingham player.

12. Mr Haslam helpfully submitted in relation to the assessment of seriousness in relation to each heading for this charge as well. Again he submitted this incident was suitable for a mid range entry point. Again he described the offence as reckless rather than intentional; again he accepted the use of the shoulder; he said it had no effect on the player who was able to continue; there was limited effect on the game when some opposition players remonstrated with Mr Barker over what he did; he conceded the Nottingham player was again vulnerable but relied on an absence of premeditation.

13. In the alternative, Mr Haslam stated that if the panel did not agree with his submissions as to the entry point and decided on both matter being top-end, then he urged the panel to find that they were at the lowest level of top end.
14. In regard to aggravating features which the panel needed to consider pursuant to paragraph 19.11.11 it was submitted there were none which ought to cause the panel to increase the sanction from the entry point it deemed appropriate.

Mitigation

15. The following matters were urged on the panel as factors which ought to mitigate the sanction. Esher has conducted their own internal disciplinary procedure and decided to suspend Mr Barker for three weeks or until such a time as this RFU panel could be convened. Mr Barker it was confirmed is thirty two years of age and has been playing National league rugby for nine years, seven of which had been at Esher. That amounted to more than 140 games at that level during which he had no previous disciplinary matters recorded against him.
16. Mr Barker had accepted his culpability at the earliest possible stage and his conduct, and that of Esher RFC had been impeccable both before and at the hearing.
17. Mr Barker had demonstrated his remorse by finding out himself who the opposition players were (even though one had been wrongly identified in the citing) and had gone to some length to contact them personally to express that remorse.

DECISION

18. The panel made a determination as to the seriousness of these matters using the guidance set out at 19.11.9 of the current RFU regulations.

Charge 1

19. The panel rejected the submission that this shouldering was reckless rather than intentional. The panel were assisted by watching the video footage on a number of occasions and were satisfied that Mr Barker had intentionally shouldered the Nottingham player and that the conduct was completed. Mr Barker had been in a position which ought to have enabled him to tackle the opposition player or safely and lawfully to make contact with him. However he made no attempt to do either, instead he turned his shoulder towards the oncoming player and made contact with what the panel concluded must have been a significant amount of force, to the face / head area of the opposition player. There had been no provocation for his actions.
20. In this incident the effect on the Nottingham player was very serious. He did not continue in the game. The injuries he suffered are set out above together with his treatment and his period of absence from the game. There was no other effect on the game.
21. The panel agreed that the injured player had been vulnerable and considered it a significant factor in their assessment of risk. Players who are carrying the ball in hand are, due to the speed they are running and the inevitable contact they will encounter, vulnerable. They are dependent upon the opposition players who they encounter making contact with them in a safe and lawful fashion. When that does not happen, as in the instant case, their risk of injury is greatly enhanced.
22. The panel did however conclude that there had been no premeditation to the incident and that it had taken place during a passage of the game in the spur of the moment.
23. The panel concluded that in all the circumstances this matter is at the top end of the scale of seriousness and consequently went on to make a further assessment of an appropriate entry point between the period of 9 weeks (as set out at appendix 2) and 52 weeks the maximum sanction for this offence.
24. The panel were guided in this process by the RFU guidance note 3 set out within regulation 19 at page 267 of the current addition of the RFU Handbook. The panel considered all of the guidance in that note and particularly the example given within it. It was obviously possible to distinguish the instant case from that example. In particular, Mr Barker did not run into any fracas. However, using the example where there was no player, spectator or media

reaction and where (as here) the victim was badly injured (e.g. a broken jaw requiring surgery) the guidance starting point for such a top end offence is suggested to be 36+ weeks.

25. In this matter the panel felt able to reduce that suggested starting point because the offence happened quickly in the run of play and without any premeditation.

26. The panel considered the appropriate starting point for this charge was one of 24 weeks suspension. The panel went on to carefully consider whether any aggravating features required there to be a further sanction imposed. The panel recognised that it could be properly argued a deterrent was required, but given the starting point and the facts of this particular case considered it unnecessary to add to the starting point here.

27. In regard to the mitigating factors which were advanced on behalf of Mr Barker the panel accepted all of them and felt it was appropriate to reduce the sanction by half as a consequence, the period of suspension was therefore 12 weeks.

Charge two

28. The panel conducted the same process in relation to the second charge and again concluded it was an intentional shouldering of a vulnerable victim. In this instance there was no injury to the opposition player and only a limited affect on the rest of the game.

29. The panel did however consider the fact that Mr Barker had committed exactly the same act earlier in the same half of the game and that he had known that his early act had caused the removal from the game of the Nottingham player. This fact the panel considered to be a relevant circumstance in its assessment of seriousness.

30. In this instance the panel again concluded that the matter was at the top end of the scale of seriousness. However, having carried out the same process as in charge one and again finding there were no aggravating matters requiring an increase in the sanction the Panel considered the appropriate entry point to be 9 weeks suspension.

31. Again the panel allowed the maximum reduction in that sanction as a consequence of the player's mitigation and reduced the period of suspension to one of 5 weeks.

32. Finally, the panel went on to consider whether the sanction for each charge should be served consecutively or concurrently. The panel had been assisted on this topic by Mr Haslam during his submissions. Because these matters happened in the same half of the same game and because Mr Barker had at least partly become aware of the consequence of the first matter by the time he committed the second the panel considered very carefully whether to make the two periods of suspension consecutive to one another. However, considering the principle of totality of sanction, the panel were persuaded to make the suspension concurrent to each other making a total period of suspension of 12 weeks.
33. The panel took into the account the sanction imposed by Esher internally which meant Mr Barker will be eligible to play again on the 5th March 2012.

Costs

34. The panel makes an award of costs against the player of £250

Right of Appeal

35. The player has the right of appeal. That right and procedure on, appeal is set out in the RFU Discipline Regulations.

Philip Evans – Chairman

9th January 2012