

## **RUGBY FOOTBALL UNION**

### **DISCIPLINARY HEARING**

**VENUE:** The Offices of Russell Jones & Walker, Chancery Lane, London WC2

**DATE:** 7 November 2011

**Player:** Aki Lea

**Club:** Shelford RFC

**Match:** Richmond v Shelford

**Venue:** Richmond

**Date of match:** 12 March 2011

**Judicial Officer:** Jeremy Summers

**Secretary:** Rebecca Morgan

**In Attendance:**

Tony Wyatt – counsel for the Player

### **DECISION**

1. **The Player was found guilty on his own admission of striking an opponent contrary to Law 10.4 (a). For the reasons set out below he was suspended for a period of 13 weeks. Having already served a total of 5 weeks pursuant to suspensions imposed by his club, he is further suspended for 8 weeks from 7 November 2011 until 4 January 2012. He is free to play again on 5 January 2012.**

### **PRELIMINARY ISSUES**

2. This matter had been adjourned generally on 12 April 2011 pursuant to the then RFU Regulation 19.6.1.7 in light of a related police investigation that was ongoing at that time.
3. That investigation led to the prosecution of the Player who pleaded guilty to charges brought against him and was sentenced at Kingston Crown Court on 7 October 2011. The criminal proceedings having thereby concluded, this matter was re-listed for hearing and I was appointed to sit as a single Judicial Officer pursuant to Regulation 19.2.4. The Player confirmed that he was content for me to hear the matter.
4. In view of the time lapse and the Player's acknowledgment of guilt, neither club wished for a hearing involving live evidence. In those circumstances I was content to allow the Player and his club chairman to participate by telephone. Mr Wyatt was though before me to represent the Player,
5. At the commencement of the hearing I noted that there were potential disputes on the written evidence as to provocation and as to the number of punches thrown. In

relation to the former, the Player accepted that, whatever provocation he had perceived, it did not justify his subsequent actions. I therefore determined that a consideration of what provocation there may have been would not have been of assistance. In relation to the second point the Referee in his report only referred to a punch. Pursuant to Regulation 19.10.2 I am required to afford his evidence considerable weight. I therefore determined that, whilst I would not make a finding as the number of punches thrown, I would sanction on the basis of the offending set out in the Referee's report. Mr Wyatt confirmed he was in agreement with both courses of action.

### **CHARGE AND PLEA**

6. The charge was read to the Player who admitted the offence.

### **THE FACTS**

7. I considered:

- i. The Sending Off Report.
- ii. All documentation contained in the Hearing Pack prepared by the RFU.
- iii. Oral evidence from the Player.
- iv. Submissions on behalf of the Player
- v. Character statements submitted in support of the Player from Chris Green, Southend RFC and James Shanahan, Old Albanians RFC.

8. The Sending Off Report read as follows:

*"There was a passage of play near the stand side touch line at the end of which there was a kick ahead by Richmond. My initial attention was with the ball, although some crowd noise drew my attention back to a minor scuffle between the two No 8s. This seemed to be breaking up innocently, when the Shelford No 8 punched the Richmond No 8 from behind as he was making his way away from the area of the original scuffle, connecting with his jaw/face area. The Richmond No 8 was felled to the ground instantly and a mass melee was sparked, involving members of the Richmond bench. I whistled loudly and called on the captains of each side to take their teams away. With the help of the near side AR, order was restored reasonable quickly and I separated the teams. I asked the near side AR to come onto the pitch, told him what I had seen, stated that I believed the punch merited a straight red card, and asked him if he had anything to add. He told me that he had not seen the punch but had seen at least one member of the Richmond bench join the melee. He believed he was able to identify one of these, but not with enough confidence to be able to recommend any sanctions. I checked with the far side AR if he had anything to add. He did not. I called the Richmond captain and one of the replacements onto the pitch, made it clear that replacements had no place on the pitch and should not join under any circumstances, and sent him back to the technical area. I then checked the injured player, who had been receiving oxygen and was not in a fit state to carry on playing, before calling over the Shelford captain and No 8. I explained what I had seen and told the captain that it was a red card offence. I then issued the red card and the Shelford No 8 left the pitch. I was aware of some verbal exchanges between the Shelford and Richmond benches as the player left the pitch, but not to*

*the extent that I needed to take any action. I then spoke to both captains about the conduct of their players for the remainder of the game, asked them to speak to their players, allowed some time for them to do this, and then re-started the game.”*

9. The incident occurred in the 12th minute of the second half at which point Richmond were in the ascendency with the score being 47-21.
10. I was advised that the match recording did not show the incident and in those circumstances it was not viewed.
11. I noted that the Player had been rendered momentarily unconscious by the blow received. He had required oxygen on the pitch and although he had then been stabilised, was unable to continue playing.
12. I also considered a medical report prepared by Mr D J Archer, Oral and Maxillofacial Surgeon at The Cromwell Hospital dated 28 March 2011, which detailed the following:

*“Before coming to see me he had been seen at Charing Cross Hospital and a CT scan of his face had been performed. When I first saw him he had bilateral circumorbital ecchymosis and on the left side subconjunctival ecchymosis on the temporal side without posterior limit. His eye movements were full and his visual acuity normal and there is no enophthalmos.*

*Physical examination showed a small step in the infraorbital margin on the left and he had paraesthesia in the distribution of the left second division of the left trigeminal nerve. Standard facial x-ray examination confirmed that he had a minimally displaced fracture of the left zygomatic maxillary complex and the CT report added that there was evidence of a blow-out fracture of his orbital floor of the same side with air within the orbit.*

*I reviewed him on 23 March, fortunately there was no indication for surgical intervention and thus so far we have avoided operating on this unfortunate young man. I will need to review him again in 10 days’ time to be sure that this is still the case and this report can therefore only be regarded as interim.*

*He will be unable to play rugby for at least 4 weeks from the date of his injury and has been unable to train for the last two weeks. This injury is potentially extremely serious and could in certain circumstances result in loss of vision in the eye on the affected side.”*

13. I was advised that the Richmond player concerned had been unable to play for a period of 6 weeks after the match.
14. I was also able to consider a statement from Detective Chief Inspector Steven Wagstaff dated 17 March 2011. Mr Wagstaff is a coach at Westcombe Park and so not connected to either club. He is also a qualified London Society Referee. His narrative broadly confirmed the evidence of the Referee and added this:

*“The reason for my writing this statement is that I believe that this action taken by the Shelford 8 was totally against the flow of the game, totally unnecessary and also potentially extremely dangerous as the Richmond player did not have any*

*opportunity to brace himself or avoid this clenched fist striking him.”*

### **MITIGATION**

15. The Player gave evidence and plainly regretted his actions. As he put it, “I don’t know what I was thinking. I just wish I’d never done it”. He also pointed to the fact that he had subsequently been assaulted by a number of Richmond personnel, including in his view a coach.
16. He had tried to apologise immediately after the game but the emotion of the incident had been such that his efforts were not welcomed. He had subsequently been advised by the police not to contact the injured Richmond player, but a message had been sent to Richmond by his coach 3 days after the game which made clear the club’s regret that the incident had occurred.
17. He has paid severely for his actions. Following his plea he had received a suspended period of imprisonment, been ordered to undertake a number of hours of unpaid work and to pay compensation to the victim.
18. He is 32 and has been playing rugby all his life. In addition to playing in England he has played for Wellington Hurricanes in New Zealand and represented Tonga at U.19 level. He had not received a straight red card at any time previously in his career, but had been dismissed from a match in 2007 having received two yellow cards. I was advised by the RFU that one of these was for a high tackle and the other for a technical offence.
19. Mr Wyatt stressed that the incident was an anomaly for a Player who had in effect had an unblemished record to date. The character references he referred me to had been provided without having been asked for and from independent clubs. Both made plain the regard in which the Player is held and the fact that the incident was viewed as being utterly out of character. In his submission the severity of the criminal sentence passed should not inform upon the sanction I imposed. Rather, I could take that sentence into account as a mitigating feature when considering proportionality.
20. The Player had been suspended by his club between 13 August and 3 September 2011, missing 4 games in total<sup>1</sup> and then again on 29 October 2011 when Shelford had played Richmond. He had been utterly taken aback by the consequences of his actions and was truly remorseful. In Mr Wyatt’s view the incident had been an isolated and wholly exceptional lapse by the Player for which he had already received a harsh punishment. In all the circumstances he urged me to assess this offending as being at the mid range of the scale of seriousness.
21. I drew Mr Wyatt’s attention to the findings of another RFU disciplinary panel made in *Rudge* (April 2008) which I felt were necessary for me to consider. In Mr Wyatt’s view that case could be distinguished from the present offending not least because it involved a strike with the head which is properly regarded as being a more serious offence.

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<sup>1</sup> 2 of which were pre-season fixtures.

## SANCTION

22. I undertook an assessment of the seriousness of the offending having regard to the criteria set out Regulation 19.11.9. In this regard I found as follows:

- a) That the Player had acted deliberately.
- b) Recklessness was not in issue.
- c) The gravamen of the offending comprised a single punch delivered with force to the upper cheek/eye area of an opponent whilst he was facing away and unable to either to see the punch or to take evasive action. Whilst I accepted that the Player may have felt provoked, as I have already noted (and is accepted by the Player), what then followed was wholly unjustified.
- d) Significant injury, as detailed above was sustained. Fortuitously it did not in the event require surgical intervention, but the victim was unable to play for a period of 6 weeks after the incident.
- e) The offending led to a melee involving a number of players, and possibly non-playing staff.<sup>2</sup> This itself took place in front of a sizeable crowd and would have done little to enhance the image of the game.
- f) The victim was extremely vulnerable, the strike having been delivered from behind.
- g) There was no premeditation.
- h) The conduct was complete.
- i) There were no other relevant factors constituting the Player's offending.
- j) Save as regards to the issue I deal with at paragraph 29 below, I did not find any other relevant circumstances.

23. In light of these findings, and after careful consideration, I assessed the offending as being at the **TOP END** of the scale of seriousness. In so doing, and whilst duly noting that all cases are fact specific, I felt compelled to follow the reasoning in *Rudge*, where the offending was similarly assessed as being Top End.

24. The top end entry point for this offence is a period of suspension of between 8 and 52 weeks.

25. As required by Regulation 19.11.10, I then went on to determine the entry point within that stipulated range. In so doing I had regard to RFU Guidance Note 3 set out at Appendix 5 to Regulation 19.

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<sup>2</sup> It is to be hoped that Richmond will have impressed on its personnel that, whatever the perceived injustice, there can be no tolerance of non-playing staff becoming involved in on-field matters. Had the match official have been able to identify those involved, disciplinary proceedings would in my view inevitably have followed.

26. As already noted I found this to have been an intentional offence (even if a *Red Mist* incident). There was significant injury including a minimally displaced fracture of the left zygomatic maxillary complex which can impact on both vision and mastication. There was also evidence of damage to the orbital floor. There was further not insignificant reaction from other players itself being perhaps indicative of the seriousness of the incident.
27. Whatever provocation might have been perceived, and I make no finding of actual provocation, this was a deliberate and violent assault on an opponent that caused significant injury. In my view the entry point must reflect the disproportionate response by the Player to any perceived provocation and the fact the Player must have realised the risk of serious injury resulting from a blow delivered with such force.
28. Having regard to these factors I would have ordinarily been inclined to set the entry point at a high point within the range. However I was acutely conscious of the price already paid by the Player elsewhere, which will be a serious blemish on his character for some considerable time to come. In my view I could take that penalty into account when considering the proportionality of this sanction. In so doing I noted the sentencing remarks of Mr Justice Cooke in the case of *R v Majeed & Others* (3 November 2011). There the Learned Judge reduced the sentence he would otherwise have imposed to take into account earlier sanctions imposed by the International Cricket Council.
29. I believe that a similar approach can be adopted here, and in so doing determine that the appropriate entry point should be one of 26 weeks, being half way within the prescribed range.
30. I found none of the aggravating features prescribed by Regulation 19.11.11 to be present.
31. There was however compelling mitigation. In my view the Player should be deemed as having no relevant previous offences, he had accepted his guilt from the outset and was plainly extremely remorseful. Again he has already paid an extremely high price for his actions elsewhere. In my judgment the Player should therefore benefit from the maximum discount I can give by way of mitigation. The period of suspension is accordingly reduced by half of to one of **13 weeks**. As set out in paragraph 1 above the periods of suspension already served will be taken into account and the Player is further suspended until 5 January 2012.<sup>3</sup>

### COSTS

32. The Player and/or his club are ordered to pay costs of £200.

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<sup>3</sup> This period includes two weeks at the end of this year when no National 2 South league fixtures will be played.

**APPEAL**

33. The Player was advised of his right of appeal, to be exercised within 14 days of receipt of this judgment.

*Jeremy Summers*

Judicial Officer

8 November 2011