

Rugby Football Union

DISCIPLINARY HEARING

VENUE: The Holiday Inn, Bloomsbury

DATE: 17 April 2012

Player: Alex BARBER

Club: Sevenoaks RFC

Match: Heathfield & Waldron RFC v Sevenoaks RFC

Venue: Heathfield & Waldron RFC

Date of match: 24 March 2012

Panel: Jeremy Summers (Chairman), Peter Budge and Dr Julian Morris (the Panel)

Secretary: Bruce Reece-Russel

In Attendance:

Sevenoaks RFC

Alex Barber ("the Player")

Lee Adamson - Chairman

Heathfield & Waldron RFC

Philip Bell – Chairman of Discipline

Bryn Jones – 1st XV player (by telephone)

DECISION

1. **The Player was found guilty of biting an opponent being act contrary to good sportsmanship contrary to Law 10.4 (m). For the reasons set out below, he was suspended from playing rugby for 8 weeks from 17 April until 1 May 2012 and from 18 August until 28 September 2012 inclusive. He will accordingly be free to play again on 29 September 2012.**

PRELIMINARY ISSUES

2. The Player did not object the composition of the Panel.
3. The Player confirmed receipt of the case papers, and no preliminary issues arose.
4. The Panel convened to consider a citing, by letter dated 28 March 2012, alleging that the Player had bitten an opponent in or around the 20th minute (first half) of the above match.

CHARGE AND PLEA

5. The Player denied that he had committed an act contrary to good sportsmanship contrary to Law 10.4 (m).

THE CITING

6. The Panel considered:
 - i. The RFU hearing pack dated 5 April 2012
 - ii. Match footage.
 - iii. Oral evidence from Mr Jones.
 - iv. Oral evidence from the Player.
 - v. Oral submissions on behalf Heathfield & Waldron.
 - vi. Oral submissions on behalf of the Player.
7. The RFU hearing pack contained a report from the Referee that read in part as follows:

“...at this point I awarded a penalty to Heathfield for the Sevenoaks number 11 holding onto the ball in the ruck. After this award the players got up and it was reported to me that the Heathfield Number 10 had been bitten in the ruck – this was clearly evidenced as I was shown a fresh bite mark on the right upper arm. I was unable to issue any sanction as I had not seen the actual bite taking place. There was clearly only 1 Sevenoaks player involved in the breakdown at the time of the incident (Number 11) and primarily 1 H&W player (Number 10, 2 other players joining in the latter stages).”
8. This narrative was not challenged on behalf of the Player, save that it was asserted that other Sevenoaks players were at the breakdown. It was not though claimed that the alleged offending had been committed by one of those players.
9. Mr Bell presented the citing and noted that there had been no adverse history between the clubs of the players concerned. The Player had been in possession of the ball and had attacked into the H&W 22 where he had been tackled. Mr Jones had arrived as the first player at the breakdown and had attempted to win possession of the ball. The Player had not released and as noted by the Referee had been penalised accordingly. Whilst attempting to win possession Mr Jones had been bitten twice on his right upper arm. He had made an immediate complaint to the Referee. The incident had not been witnessed by any other person.
10. The match footage was then reviewed. This showed the attack referred to but not the incident itself, save that Mr Jones appeared to lift his right arm and point to it as the breakdown ended with the award of the penalty.
11. Mr Jones gave evidence by telephone. He stated that as he tried to secure possession he felt a bite to the underside of his arm. He moved his arm away slightly and the pressure subsided before he then felt a second bite. He had reported this immediately to the Referee who had confirmed he had seen a fresh bite mark, but that having not seen the incident he was unable to take any action. He said that there had been only a small amount of blood but some heavy bruising. He completed the game and there was no other adverse effect thereafter. The pain had become

more acute as pressure had been increased. He was clear in his belief that no other player could have been responsible.

12. He rejected the assertion put to him in cross examination that his arm had inadvertently made contact with the Player's mouth in the course of an aggressive attempt to get the Player to release the ball. Similarly he did not accept that the injury was a graze that had occurred as his arm rubbed across the Player's mouth. He confirmed that he had playing rugby since a mini and had never previously complained about the conduct of an opponent. He has played representative rugby for West Wales and Sussex and is now 29.

DEFENCE

13. The Player gave evidence. He denied the offending or having committed any act contrary to good sportsmanship. He felt that in addition to trying to grab the ball, Mr Jones had also grabbed his head and had been particularly violent in trying to get the ball. His eyes had been closed and he had then felt Mr Jones' arm come across his mouth. In written submissions provided in advance of the hearing it appeared to have been suggested that Mr Jones had forced his arm into the Player's mouth, but in oral evidence this contact was expressed to have been more inadvertent and a consequence of the way in which Mr Jones had been attempting to win possession.
14. Mr Adamson supported the Player's case and spoke highly of him. Contact was not disputed and it was accepted that Mr Jones believed he had been bitten. However Mr Jones was mistaken. In reality, because of his efforts to lift the Player off the ground and secure possession his arm had come into contact with the Player's teeth and not the other way around. The injury was a scrape caused by that action and not a bite.

FINDING

15. The Panel carefully considered all the evidence and submissions. In its view Mr Jones was a credible witness who had not sought to embellish the incident in his testimony. As required the Panel attached particular weight to the evidence of the Referee who recorded that Mr Jones had made an immediate complaint. The Panel reminded itself of that it had to be satisfied on the balance of probabilities that the alleged act of foul play had occurred. Having regard to the evidence it was so satisfied.

SANCTION

16. Having so found the Panel then undertook an assessment of the seriousness of the offending having regard to the criteria set out in RFU Regulation 19.11.9. In this respect it found as follows:
 - a) The Player had acted intentionally. In coming to that conclusion, the Panel was of the view that a bite would of necessity involve an element of intention and could not readily see how such conduct could be committed recklessly.
 - b) The offending was accordingly not reckless.
 - c) Two bites had been delivered in quick succession. In the view of the Panel this had happened on the spur of the moment and without any real

malice. The Player may have felt that Mr Jones had been overly violent in trying to win possession but, if so, it would not have constituted provocation that in any way then justified his reaction.

- d) There was only minor injury and no lasting ill effect.
- e) There was no effect on the game.
- f) There was no material vulnerability.
- g) There was no premeditation.
- h) The conduct was complete.
- i) There were no other relevant factors constituting the Player's offending.
- j) There were no other relevant circumstances.

17. In light of these findings the offending was assessed as being at the LOW END of the scale of seriousness. The low end entry point for this offence is a suspension of 12 weeks.
18. None of the aggravating features prescribed by Regulation 19.11.11 were found to be present.
19. Having regard to the Player's previous record, and the manner in which he presented his case the Panel determined that he was entitled to a reduction of 4 weeks by way of credit for mitigation.
20. The Player was accordingly suspended for a period of 8 weeks as detailed in paragraph 1 above.

COSTS

21. No order for costs was made.

APPEAL

22. The Player was advised of his right of appeal.

Jeremy Summers

Chairman

21 April 2012