

RFU DISCIPLINARY HEARING

Venue: Holiday Inn Hotel, Bloomsbury, London

Date: 19th January 2012

Player: Dan Seal (Bedford Blues RFC)

Match: Bristol v Bedford Blues (23rd December 2011)

Panel: Philip Evans; Peter Budge; Gerard McEvilly

Disciplinary Secretary: Rebecca Morgan

In Attendance: Dan Seal, Anthony Yates (Solicitor acting for the player) Ian Bullerwell (Director of Bedford Blues Rugby Club)

JUDGMENT

Preliminary Issues

1. The panel was introduced and the Player confirmed there was no objection to the constitution of the panel.
2. The citing report available to the Panel read as follows:

"On 62.23 Bristol enter a scrum. As the ball is being delivered the front rows continue to push. The Bedford No 17 has his head in Bristol no 3's chest. He lifts his hand up to the Bristol props face and make contact with his eyes. The referee on instruction from the touch judge gave a penalty against Bristol No 3 for punching a Bedford player.

I have spoken to Martin Fox and asked him. "In the Bristol v Bedford game on Friday you penalised Bristol No 3 for a punch at the scrum. Can you remember what you saw?"

Martin replied "I didn't see the incident as I was following the play. The Touch judge brought to my attention that the Bristol No 3 had struck two blows to the body of a Bedford player.

I also asked him " Can you recall what the prop said when you spoke to him about the incident"

Martin replied "No I can't recall, I just wanted to get my point across that punching was unacceptable"

I have also spoken to the touch judge Chris Sharp. I asked him "At the scrum, were you informed by the Referee of a Bristol player punching a Bedford player? Did you see any Bedford players hand make contact with a Bristol player's eye or eye area?"

Chris replied "No I didn't. I was aware of an allegation after the game. I saw the Bristol player rubbing his eyes after the incident. If I had seen anything like this I would have dealt with it in the correct way".

I am therefore citing Dan Seal under law 10(4)(M), an act contrary to good sportsmanship, in that he made contact with the eye or eye area of the Bristol No 3." (sic)

3. Further to this the Citing Officer made the following brief addendum to his report which was available to the panel and was given to the player and his representative prior to the hearing.

"In the report I sent through, I have stated that both the referee and the touch judge did not see any contact with the eyes. The touch judge saw a punch from the Bristol prop that struck a Bedford player. I asked if he saw any contact made to the eyes of the Bristol player at this incident. He replied no."

I picked the incident up on the video through my own observation."

4. The charge sheet which had been served on the Player read;

STATEMENT OF OFFENCE

Acts contrary to good sportsmanship, contrary to law 10(4)(m).

PARTICULARS OF OFFENCE

On the 23rd December 2011, Dan Seal of Bedford Blues made contact with the eye or eye area of an opponent at 0062.23 during the second half of the match Bristol v Bedford Blues RFC.

5. At the beginning of the hearing the panel raised the suitability of the wording of the charge. The panel took the view that the charge ought to be amended to properly reflect the factual basis of the citing as it was set out by Mr Ward. The panel gave the player an opportunity to consider this proposal but no objection was made on behalf of the player and the statement of offence was amended to read; Contact with the eye or eye area, contrary to Law 10(4)(m). The particulars of offence remained unaltered.
6. The panel had received a skeleton argument prior to the hearing on behalf of this player. It raised a matter to be dealt with as a preliminary issue. The submission advanced, was "the

citing was technically and fatally flawed, in that it did not establish that there has been an act of foul play that merited the award of a red card.” Paragraph 10 of Appendix 4 to Regulation 19 was drawn to the attention of the panel in support of the submission. That paragraph reads;

10. “Before bringing a citing complaint the Premiership Citing Officer must be satisfied that in his opinion the act of foul play merited the award of a Red Card (the ‘Red Card Test’). That is, a Citing Officer shall be entitled to cite a player for any act of illegal and/or foul play which in the opinion of the Citing Officer warranted the Player being ordered off. The citing complaint shall contain the following information.

e) confirmation that the act was not detected by the match officials or if it was and a red card was not awarded, an explanation as to why the Citing Officer considered the Referee to be wrong”

7. At this stage and at the request of the Player, the panel heard evidence from Mr Ward, the Citing Officer. He explained the wording of the citing itself and the events as he had seen them from the video. He was asked a number of questions on behalf of the Player about his conclusions and opinions. He confirmed that in his view an offence had been committed and that the offence as he saw it amounted to contact with the eye or eye area. He agreed the amended charge was the appropriate one. He confirmed that none of the officials had seen the incident which he had cited. He also told the panel, that in his view the incident passed the Red Card test.
8. The panel was satisfied that the citing was not fatally flawed and rejected the submission. It is an obvious and overwhelming inference, considering paragraph 10, that a citing officer who cites a player does so because they believe an offence has been committed which passes the Red Card test. It was, on the face of the original citing report obvious to any reader that the factual basis of the offence being cited was contact with the eye or eye area, in particular as the actual offence i.e. 10(4)(m) was specifically referred to. The Citing Officer also confirmed in evidence to the panel that when he cited the player he did so because in his view it met the Red Card test and the act he had considered amounted to an offence.

The amended charge was subsequently put to the player and he denied it.

EVIDENCE AS TO FACT

The panel considered:

- i. Evidence from Mr Ward the citing officer (set out above);
- ii. The video recording of the incident;
- iii. The evidence of Mr Sharp (Touch Judge) which was contained in the citing report;

iv. The medical evidence of Dr Jonathan Williams which described some damage to the left eye consistent with the player having been poked in the eye. Within 3 days the eye had begun to heal and there was no evidence of lasting damage.

v. The evidence of the Player

vi. The submissions made on behalf of The Player by Mr Yates and by Mr Bullerwell.

DECISION

9. The panel first had to consider whether or not the incident depicted on the video amounted to an offence. The panel was satisfied, having considered all of the above material that, contrary to the submissions made, the contact by the Player had not been purely accidental. The panel was satisfied that, despite the fact the Player was being held and was facing down at the time, he reached out toward the player who was holding him in a deliberate attempt to make contact. He could clearly be seen to lift his arm upwards and make that contact. His arm moved in the general direction of the opposition player's head/face. It was then clear that he did make contact with the eye area of the Bristol 3. The Bristol player's reaction after the incident, taken together with the supporting medical evidence confirmed to the panel that the Player had poked the Bristol player in the eye. Submissions were also made that the Player had been acting only to defend himself. The panel were satisfied, having considered all of the evidence available to it, that the Player's actions had not been necessary to defend himself. The panel did however find there had been some provocation from the Bristol player in that he had thrown at least one punch, for which a penalty had been awarded against him prior to the incident cited. The panel were therefore satisfied that an offence had been committed and upheld the citing.
10. The panel went on to make an assessment of the seriousness of the offending.
11. The panel were not satisfied that the Player had intentionally made contact with the eye or eye area but rather that it was a reckless act. The panel considered the gravity of the Player's actions in relation to the offence and concluded that the existence of provocation was a prominent factor. The effect of the offending Player's actions was negligible on the game itself and although some injury was caused, it was relatively minor. The panel found little relevance in the other factors listed at 19.11.9 of the regulations, save to say that there appeared to be no premeditation. Considering the factors above the panel decided a lower end entry point was appropriate. That entry point is 12 weeks suspension.
12. The panel did not find any aggravating features present to cause them to increase the sanction.

MITIGATION

13. The panel considered submissions as to mitigation and took account of the fact that the Player had a previously unblemished playing record over a long period of time. The panel accepted this matter was entirely out of character for him. The panel were of the view that the Player's conduct at the hearing had been exemplary. In considering the level of discount appropriate in this case, the panel did not feel, given the not guilty plea, that the maximum discount should be given. The panel did feel however that the overall mitigation for this Player was compelling. The panel concluded that it would be just to reduce the entry point sanction by 5 weeks and impose a 7 week suspension from playing. The player would therefore be free to play again on the 9th March 2012.

COSTS

14. The panel made an award of costs against the Player/Club in the sum of £250.

RIGHT OF APPEAL

15. The right of Appeal and procedure on appeal is set out in the RFU regulations at 12.1.1

Philip Evans – Chairman

24th January 2012