

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

At: Holiday Inn, Filton, Bristol

On: Tuesday 29 May 2012

JUDGMENT

Player: Manusamoa Tuilagi

Club: Leicester Tigers RFC

Match: Harlequins RFC v Leicester Tigers RFC

Venue: Twickenham

Match Date: 26 May 2012

Panel: Christopher Quinlan QC (Chairman) Nick Dark & Daniel White

Present: Manusamoa Tuilagi ('the Player')
Richard Smith QC (representing the Player)

Secretariat: Bruce Reece-Russel, RFU Disciplinary Manager
Rebecca Morgan

Charge and Plea

1. Mr Smith QC took two preliminary points.
 - a. The wording of the charge: the particulars of the charge read, *inter alia*, "...such that the player's head and/or upper body came into contact with the ground first...". Mr Smith's point was that the word "first" was otiose. It does not appear in the present draft of Law 10.4(j). He was correct. We amended the charge to delete it.
 - b. The citing report
 - i. The submission was that the citing report did not comply with the paragraph 10(e) of Appendix 4 to the RFU Disciplinary

Regulations 2011-2012 ('DR') in that it did not contain an explanation as to why the Citing Officer considered the referee to be wrong. Mr Smith QC was correct: it did not say so in terms. Mr Smith's submission was that this rendered the citing invalid.

- ii. We took a different view. It was capable of being addressed by hearing from the Citing Officer, John Byett. Mr Smith agreed with our "sensible" suggestion that we hear from Mr Byett and we did so.
 - iii. Following Mr Byett being asked question by the Chairman, Mr Smith renewed his submission that the citing was flawed for it lacked "procedural clarity and sufficient meaning". That it was *now* being suggested that this was a 'spear' tackle was contrary to the working of the report and was unsustainable.
 - iv. Once more, we disagreed. The citing was sufficiently clear. What Mr Byett told us is recorded below (see paragraph 7) but for these purposes the basis of the citing was as follows:
 1. The Player drove the tackled player, Danny Care ['DC'] into the ground;
 2. Therefore the tackle fell into the first of the three scenarios postulated in the IRB Memorandum on Dangerous Tackles dated 8 June 2009 issued to Referees, Citing Commissioners, Judicial Officers and Non-Legal Judicial Committee Members ('IRB Memorandum'); and
 3. Consequently it merited a red card. The referee was wrong not to issue such a card.
2. Thereafter, the Player denied committing an act of foul play, namely dangerous play by lifting DC from the ground and dropping or driving DC into the ground whilst DC's feet were still off the ground, such that the DC's head and/or upper body came into contact with the ground (for ease of reference described herein as a 'dangerous tip tackle'), during the second minute of the first half of the Aviva Premiership Final played between Harlequins RFC and Leicester Tigers RFC, contrary to Law 10.4(j).

The Citing Complaint

3. The Citing Commissioner's report is dated 28 May 2012. It reads:

“From a ruck in the middle of the pitch the Harlequins No 9 Danny Care picked up the ball and made a break. No 12 Manusamoa Tuilagi met Care head on. As Tuilagi tackled Care, he wrapped his right arm around Care's waist and his left arm around Care's upper right leg. He then lifted Care off the ground and proceeded to raise Care's right leg and body above the parallel. Tuilagi still had hold of Care as they both headed to the ground and released Care with his right arm just before they hit the ground. The position of Tuilagi's head on Care's back showed he could not see whether Care was able to put an arm out to break his fall.

When contacted, referee Wayne Barnes said he did see the incident, he saw the player (Care) being lifted above the parallel and not being brought to ground safely and as a result decided to penalise Tuilagi, but did not feel it warranted a card. This is confirmed via the referee's microphone in the match. There were no interventions by the assistant referees.

After reviewing the incident and the IRB Directive on Dangerous Tackles (8th June 2009), I have decided to cite Manusamoa Tuilagi under Law 10.4(j).”

4. In addition to the said report we were provided with the following:
 - a. Footage of the incident recorded by the broadcaster ESPN.
 - b. Six different stills from that footage, one from behind the Player and five from behind the tackled player.
5. The footage showed the incident in full speed and slow motion from a number of different angles. We viewed the footage. As to what it showed and our interpretation of it, that is set out in paragraph 14 below.
6. A portion of the footage was accompanied by commentary. We ignored what the broadcast commentators said about the tackle. Of note and relevance was what the referee can be heard when explaining why he was awarding a penalty: *“that was a penalty for beyond the horizontal as well but it wasn't dangerous in my view, just beyond the horizontal...”*
7. We heard from John Byett, by way of telephone conference call.
 - a. He was asked by the Chairman to explain the basis upon which he cited the player and why he decided that the tackle (1) merited a red card and so (2) why the referee was wrong in dealing with by it by way of a penalty. His initial account rehearsed the content of his report. He further explained that unlike the referee he had the opportunity to view the broadcast footage, so had seen it a number of

times at full speed and slow motion and from different angles. His considered view was that the tackle was dangerous.

- b. Taken to the IRB Memorandum he opined that the tackle came within the first scenario, namely *“the player is lifted and then forced or ‘speared’ into the ground. A red card should be issued for this type of tackle”*. He said the Player used his left shoulder and arm to force DC to the ground. He added that the Player did not drop DC.
8. The Player took us through the footage. He made a *“good hit”* on DC, intending to drive him backwards. He said DC was *“surprisingly light”* and as he rose, he realised he could not drop or drive him to ground. He said he was coached not to drop or drive a player into the ground (as part of such a tackle). The Player told us that DC twisted in order to get himself into a position where he could place the ball back. It was DC’s momentum that caused him to move to his side. He released his grip so as to enable him to do that. He denied twisting or tipping him. He denied putting his weight on him or driving him to ground. He felt he brought him to ground *“pretty safely”*.
9. We were provided with an email from Danny Care. Of course we appreciate that whilst he was an opponent during the match, they are now in the same (England) squad. Mr Smith QC told us that the derivation of the email was DC volunteering to a member of the England coaching staff (Graham Rowntree – ‘GR’) that which subsequently appeared in the email. The email from GR to Mr Smith recorded the following from DC: *“I didn’t feel I was being forced towards the ground in a dangerous manner. I was lowered and was able to put one arm out to break my fall. I didn’t feel threatened for my safety at any point during the tackle. The ref (Wayne Barnes) alerted me to the fact he had seen the tackle and would be going back for the penalty to which I replied there wasn’t anything wrong with the tackle.”*
10. Mr Smith QC submitted that the Player did not commit an act of foul play contrary to Law 10.4(j). Alternatively, he submitted that there was no sufficient basis for concluding the referee was wrong. The footage simply did not sustain the Citing Officer’s assertion that the Player drove DC into the ground. The footage must be considered with the Player’s account, together with DC’s narrative.

Decision

11. Paragraph 14, Appendix 4 to the DR provides: *“...where the offence was detected by a match official, but the cited player was not awarded a red card,*

the Disciplinary Panel must dismiss the citing unless it is satisfied on the balance of probabilities that the referee was wrong in not sending the player off.”

12. The starting point in any alleged ‘dangerous tip tackle’ is not the IRB memorandum but Law 10.4(j). It is the Law which creates and defines the act of foul play. Plainly, it is the Law which the referee applies. Pursuant to Law 10.4(j) a ‘dangerous tip tackle’ comprises the following essential elements:
 - a. The tackled player is lifted off the ground
 - b. He is then dropped or driven into the ground, whilst
 - c. His feet are off the ground, such
 - d. That the tackled player’s head and/or upper body come into contact with the ground.

If each element is present the tackle is dangerous and an act of foul play is thereby committed.

13. The IRB memorandum assists with assessing the seriousness of that act of foul play. The IRB Memorandum postulates, *inter alia*, three “possible scenarios when a tackler horizontally lifts a player off the ground”. They are:
 - a. *“The player is lifted and then forced or ‘speared’ into the ground. A red card should be issued for this type of tackle.*
 - b. *The lifted player is dropped to the ground from a height with no regard to the player’s safety. A red card should be issued for this type of tackle.*
 - c. *For all other types of dangerous lifting tackle it may be considered a penalty or yellow card of sufficient.”*

14. The footage:
 - a. DC ran into the Player, who was crouched, bent forward at the waist ready to tackle him. The Player’s right shoulder made contact with the middle of DC’s torso. With his right arm he took hold of DC across his backside and with his left hand he gripped the rear of DC’s right thigh. He lifted him such that both of DC’s feet were off the ground. The first element of law 10.4(j) was made out.
 - b. The player then bent at the waist to his right side. As he did so his left leg came off the ground, but his right remained on the ground. In the process DC’s right leg and foot moved through the horizontal; his left leg never does. Both men then descend to ground. As they descended, significantly (in our view), the Player released his right hand from the leg and placed it on the below DC, on his left flank in

the region of his waist, as if to support him. The Player also released his left hand.

- c. It is instructive to note how DC landed. He broke his descent with his left hand. The next part of him that made contact with the ground was his left foot. That was because he was parallel to the ground. Unlike the vast majority of those who are the 'victims' of 'dangerous tip tackles' he did not land at an angle to the ground, contacting first with his head and/or neck and/or shoulder. He landed face down, also completely horizontal or flat. That is important for
 - i. It supports the player's account that he let DC twist away from him, as part of his attempt to enable DC to descend safely to ground; and
 - ii. It is relevant to an essential element of the alleged foul play: did DC's head and/or upper body come into contact with the ground. Of course, the Law does not state that head and/or upper body come into contact with the ground *first*. Insofar as it is possible to break this down, the order was as follows: left hand, left foot, lower left leg and knee, left forearm, right forearm and leg simultaneously; thereafter he landed flat on his upper legs and midriff, facing down. His head, face, neck and shoulders did not make contact with the ground until he turned on the left side as he placed the ball back.
- d. We are not satisfied that the Player did drive DC into the ground. It is correct that he remained in contact with him: he had his right hand under his torso and his head appeared to be in contact with the right side of DC's torso. However, we were not satisfied that was driving him, even within the meaning of the ERC decisions in *Gough* 27 December 2011 and *Hayman*, 26 May 2012. We are fortified in that interpretation of the footage by the email from DC.
- e. We note there was no player reaction, from DC or from any other player. This is not of course determinative but similarly it is not irrelevant, especially in the present climate of 'heightened sensitivity' (rightly) about such tackles.
- f. As explained herein, it is important to understand that the dynamics of the tackle in this instance were different from the recent instances of 'dangerous tip tackles' with which the Panel is very familiar. The tackled player was not dropped, nor was he driven to ground and he land, essentially, flat.

15. In light of our interpretation of the footage, and having heard from the Player, together with DC's account, we are not satisfied the Player drove DC

into the ground, within the meaning of Law 10.4(j). It follows that the tackle was not, in our judgment, within the first of the “*possible scenarios*” in the IRB memorandum, which mandates a red card.

16. In his account before us, the Citing Officer opined that the Player did not drop DC. That is to be contrasted with his report where one might have inferred from his use of the verb “*release*” that he was implying the Player did drop DC. He disavowed that interpretation and said in terms that in his view the tackle did not fall into the second of the “*possible scenarios*”. That did not bind us as it was for us to reach our own conclusion. However, we did not disagree with it.

17. We viewed the footage with care and repeatedly, at full speed, and frame by frame. In doing so, we had the advantage, which the Citing Officer did not, of hearing from the Player and the lucid submissions of Mr Smith QC. We can understand why the Citing Officer decided to cite the Player. However, in light of our conclusion that the tackle did not come into either the first or second of the IRB memorandum scenarios, we concluded that we could not say the referee was probably wrong not to send the Player off. Accordingly, and pursuant to Paragraph 14, Appendix 4 to the DR, we “*must*” dismiss the citing complaint. We did so.

A handwritten signature in black ink, appearing to read 'Christopher Quinlan', written in a cursive style.

Signed: **Christopher Quinlan QC, Chairman**

Date: 30 May 2012