

EUROPEAN RUGBY CUP

DECISION OF DISCIPLINARY COMMITTEE

HELD AT THE PARK INN, HEATHROW, LONDON

16th March 2007

IN RESPECT OF:-

Trevor Brennan, Toulouse (“the Player”)

AND

An allegation of misconduct

MEMBERS OF THE DISCIPLINARY COMMITTEE:- (“the Committee”)

His Honour Judge Jeff Blackett (Chairman) (RFU)

Rod McKenzie (SRU)

Achille Reali (FIRA)

DECISION OF THE COMMITTEE:

The player is:-

- (a) suspended from playing rugby union football for life;
- (b) expelled from the ERC Tournament and banned from participating in any capacity in future competitions organised by ERC for life;
- (c) fined 25,000 Euros;
- (d) ordered to pay 5,000 Euros to Mr Patrick Bamford as compensation for personal injury and distress.

INTRODUCTION

1. We were convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel pursuant to the Disciplinary Rules of ERC in respect of a misconduct complaint made by Roger O'Connor, the ERC Disciplinary Officer. The complaint concerned the conduct of the Player during a match played between Toulouse and Ulster on 21st January 2007 in Toulouse, France. The complaint alleged that the Player had committed an act of misconduct in that the Player had entered the seated area and struck an Ulster spectator.
2. Present at the hearing on 16th March 2007, in addition to the members of the Committee were:-

Mr Roger O'Connor, ERC Disciplinary Officer

Mr Max Duthie, Partner, Bird and Bird

Mr Patrick Bamford (witness)

Mr David Wilson (witness)

Mr Victor Moore (witness)

Mr David Gillan (witness)

Mr Jonathan Bill (witness)

PRELIMINARY ISSUE

3. Neither the Player nor his legal representatives attended the hearing. On inquiry it was established that the Player knew the date, time and venue of the hearing, his representatives having been informed at the end of the hearing on 26 February which dealt with an application to adjourn pending the outcome of civil and/or criminal proceedings in France. Mr Duthie informed the panel that the Player's legal representatives, Donal Spring, had informed him by telephone that neither would attend "in order to protect the Player's right to silence" in other proceedings.

4. The panel was, therefore, satisfied that the Player had received notice of the hearing and decided to hear the case in his absence in accordance with ERC Disciplinary Regulation 7.6.8. The panel proceeded to deal with the matter as though the Player had pleaded not guilty to the charge of misconduct.
5. Mr Duthie reminded the panel that they were entitled to take account of any written submissions from the Player when hearing the case in his absence. No written submissions were received apart from those relating to adjournments which were not relevant to these proceedings.

THE COMPLAINT

6. The misconduct complaint laid by the ERC Disciplinary Officer alleged that in the 50th minute of the match between Toulouse and Ulster on 21 January 2007, the Player entered the seated area and struck an Ulster spectator.

THE PROSECUTION CASE

7. The panel viewed a series of photographs which depicted the Player on the margins of the field of play and then on the steps within the seated area of the stadium advancing towards an Ulster spectator. They then showed him preparing to punch a spectator identified as Patrick Bamford and then actually landing a punch on his jaw. It was clear from the reactions depicted on the photograph of two women sitting nearby that this caused fear, alarm and distress within that section of the crowd. The photographs then depicted the Player leaving the scene, returning to the playing enclosure and then walking back towards the player's dugout under a shower of beer and plastic cups which were thrown at him by spectators within a section of the crowd near where the incident occurred. Finally the panel saw a photograph of Mr Bamford after the incident which showed significant swelling around the right of his face and jaw area.
8. The panel then heard live evidence from the alleged victim of this attack and four other Ulster supporters who had witnessed it. The panel also read a medical report from David Irwin the Ulster team doctor who examined Mr Bamford after the incident.

9. Mr Bamford, a trainee accountant, is an Ulster supporter. He and a number of friends went to Toulouse for the match. They arrived at Stade Ernest Wallen having drunk three or four 250ml cups of beer, but they were not drunk. Mr Bamford told the panel that in the beginning of the second half the Player, who was a substitute for Toulouse, started to warm up in the dead ball area near the Ulster supporters. Mr Bamford was sitting about 6 or 7 rows back at the corner of the pitch. Many of the Ulster supporters started to chant sarcastically at the Player – Mr Bamford said that it was good natured “banter” directed at the Player’s bar in Toulouse. Statements such as “your bar is a load of bollocks” were made and the crowd counted out loud as the Player did press ups. Mr Bamford stated categorically that he, nor anyone else that he heard, made any other more offensive derogatory comments. He specifically denied any of the assertions in the press that he had called the Player’s mother a whore or made any other remarks which could be classified as sectarian abuse. Mr Bamford said that he shouted: “Your bar is so crap – it is below average Trevor. O’Neills is a chain bar and is better than yours.” Mr Bamford believed the Player heard what he shouted because they made eye contact with each other. By this time the Player was at the side of the playing enclosure and he shouted at Mr Bamford: “What the fuck did you say?” Mr Bamford thought he was smiling and he was still engaging in “banter”. He saw the Player jump over the low wall of the stand and his next recollection is being taken for medical treatment. He subsequently gave a statement to the French police. He said that insofar as that statement purports to describe the incident of being struck it was based on what he had been told by others after the event.
10. Mr Bamford said that he suffered significant soft tissue injury and bruising on the right side of his face. The inside of his mouth was cut and there was some blood. There was significant pain associated with his injuries and he was unable to work for one week after the incident. Subsequent XRays revealed that there was no permanent damage, although there was a possibility of a hairline fracture to the jaw, and nearly two months after the incident he has recovered physically although he still feels some pain at the top of his head when he yawns. He also said that he has suffered some mental distress since the incident, not least because of what the Player has been reported as saying in the press, and he has an appointment with a psychologist in the near future. When giving this evidence Mr Bamford was clearly distressed. Our impression was that he sought to underplay the

pain and suffering occasioned by his injuries and the psychological effects on him of the incident and its aftermath.

11. Mr David Wilson was sitting very close to Mr Bamford and his wife, Janice, was between them. He did not know Mr Bamford. His description of what occurred corroborated the evidence from Mr Bamford. He said that other Toulouse players warmed up at the other end of the stadium and he thought that the Player had intentionally come to the Ulster supporters end to attract attention. He said that there were light-hearted cheers and boos from the crowd and the Player seemed to be enjoying it, raising his hands as if to say “come on give me a bit more.” Mr Wilson heard Mr Bamford and his friends shouting comments about the Player’s bar and the poor quality of the beer served there. He said that Mr Bamford was boisterous and in good spirits, and was probably shouting the loudest. He heard him shout something about having been to the Player’s pub and having his worst Friday night ever. He said all of this was light hearted and he specifically denied that there had been any comments about the Player’s mother or any sectarian abuse.

12. Mr Wilson then said the Player had been participating in these exchanges but then “like a flick of a switch” seemed to change. He picked out Mr Bamford and asked him “what the fuck” he had said. Mr Wilson was sensitive to such language and the swear word used by the Player was not consistent with the much milder language used by the spectators. Mr Bamford replied “your Guinness is the worst I have ever tasted” and the Player stepped over the barrier and took three strides up to Mr Bamford’s seat. He said he did this quite calmly although he had a grimace on his face and frown on his forehead. He then put his right hand on Mr Bamford’s chest to push him down and the started to punch him very viciously with his left hand. The Player used his right hand to hold Mr Bamford down in a defenceless position so that he, Mr Bamford, was unable to respond to the blows or to defend himself. Mr Wilson described a constant punching motion and said that he hit him between 5 and 8 times. During this assault Mr Bamford who had been seated throughout fell forward to the row of seats in front of him. Mr Wilson tried to move his wife away because he thought she might be hit and a security man came up and ushered the Player away. He said the crowd around the area were all very shocked and as the Player went back to the dugout beer and plastic glasses were thrown at him. He said that the whole atmosphere changed from a friendly carnival to one of anger and shock. He said that his

wife was physically shaking in fear and distress and that he was stunned by what had happened.

13. Mr Victor Moore was sitting near to Mr Bamford and gave a similar account which corroborated Mr Wilson's evidence. He described the verbal exchanges between the Player and sections of the crowd in the same terms – he said there was certainly no sectarian abuse or comments about the Player's mother and the worst word he heard used by the crowd was "crap". He heard Mr Bamford shout to the Player that he had ruined his Friday night because his bar is substandard. He then saw the Player bound over the perimeter fence, walk up the steps to Mr Bamford and start to hit him. He said that he thought that the player came into the crowd to shake Mr Bamford's hand or invite him to the bar but no words were spoken. He said that 3 blows had landed before he realised what was happening. One of these blows glanced the head of his wife, who was sitting in front of Mr Bamford. He said she "took a smack to the cheek from Brennan's elbow" but no treatment was required afterwards. He saw the Player hit Mr Bamford 6 to 8 times – he said he was holding Mr Bamford with his right hand and hitting him with heavy blows with his left fist. The Player used his right hand to hold Mr Bamford down in a defenceless position so that he, Mr Bamford, who was seated throughout, was unable to respond to the blows or to defend himself. Mr Moore stood up and tried to push the Player away before a member of the security staff escorted him away. He said that the whole incident took only about 20 seconds.

14. Mr David Gillan is a friend of Mr Bamford and had travelled with him to Toulouse. He was sitting directly beside Mr Bamford, on the stairs within the seated area. He gave similar evidence to the other witnesses and said that he was absolutely sure that Mr Bamford did not make any comments about the Player's mother or say anything which could be described as sectarian abuse. He realised the Player was aggressive when he shouted "what the fuck did you say" towards Mr Bamford, but thought that as he walked up the steps he still had a smile on his face. He thought that the Player was coming into the crowd to shake Mr Bamford's hand or have a word with him and never thought that he would physically assault Mr Bamford. He saw that the Player struck Mr Bamford 6 or 7 times – perhaps as many as 10. Towards the end of the assault Mr Gillan tried to pull the Player's shirt to pull him away. He said the whole incident took 30 – 45 seconds.

15. Mr Jonathan Bill was about 15 yards away from Mr Bamford and did not have a clear view of what occurred. He described the verbal interchanges between the Player and the crowd although he could not say what was actually said. He said it appeared to be in good spirits and the Player appeared to be encouraging the “banter”. He saw the Player bound up the steps in a purposeful manner and deliver a flurry of punches with both fists to a spectator whom he did not know, and he subsequently saw beer and plastic cups being thrown at him after the incident. He described the crowd’s mood at that point as “irate”. After the game he accompanied Mr Bamford to the police station to help him make a complaint and said that by then Mr Bamford was lucid when he spoke to him but he was shaking.
16. The panel read the statement of David Irwin, the Medical Officer of Ulster RFC. He said that he examined Mr Bamford shortly after the incident. Mr Bamford complained of tenderness and swelling in the right jaw/cheek area, right temple area and an abrasion with tender bruising on the right chin area. He said that on examination there was no obvious palpable bony deformity of the jaw, cheek or skull but there was considerable soft tissue swelling and tenderness to the right cheek area, right angle of jaw and right temple area. He had a fresh abrasion to his right chin area measuring one inch long and half an inch wide with associated tenderness underlying. He observed that Mr Bamford was badly shaken, traumatised psychologically and emotionally upset by the whole incident. He gave Mr Bamford anti-inflammatory and analgesic painkillers and advised him to attend his local hospital on return to London.
17. The panel were also handed a bundle of statements from other Ulster supporters which corroborated the evidence adduced orally.

FINDING

18. The panel considered all of the uncontested evidence and found that while the Player warmed up in the dead ball area he engaged in good natured verbal exchanges with sections of the crowd. Ulster supporters, including Mr Bamford, made derogatory comments about the quality of the Player’s bar and the beer sold there. We heard no evidence of any other more serious verbal or physical provocation and conclude that no sectarian statements or comments about the Player’s mother were made. The Player

singled out Mr Bamford after he had shouted at him and he climbed over the perimeter wall and walked up the steps towards him. Without any warning he attacked Mr Bamford by pushing him down with his right hand and punching him 6 or 7 times with considerable force to the head with his left fist. These punches caused soft tissue injury to Mr Bamford including bruising and minor lacerations on his chin and inside the mouth. It is clear that this incident has also caused Mr Bamford some mental anguish. Mrs Moore was also struck a glancing blow by the Player, which caused no injury, although this was caused by the recklessness of the Player and was not deliberate. A great deal of fear and alarm amongst the spectators was occasioned by the Player's conduct and it provoked an angry reaction from them. The whole incident took less than one minute and the Player left the area when escorted away by a member of security staff. He then walked back to the replacements' bench and was showered with beer and plastic cups thrown by Ulster supporters.

19. In those circumstances we find the misconduct complaint is proved.

SANCTION

20. The Panel received no oral or written submissions of mitigation from those representing the Player or any communication from the Player himself. The Panel were directed to ERC Disciplinary Rule 7.6.22 which lists the sanctions available for misconduct. It considered whether any analogy could be drawn between this type of misconduct and Foul Play. The most serious offence contained within the IRB recommended sanctions relates to physical abuse of match officials which carries a maximum penalty of suspension for life. The Panel considered that physical abuse of spectators in or around the playing arena is an even more serious offence for which there simply cannot be any excuse except, perhaps, when acting in self defence to a violent assault, for example, following a pitch invasion. Were the panel to carry out the assessment of seriousness in this case, which it is not required to do within the Rules, it would have assessed this as offending of the most serious kind. It was deliberate, premeditated and unprovoked and the victim was vulnerable before the attack and seriously injured by it.
21. The Panel concluded that the Player's behaviour, which could properly be described as "thuggish", was completely unjustified and was carried out maliciously with intent to

cause injury. There may have been some mild verbal ribbing from the spectators, but that was, in part, encouraged by the Player himself and appeared to be good-natured. Nothing could excuse the Player's entry into the seated area and his physical attack on a spectator was nothing less than disgraceful. Given the Player's age (33 years old) and experience, he could not even rely on youthful petulance as an excuse, although the Panel did take into account the reported retirement of the Player. The Player has caused serious physical and mental harm to an innocent spectator and significant damage to the image of rugby, thereby bringing the Game into serious disrepute. The aggression of the attack and the force and number of blows struck on a defenceless person might easily have resulted in more serious damage and it is fortunate that Mr Bamford's injuries were not more severe. Further the Player's failure to attend a properly convened disciplinary hearing denied the Panel the opportunity to hear any mitigation, such as there may have been, but the Panel could not envisage more serious misconduct in relation to spectators and believe that the maximum permissible suspension is appropriate. Additionally a fine is necessary to mark the fact that this was entirely unprofessional behaviour and meaningful compensation was appropriate for the victim notwithstanding the fact that he may also seek satisfaction elsewhere.

22. The Panel believe that the Player should be completely expelled from the family of rugby but are constrained by the terms of the ERC Rules which does not allow a disciplinary Panel to suspend an offender from all rugby related activities. Jurisdiction within the ERC only permits world wide suspension from playing although it has wider jurisdiction in relation to its own tournament.¹ It may be appropriate for CEO/ERC to make further submissions to the IRB in relation to the extent and effect of the suspension pending the outcome of any other proceedings in relation to this matter in accordance with IRB Regulation 17.30.1.
23. In all the circumstances the Player is:
 - a. suspended from playing rugby union football for life;
 - b. expelled from the ERC Tournament and banned from participating in any capacity in future competitions organised by ERC for life;
 - c. fined 25,000 Euros

¹ ERC Disciplinary Rule 7.6.22 and 9.4

- d. ordered to pay 5,000 Euros to Mr Patrick Bamford as compensation for personal injury and distress.

The fine and compensation are payable to the ERC within 14 days of the date of this judgment being copied to parties. On receipt of the compensation payment from the Player the ERC is to make payment of the same to Mr Bamford.

COSTS

24. There have been four hearings in this case. The first was stayed because the Player sought an interlocutory injunction from the High Court in Ireland preventing it from proceeding. The second was a short hearing by video conference to set a date for a full hearing in relation to the defence application for an adjournment. The costs of both of these hearings should lie where they fall. The third hearing was held in Dublin to consider an application by the defence to adjourn pending the outcome of any civil or criminal proceedings against the Player, and the fourth hearing considered the substantive case.
25. There is no power to order legal costs unless it can be shown that one of the parties has acted frivolously or in bad faith (ERC Disciplinary Rule 7.6.35). There is no such suggestion in this case. However, it is appropriate that the Player should bear the administrative costs in relation to the third and fourth hearings (the adjournment hearing and substantive hearing). The Panel therefore orders the Player to pay all the administrative costs including the costs of interpreters and travel and accommodation of panel members in relation to these two hearings. The quantum is to be assessed by the Disciplinary Officer ERC and if there is any dispute as to quantum then the matter should be referred back to the Chairman to be taxed.

RIGHT OF APPEAL

26. The Player is reminded of his right of appeal under section 8 of the ERC Disciplinary Rules.

PUBLICATION

27. ERC publishes the decisions of disciplinary hearings under ERC Disciplinary Rule 9.1. In this case the Panel considered whether or not publication was appropriate. During the adjournment hearing the Player's representatives submitted that publication of a judgment which included material setting out the Player's position on the allegations made against him might prejudice his right to a fair criminal trial in France. The Panel were not persuaded by this argument but ruled that "any fears of prejudice which may still exist in the mind of the applicant can be dealt with by this Panel directing that (inter alia) any full written decision of the panel should not be published until after criminal proceedings have been concluded, unless the applicant wishes it to be."
28. As the Player did not attend the substantive hearing, make any statements, cross examine any of the witnesses or dispute any other testimony the Player cannot be prejudiced in any future prosecution by publication of this judgment and accordingly this statement is not applicable. Nevertheless, the full judgment is not to be published until 14 days from the date of issue during which time the Player may make representations as to why it should not be published.

His Honour Judge Jeff Blackett, Chairman
Rod McKenzie
Achille Reali

21st March 2007