

## EPCR CHALLENGE CUP 2016

### Decision of an Independent Disciplinary Panel

Held at The Sofitel Hotel Heathrow London on 26<sup>th</sup> October 2016

In respect of Johan Snyman No 5 CA Brive, France ('The Player')

AND

A citing by Eddie Wigglesworth (Ireland) Citing Commissioner, in respect of an allegation of Dangerous Tackling contrary to Law 10.4(e) in the match between Worcester v CA Brive on Saturday 22nd October 2016 at Sixways Stadium, Worcester.

Disciplinary Panel

Mike Hamlin Chairman (England)

Roddy Dunlop QC (Scotland)

Andrea Caranci (Italy)

Attending:

The Player

Simon Gilham - Vice- President and main shareholder of CA Brive

Liam McTiernan - Head of Regulations & Compliance, EPCR Rugby

Danny Rumble - EPCR Regulations & Compliance Executive

### DECISION OF THE DISCIPLINARY PANEL

The Panel upheld the Citing and found that The Player committed an act of foul play, namely, a Dangerous Tackle contrary to Law 10.4(e).

The Player is suspended from taking part in the game of rugby union for a period of 5 weeks. The Player is suspended until midnight 4<sup>th</sup> December 2016 which represents a 5 week suspension omitting 26<sup>th</sup> November 2016 when CA Brive have no published fixture and therefore the Player had no meaningful game that weekend, pursuant to the 2016/17 EPCR Disciplinary Rules. The Player is free to resume playing on 5<sup>th</sup> December 2016.

The Panel made no award of costs.

### INTRODUCTION

1. The Panel was appointed as an Independent Disciplinary Panel by Professor Lorne Crerar, Chairman of EPCR Disciplinary Panel, pursuant to clauses 7.1.2 and 7.5.4 of the Disciplinary Rules. The Panel was appointed to consider the Citing Complaint against The Player in the above match in accordance with European Rugby Challenge Cup Disciplinary Rules 2016/17 ('the Rules').
2. Eddie Wigglesworth (Ireland) was appointed as Citing Commissioner to this match and cited the Player for 'a dangerous tackle' contrary to Law 10.4(e).

3. Pursuant to clause 7.5.5. of The Rules standing directions set out at Section B of Appendix Six and a supplementary direction for updated medical evidence on 25<sup>th</sup> October were issued pre-hearing.

#### PRELIMINARY MATTERS AND PROCEDURE

4. At the commencement of the hearing, The Chairman noted the identities of all present. Fog at Heathrow Airport had delayed the arrival of all in attendance, save for Mr McTiernan and Mr Rumble. The Player was South African and had been further delayed at border control. Mr Gilham had a mid afternoon return flight to Paris and Mr McTiernan and Mr Gilham jointly requested that preliminary points and consideration of the written submissions be dealt with in the absence of The Player whilst he cleared immigration. The Panel, to assist, agreed. It was confirmed by Mr Gilham that The Player's position remained as set out in his response to the directions, namely that he admitted he committed an act of foul play justifying a penalty but, which after some discussion, he agreed 'may' have justified a yellow card. On behalf of The Player, Mr Gilham confirmed that the act of foul play did not justify a red card. The Player when he arrived some 25 minutes later confirmed that this was correct.
5. The Chairman reminded all present that The Rules applied. The Chairman outlined the procedure to be adopted to determine the primary issue before The Panel, namely, whether the admitted act of foul play justified the award of a red card or not. The burden of proving this, on the balance of probabilities and in accordance with all the evidence, was upon Mr McTiernan on behalf of EPCR. All present agreed to proceeding on that basis. No Preliminary matters had been raised in The Player's response to standard directions save for points which amounted to submissions in respect of the primary issue before The Panel. The Chairman indicated that, although these were valid submissions, they would be considered in determining the primary issue but were not, on the face of it, preliminary or procedural points for The Panel to consider.
6. However, Mr Gilham, at this point in the hearing (in the absence of The Player) wished to raise a number of points which can be summarised as follows:
  - (i) he was critical of the conduct and actions of the Citing Commissioner at the game and the length of time he spent with the Worcester officials immediately after the game;
  - (ii) he enquired why there was no French member sitting on The Panel and
  - (iii) he stated that all the papers and documents served were in English and not French, and that the translation provided by EPCR had been provided very late, namely hours before the hearing was due to commence.

Mr McTiernan stated that he had been in regular contact with Dominique Antoni of the CA Brive Club in the days prior to the hearing to assist Mr Antoni with the process. It was Mr Antoni who had discussed the citing with The Player and submitted the response to the standard directions on The Player's behalf. On behalf of the Panel, The Chairman responded as follows:

- (i) The conduct and/or actions at the match of the Citing Commissioner were not a matter for the Panel as the conduct complained of was not relevant to the determination upon the justified the award of a red card. Any complaint concerning the Citing Commissioners conduct/actions at the match should be separately addressed to EPCR;

(ii) the appointment of the Panel had been set out in the Notice of hearing and any complaint/objection concerning the constitution of the Panel should have been submitted to Professor Lorne Crerar within the time limit set out in the Notice. No such complaint/objection had been submitted within the time limit and as the Panel contained 3 judicial officers from 3 different participating countries the hearing would proceed as originally appointed. In an attempt to allay Mr Gilham's concerns, however, The Chairman confirmed that a French Judicial Officer was sitting on another case to be heard after this case;

(iii) Mr Gilham was English and The Player a South African who spoke English but, nevertheless given the observation made by Mr Gilham concerning the late delivery of the translation of the papers, the Chairman offered to adjourn/stand the hearing down for a short period the hearing so that Mr Gilham and The Player could confer further. The offer was declined.

7. The Panel considered the following evidence:

- Letter from Mr McTiernan to Professor Lorne Crerar dated 24<sup>th</sup> October 2016
- The Citing Complaint
- The Player's response to standing directions and Mr McTiernan's response
- Notice of Hearing
- The DVD of the incident
- Statement from the match referee, Gary Conway (Ireland)
- Statement from the match assistant referees, J.Erskine and E. Hogan-O'Connell (Ireland)
- The written statement of Tom Heathcote (Worcester No 10)
- A medical statement from the Worcester Doctor, Dr John Chaffe
- The Player's evidence and oral submissions from The Player and Mr Gilham

#### SUMMARY OF THE EVIDENCE

8. The Player was alleged to have tackled W No 10 dangerously, contrary to Law 10.4(e). The Citing Commissioner's Complaint dated 23<sup>rd</sup> October states:

'Following ruck on Brive 22, ball is passed to WW10. He is hit at pace above the shoulders by Brive No 5 Johan Snyman. The Referee was 5 metres from the incident. In discussion with the match officials after the match, the Referee considered action of Brive 5 a tackle. No comment from A/Rs. No TV, so no TMO. Single angle camera. Player WW10 (Tom Heathcote) removed on spinal stretcher after 10+ minutes of on-field treatment by medics. Later WW10 diagnosed as concussed by medics. No immediate referral to hospital'.

9. The match officials concluded that there was no act of foul play and after the removal of WW No 10 from the field of play the referee resumed play with the award of a scrum. In the absence of a Television Match Official the officials were unable to refer the incident nor was it possible for the incident to be referred to the referee by the TMO in accordance with the foul play protocol.

10. Tom Heathcote, the WW10, stated that he remembered looking outside him and calling for the ball. The next thing he remembered was the club physiotherapist over him. He remembered nothing of the incident. Dr Chaffe, the WW doctor stated that on field WW10 was dazed and

complained of pains in his left arm. He was immobilised and eventually removed from the field after Dr Monkly had cleared his neck and authorised removal. He was assessed for concussion and exhibited a number of concussion symptoms. In Dr Chaffe's second report dated 25<sup>th</sup> October, WW10 had failed the Head Injury Assessment Nos 1,2 and 3. Concussion was confirmed. He was still exhibiting concussion symptoms on 23<sup>rd</sup> and 24<sup>th</sup> October. He was symptom free on 25<sup>th</sup> October and was therefore graded to return to play in accordance with the return to play protocol. He would miss at least one game on the weekend of 29<sup>th</sup> October and would not resume playing until he passed and complied with the return to play protocol which could be 5<sup>th</sup>/6<sup>th</sup> November or later.

11. The panel also received, in support of the Citing, recorded match footage from in front of and behind the incident which reflects the brief narrative in the citing complaint although the citing complaint does not particularise the body positions or the point of contact/collision between WW10 and The Player. The DVD shows the Player leave the defensive line and move towards WW10, the anticipated recipient of the ball. The Player is significantly bigger than WW10 and both players are slightly stooped. Immediately before contact, WW10's legs are slightly bent and The Player is also bent as he moves in to tackle WW10. Both players' heads are roughly level before contact. The DVD was watched at normal speed and frame by frame. The Player does not materially lower his body and shoulders as he moves into tackle WW10. His left arm does not appear to embrace the upper right side of WW10 but The Player's left shoulder contacts WW10 above his shoulders and to the right hand side of WW10's head. The Player's right arm appears to embrace the left hand side of WW10's torso. The point of impact is between WW10's head and The Player's left shoulder. At the point of impact WW10's head can be seen to move sharply to WW10's left. WW10 falls backwards to the ground and The Player falls to the right of the fallen WW10 not bound onto WW10. WW10 remains on the floor for some 10 minutes whilst the medics attend to him and he is then removed from the field of play on a stretcher.
12. Mr McTiernan submitted that as to the issue of the red card test, based upon the point of contact between The Player's left shoulder and WW10's head and the manner in which WW10 fell to the ground, this constituted a dangerous tackle irrespective of the fact that the match officials did not sanction the tackle. Mr McTiernan also drew the Panel's attention to the memoranda set out in Appendix 8 to the Rules, issued by the IRB (as was) in October 2007, 21<sup>st</sup> January 2011, 4<sup>th</sup> August 2011 and 22 May 2015 which provide guidance on the circumstances in which a tackle involving contact above the line of shoulders is dangerous and warrants a red card.
13. Dominique Antonio, Administrative Director of CA Brive on behalf of The Player, in compliance with the pre-hearing directions stated:
  - (i) The Player accepts that the citing complaint is a true and accurate account of the incident that resulted in the citing.
  - (ii) The Player accepts that he committed an act of foul play as set out in the citing complaint. The Player acknowledges that he would have to receive a yellow card.
  - (iii) The Player doesn't accept that the act warranted a red card.
  - (iv) The Player does not accept it because:
    - the ball carrier goes down before the tackle
    - the tackler's arms embrace the player
    - it's a tackle, not a shoulder charge
    - the Worcester players did not protest to the referee after the tackle
    - the referee stopped the match on suspicion of concussion, not to sanction the tackle

- the assistant referees reported no illicit tackle on this action.

14. At the hearing, The Player told the Panel that he agreed that he had made a mistake. He was intending to tackle hard and pointed out on the DVD that his right arm, immediately before contact, is going to the left hand side of WW10, whose legs before contact are bent half way. The referee did not deem it a dangerous tackle. He had no malice nor any intention to hurt WW10 other than executing a hard tackle. He was not aiming for his head nor above his shoulders but chest high. He wrapped his right arm around WW10 and he had to use his left shoulder to execute the tackle. There was no reaction from the Worcester players and he confirmed that both his arms embraced WW10. There had been no issues in the game. He felt that WW10's loss of consciousness was possibly as a result of hitting the ground as opposed to his shoulder coming into contact with WW10's head. He confirmed that both his arms were either side of WW10 and he was looking at below WW10's head. He accepted that he went in too high but WW10 moved unexpectedly after he had made the decision to tackle. He did not accept that by going in high towards WW10's chest there was a risk that he may commit an act of illegal and/or foul play.
15. Mr McTiernan on behalf of EPCR submitted that, based upon all the evidence and The Player's admission that he committed an act of foul play, his conduct met the threshold for the issue of a red card. The Player had aimed his tackle above the waist and his left shoulder had come into contact with WW10's head and WW10 had been rendered unconscious. The medical evidence supported this submission. The Panel had seen and heard all the evidence including the DVD, a luxury not afforded to the officials and the referee in particular, especially in the absence of a TMO. The Player should have been more careful particularly in view of the smaller stature of WW10 in the execution of his tackle.
16. Mr Gilham, on behalf of the Player, referred to the complete absence of any reaction from the crowd, players or indeed officials to the incident. As The Player moved in to complete his tackle WW10 ducked which is why there was contact above WW10's shoulder. The Player had hit WW10 very hard. Upon reflection, The Player accepts that his action merited a penalty, possibly a yellow card, but absolutely not a red card. The tackle looks hard and high but The Player is not a dirty player. This was only his second game this season as he had been injured. He is in his second season with Brive and indeed has just signed a new contract till 2020.
17. At the conclusion of the evidence and submissions, Mr Gilham indicated that, due to the imminent departure of his flight, unless the Panel were likely to reach a decision within 5 minutes he would have to depart leaving The Player to hear the Panel's decision. The Chairman indicated that it was unlikely that a decision would be decided within that time frame.

#### DECISION AS TO CULPABILITY

18. In private, the Panel reviewed all the evidence. Given the nature of the allegation, the absence of any action taken by the match officials and the necessary caution in reviewing limited angle video footage evidence, the panel reminded itself of the burden of proof and the need to analyse all the evidence with care and caution. The Panel's function is to determine whether or not on the balance of probabilities The Player's admitted act of foul play merited the award of a red card for his actions. If so satisfied, the Panel must uphold the citing complaint and proceed to sanction.

19. The Panel's findings of fact are as follows:

- (i) The Player by his own admission committed an act of foul play namely a dangerous tackle. The panel found that the left shoulder of The Player came into contact with the head of WW10 with such force whilst executing or attempting to execute a tackle that it knocked him to the ground rendering him unconscious and unable to remember the incident.
- (ii) The Player aimed to tackle WW10 chest high. On his own evidence he went in high and hard. The Player conceded at the very least his actions merited a penalty kick and possibly a yellow card.
- (iii) There was some contact by The Player with his right arm around the torso of WW10 but it was not a properly executed tackle given that his left shoulder made contact with WW10's head. The Player's left arm does not embrace WW10's torso. Had the tackle been executed properly, the left shoulder would almost certainly not have come into contact with WW10's head and The Player's left arm would have embraced WW10's torso on his right side. Furthermore, when the two players fell to ground they did not go to ground together with The Player maintaining hold of WW10; WW10 hits the ground and The Player falls to the right of WW10.
- (iv) As a result of the contact between WW10's head and the left shoulder of The Player, WW10 is rendered unconscious. It is immaterial whether WW10 is rendered unconscious by hitting the floor with his head (as suggested by The Player) or whether it was as a result of the initial contact between shoulder and head. The fact is WW10 was rendered unconscious either by the initial collision or by his head hitting the floor as a result of The Player's admitted act of foul play, namely the collision.
- (v) In accordance with World Rugby's memoranda set out in Appendix 8 of the Rules, a dangerous tackle is committed if a player tackles another player above the shoulder line. This was not a stiff arm type tackle but a recklessly and partially executed tackle with considerable force.
- (vi) The Player did not commit this act of foul play with malice or an intention to commit a dangerous tackle. He aimed at WW10's chest and hit high with considerable force whilst running at speed. WW10 did bend his legs but did not duck to the extent that The Player is exonerated from responsibility. The Player was aware of the substantial difference in height and size between the two players and having made a decision to tackle high he ran the risk that if WW10 did change his running height or direction there was a probable risk that he would commit an offence. The Player's evidence that he did not believe there was such a risk is rejected and is inconsistent with his admission that he committed an act of foul play.
- (vii) Taking into account the totality of the above findings, namely the collision of the shoulder with the head, the force and pace at which it was inflicted, the unconscious state of WW10 and his removal on a stretcher from the field of play (notwithstanding the bending of WW10's legs, the lack of sanction from the officials) was compelling evidence in the unanimous judgment of the Panel that The Player's actions merited a red card and the citing would be upheld.

The hearing reconvened. Mr Gilham had departed and The Player was now representing himself. The Chairman explained the Panel's findings in outline and that the citing would be upheld. The Panel's detailed reasons for determining that his act of foul play merited a red card would be set

out in a written judgment. As The Player was now on his own representing himself, the Chairman carefully outlined the sanction process, setting out each factor which required the Panel to determine the seriousness of the offence and the consequential entry point. The 3 entry points were explained to The Player and also how aggravating and mitigating factors were applied. The Player confirmed that he understood the process. The Player did not wish to add anything to the evidence and submissions which had been made by him or on his behalf. He told the Panel that he was 30 years of age and had been playing professionally for 12 years. He had played for The Sharks and Lions in South Africa, Scarlets in Wales for 3 years, before joining Brive. His contract had been extended to 2020. He was clearly well thought of by Brive as stated by Mr Gilham. He had never received a red card in a playing career which started when he was about 6 years of age. He was however suspended for 1 week in France last season under the yellow card totting up procedure. He was apologetic for the injury sustained by WW10 and had enquired of his well being after the match.

Mr McTiernan reminded the Panel that as this offence involved a dangerous tackle above the line of the shoulders World Rugby's Memoranda referred to above may apply. The Memoranda did not specifically mention the use of a shoulder which resulted in a dangerous tackle but it was a matter for the Panel as to whether or not this was an off field aggravating factor under the Rules.

#### SANCTION

20. In assessing the seriousness of the offence pursuant to the Rules the Panel determined as follows:-

- (i) The offending was neither intentional nor deliberate.
- (ii) The offending was reckless as set out above.
- (iii) The offending was fairly grave in that the Player's shoulder came into contact with WW10's head with considerable force arising from The Player running at speed in the act of tackling.
- (iv) Provocation, retaliation and self defence factors were not present.
- (v) WW10 was knocked unconscious as a result of the offending and removed from the field of play. He could remember nothing of the incident. He was diagnosed as suffering from concussion exhibiting concussion symptoms for 3 days after the incident. He will miss at least one game and will have to undergo the return to play protocol before he is cleared to play again which may take between 1 and 2 weeks.
- (vi) The match was delayed for 10 minutes whilst WW10 received medical treatment and was removed from the field of play.
- (vii) WW10 was not particularly vulnerable, he would anticipate being tackled but not a collision involving his head.

The Panel therefore determined that the offending merited a mid-entry point of 6 weeks in accordance with the Rules. Whilst the act of foul play was reckless, the compelling factors were the blow to the head, the speed and force of the collision, the removal from the field and the medical diagnosis of concussion. Pursuant to the Rules, the Panel determined there was one aggravating off field feature. The dangers of concussion are now well recognised. World

Rugby's memoranda relating to dangerous tackles above the shoulder are incorporated in the memoranda referred to above. The Panel determined that on the facts of this case the reckless contact between the shoulder and the head was exactly the type of offending which is to be discouraged. Therefore a need for a deterrent in accordance with the Rules was present. There is a significant risk of serious injury to a victim player's head whether contact is made by an arm, forearm or shoulder. Accordingly, an additional 1 week would be added to the entry point of 6 weeks, making a total sanction of 7 weeks.

21. Pursuant to the Rules the Panel made the following determination in respect of mitigating factors:

- (i) The Player admitted he had committed an act of foul play but denied his conduct justified the award of a red card and therefore to that extent did not accept his culpability.
- (ii) The Player has a very good disciplinary record save for his 1 week suspension in season 2015/16 for 3 yellow cards.
- (iii) The Player is 30 years of age and has been playing professionally for 12 years, therefore a mature experienced player.
- (iv) The Player's conduct before the Panel was courteous and appropriate despite his denial that his conduct justified a red card. The Panel were impressed with how he conducted himself throughout, especially after he was left to hear the findings and deal with the sanction process on his own.
- (v) The Player demonstrated some remorse by enquiring after the welfare of WW10 after the game.
- (vi) There are no other off field mitigating factors.

Based upon the above mitigating factors the Panel determined that The Player is entitled to a reduction in sanction from the 6 week entry point of 33%. All mitigating factors were not present. Having found that there was one aggravating factor it was not possible in accordance with the Rules to reduce the sanction from 7 weeks by 33% but only from the initial entry point of 6 weeks. The Player was eligible to play meaningful games for him for all the forthcoming weekends, save for 26<sup>th</sup> November 2016 when Brive 1<sup>st</sup> XV did not have a fixture according to their published fixture list. The Player is therefore suspended from playing for a period of 5 weeks until midnight on 4<sup>th</sup> December 2016. He is free to play again on 5<sup>th</sup> December 2016.

22. The Player's right of appeal was drawn to his attention pursuant to the Rules.

Mike Hamlin (England)  
Chairman  
27<sup>th</sup> October 2016.