



## **Decision of the Independent Judicial Officer**

Hearing held at the offices of Clifford Chance, 10 Upper Bank Street, Canary Wharf, London on 4 October 2015 commencing at 10.00am.

In respect of

**Manasa Saulo** of Fiji (“the Player”)

And

A citing by **Bruce Kuklinski (Canada) Citing Commissioner**, in respect of an alleged offence under Law 10.4(b) namely, a player must not stamp or trample on an opponent, in a match played between Wales and Fiji on 1 October 2015 at The Millennium Stadium, Cardiff (“the Citing Complaint”).

Judicial Officer appointed to hear the case:

**Adam Casselden (Australia) (“the Judicial Officer”)**

### **Decision of the Judicial Officer:**

- (i) The Judicial Officer upheld the Citing Complaint.
- (ii) The Player was suspended for 10 weeks. The Player is free to resume playing on 17 January 2016.

## 1. Introduction

- 1.1. I was appointed to consider the Citing Complaint against the Player in a match played between Wales and Fiji on 1 October 2015 at The Millennium Stadium, Cardiff in the Rugby World Cup 2015 (“Tournament”). The alleged incident occurred in the 32<sup>nd</sup> minute of the second half.
- 1.2. Bruce Kuklinski of Canada was appointed as Citing Commissioner to this match and cited the Player (Fiji #3) for an alleged offence under Law 10.4(b) namely, *a player must not stamp or trample on an opponent*.
- 1.3. The following persons were present at the hearing:
  - The Player;
  - Mr Tony Thorpe (Fijian Team Manager);
  - Mr Chris Smith, Lewis Silkin (Player’s legal representative);
  - Mr Ben Rutherford, Designated Disciplinary Official (“DDO”), Rugby World Cup Ltd; and
  - Ms Yvonne Nolan, Designated Disciplinary Official (“DDO”), Rugby World Cup Ltd.

## Plea

- 1.4. The Player admitted at the earliest opportunity that he committed the alleged offence under Law 10.4(b). The Player also admitted that his actions in stamping the head of his opponent (Wales #19) on two separate occasions were intentional. As a result of the Player’s early admissions what remained to be determined was what sanction, if any, should be imposed on the Player in accordance with the provisions of clause 10.10 of the Tournament Disciplinary Regulations (“TDP”).

## 2. Evidence

- 2.1. I admitted into evidence the following material:
  - The Citing Commissioner’s report (Tab 1);
  - Letter from the DDO to the Player dated 2 October 2015 (Tab 2);
  - Email to Mr Thorpe dated 2 October 2015 and subsequent correspondence (Tab 3);
  - Match Summary Sheet (including team sheet) (Tab 4);
  - An email statement from the Referee, Mr John Lacey (Tab 5);
  - An email statement from the First Assistant Referee, Mr Jérôme Garces (Tab 5);
  - An email statement from the Second Assistant Referee, Mr Mathieu Raynal (Tab 5);
  - An email statement from the Welsh Team Doctor, Dr Prav Mathema (Tab 6);
  - An email statement from Mr Justin Tipuric (Wales #20) (Tab 6);
  - An email statement from the victim player, Mr Luke Charteris (Wales #19) (Tab 6);

- Directions issued by me and responses to those directions (Tab 7);
- Statements in support of the Player from Mr John McKee (Fijian Head Coach), Mr Humphrey Tawake (Fijian RWC 2015 Team Manager) and Mr Alan Muir (Fijian Scrum Coach); and
- Video camera footage showing various angles of the alleged incident.

2.2. The Citing Commissioner described the incident in his report in the following terms:

*“At a tackle which became a ruck, Wales 19 ended up on the ground on the Fijian side of the ruck, with the ball under the side of Wales 19’s right torso. Fiji 3 raised his left leg and stamped once with his left foot contacting the left side of the head of Wales 19. Whilst Fiji 21 freed the ball with his hands from under Wales 19, Wales 19 raised his upper body partially off the ground (also being pulled up by Fiji 1) and brings his right arm back to hold the lower left leg of Fiji 3. Soon after the ball has left the ruck, Fiji 3 raised his right leg and stamped once with his right foot contacting the left side of the head of Wales 19. These actions can be seen from the video submitted from cameras 3, 6 and 26. Wales 19 was not injured and played on. There was no action from the match officials. I allege that the actions of Fiji 3 were contrary to Law 10.4(b) such that they meet the red card threshold that a red card be warranted.” (my underlining)*

2.3. The Player accepted that the Citing Commissioner’s report was an accurate description of the incident. The video footage, which I viewed a number of times, broadly corresponded with the description given by the Citing Commissioner in his report.

2.4. None of the match officials including the TMO observed the incident.

2.5. Mr Charteris (Wales #19) in an email (Tab 6) stated *“After the maul had collapsed I ended up on top of the ball. I felt someone stamp on my head once and then a few seconds later there was a bigger stamp again to my head.”*

2.6. Mr Tipuric (Wales #20) in an email (Tab 6) stated *“During the game I saw Luke Charteris lying down at the bottom of a ruck, the Fijian number 3 made contact with his boot onto Luke’s head which appeared to be a stamping motion.”*

2.7. Dr Mathema, the Welsh Team Doctor, confirmed in an email (Tab 6) that Mr Charteris did not suffer any medical consequences as a result of the Player’s actions.

2.8. Mr Smith presented the evidence of the Player. I was impressed by the Player’s frankness. Relevantly, the Player gave the following evidence between transcript page 8 line 14 and transcript page 11 line 14.

*“MR SMITH: Mr Saulo, why did you use your left foot to contact number 19 Wales?*

*MR SAULO: It was clear that he fell over the ball, and I tried to ruck him away. I used my left foot.*

*MR SMITH: And your left foot came into contact with his head. Now, do you know*

*that using your boot on someone's head is dangerous?*

*MR SAULO: It was a mistake. I felt bad about it after the game. I shouldn't have done it.*

*MR SMITH: Thanks, Manasa after you first made contact with your left foot you then made contact with your right foot. Could you explain that?*

*MR SAULO: I first made contact with my left foot. Then after, I did my right. Then he grabbed on my left, so I tried to remove him -- I tried (inaudible) with my right, but after doing it I felt really bad. I stood up then after I talked to him after the game. I said "I'm sorry" and we shook hands, and he said -- and it was -- yes.*

*MR SMITH: Just so that I can be clear, when you initially made contact with your left foot, in your mind was that because number 19 Wales was on top of the ball?*

*MR SAULO: Yes. Yes, sir. He came -- he fell over the ball, but he didn't try to move, he was just lying there.*

*MR SMITH: And you accept that you shouldn't have put your left foot on his head.*

*MR SAULO: Yes, I shouldn't have done it.*

*MR SMITH: And just to be clear again, when he grabbed your left leg and then you made contact with your right boot, do you acknowledge that that was also dangerous?*

*MR SAULO: Yes. Yes, sir.*

*MR SMITH: So you have already said that you apologised to the player after the game. Could you just tell the Judicial Officer and myself just the process about that?*

*MR SAULO: The game finished at the 80th minute. We all came out of the field. They waited for us in the tunnel. We came in first. They clapped for us, and after they came in, we waited for them. He was the last guy [Wales #19] and I was looking for him because he was quite tall. And after he came in, I grabbed him away and I shook his hand, I told him "It was me that stood on your head". I apologised for that. He said -- we talked that he was waiting for me outside of the tunnel. We chatted and then, yeah, that was it. I did apologise to him for what I did.*

*MR SMITH: Thank you.*

*JUDICIAL OFFICER: Was that accepted or not by the Welsh player, your apology?*

*MR SAULO: Yes, he accepted it, we joked and he walked off to his changing room.*

*MR SMITH: So, Manasa, would you make contact with someone's head again?*

*MR SAULO: No, sir, I wouldn't. I really felt bad doing that, especially in this competition. I wouldn't have done it again.*

*MR SMITH: If I can just ask three more questions.*

*JUDICIAL OFFICER: Take as long as you need, Mr Smith.*

*MR SMITH: How would you feel if someone used their boots on your head?*

*MR SAULO: I would feel the same way the lock did. I would feel --*

*MR SMITH: Sorry, number 19?*

*MR SAULO: The number 19 Wales team. I would feel bad, very angry too and I would want something to be done by it.*

*MR SMITH: I think you have made this point, but I'm just going to ask you again, Manasa. Do you acknowledge that you shouldn't have put either of your left foot or your right foot on number 19 Wales' head?*

*MR SAULO: Yes.*

*MR SMITH: When you did that, were you trying to hurt number 19 Wales?*

*MR SAULO: No. I didn't try to really hurt him, no."*

- 2.9. In response to questions by me the Player acknowledged that the use of the boot to the head of Wales #19 could have caused serious injury to his head. He also acknowledged that there was little Wales #19 could do to protect his head given the way in which Wales #19 was positioned under the collapsed maul. The Player attempted to explain, as best he could, why he decided to use his boot to the head of Wales #19 at transcript page 12 line 14 and transcript page 12 line 23:

*JUDICIAL OFFICER: ...Now, you said at the start of your short evidence to Mr Smith that your intention was to, in effect, move him, to ruck him away. Is there a reason why you decided to use your boot on his head as opposed to using your hands, to try and move him from where he was positioned or not?*

*MR SAULO: It was a really bad thing for me to do, to use my boot on his head. It was a mistake I done. I felt really bad about it."*

### **3. Submissions as to sanction**

- 3.1. To the Player's credit he submitted that an assessment of the seriousness of his conduct which constituted his offending should be categorised under clause 10.10.2 of the TDP as conduct being at the Top End of the scale of seriousness in order to identify the appropriate entry point under Appendix 3 of the TDP.
- 3.2. The Top End entry point for an offence under Law 10.4(b) "*Stamping/Trampling on an Opponent*" under Appendix 3 of the TDP (World Rugby Sanctions for Foul Play) dictates a sanction of 9 weeks plus up to a maximum sanction of 52 weeks.
- 3.3. Mr Smith, the Player's legal representative, addressed me on each of the applicable sub-paragraphs contained within clause 10.10.2 of the TDP. For present purposes I do not propose to set out each of those submissions in circumstances where it was ultimately submitted by the Player that the appropriate entry level for his offending should be assessed as Top End on the scale of seriousness. For reasons that follow I accepted the Player's submission on the appropriate entry level and accordingly determined that the Player's level of offending should be categorised at the Top End of the scale of seriousness of offending.

### **4. Assessment of sanction**

- 4.1. Intentional application of the foot or boot to the head is regarded seriously under the Laws of the Game. It is an offence that cannot be tolerated in the Game because not only is it totally against the spirit of the Game but it carries an inherent potential

danger of serious injury to players when contact is made to the head or head area. In our Game the head is sacrosanct.

4.2. In assessing the seriousness of the offending and by reference to TDP clause 10.10.2 I found as follows:

- a. I accepted the Player's admission that his offending was intentional. The video footage is consistent with his admission. The Player deliberately stamped the head of his opponent on two separate occasions (TDP 10.10.2(a)).
- b. I did not need to consider whether the Player's offending under TDP 10.10.2(b) was reckless in circumstances where he admitted his offending was intentional.
- c. The Player completed two stamps to the head, which is a vulnerable part of the body. The possibility of a significant injury existed. In my opinion the Player's actions were grave (TDP 10.10.2(c)).
- d. The Player applied his studded boot on two separate occasions to the head of the victim player (TDP 10.10.2(d)).
- e. There was no provocation (TDP 10.10.2(e)) and the Player's actions were not retaliatory (TDP 10.10.2(f)) or done in self-defence (TDP 10.10.2(g)).
- f. There was no injury to the victim player (TDP 10.10.2(h)). This in my opinion was nothing more than good fortune and may have come about because the victim player was wearing head protection (head gear).
- g. The Player's offending did not have any effect on the match (TDP 10.10.2(i)).
- h. The victim player was clearly placed in a vulnerable position. He was on his stomach beneath a collapsed maul. Each stamp was unexpected and without warning. He had limited means available to him, given the position of his arms and body, to protect himself from the Player's actions. Following the first stamp to his head the victim player took hold of the Player's left leg. Very shortly thereafter the Player applies the boot of his right foot to the head of the victim player with more force than the first stamp. (TDP 10.10.2(j)).
- i. The Player acted alone (TDP 10.10.2(k)).
- j. The Player's offending was complete (TDP 10.10.2(l)).

4.3. Accordingly, I accepted the Player's submission and considered this Top End Foul Play which carries an entry point of 9 weeks plus up to a maximum sanction of 52 weeks on the World Rugby Sanction Table.

- 4.4. For offences categorised at the Top End of the scale of seriousness of offending I am required under 10.10.3 of the TDP to identify an entry point between the period shown as the Top End for the particular offence, namely, 9 weeks and the maximum sanction namely, 52 weeks in Appendix 3.
- 4.5. After careful consideration I assessed the seriousness of the offending as warranting a 16 week (4 month) entry point. I came to that conclusion, in addition to the reasons already referred to above, because:
- a. the Player repeatedly and deliberately targeted the head of his opponent in circumstances where the victim player's head was nowhere near the ball; and
  - b. the second stamp by the Player was more forceful than the first stamp demonstrating a total disregard for the welfare of the victim player.

### **Aggravating Factors**

- 4.6. The Player submitted there were no aggravating factors which should apply to the case in question.
- 4.7. The DDO submitted that I should consider increasing the entry point for aggravating factors for two reasons. First, it was submitted that the Player was the third Fijian player in the Tournament to be the subject of a disciplinary hearing for Foul Play and that therefore I should consider increasing the entry level applicable to this Player under clause 10.10.4(b) of the TDP as a need for a deterrent to combat a pattern of offending in the Game by the Fijian Team in the Tournament.
- 4.8. Secondly, it was submitted by the DDO that the Player's serious offending may have been viewed by a considerable world wide television audience which warranted increasing the entry point as an off-field aggravating factor under clause 10.10.4(c) of the TDP.
- 4.9. In relation to the DDO's first submission I concluded that 10.10.4(b) when properly construed had no application to the case in question. Clause 10.10.4(b) needs to be construed in the context of the TDP as a whole. The object of clause 10.10.4(b) is to combat a pattern of offending in the Game. The words "*pattern of offending*" in my opinion means a particular or specific type of offending, for example, lifting tackles, contact with the eyes or eye area or dangerous high tackles. In support of my construction I relied upon the IRB and World Rugby Memoranda issued from time to time with respect to patterns of offending which have emerged in the Game. Each of the Memoranda issued to date relate to a specific type of offending and not to offending in the Game per se. Accordingly, I came to the view that whilst it was disappointing that three players from the Fijian Team have committed acts of Foul Play in the Tournament I could not lawfully invoke clause 10.10.4(b) and increase the entry level applicable to this Player in the hope that it would act as a deterrent to other members of the Fijian Team.

- 4.10. In relation to the DDO's second submission I concluded that 10.10.4(c) did not apply to the case in question. None of the match officials including an experienced TMO observed the Player's offending. I was informed that the offending was not replayed as part of the television broadcast. There was no evidence before me as to the numbers or likely numbers of viewers who may have observed the Player's offending. For me to find that a considerable world wide television audience viewed the Player's offending would be conjecture on my part and accordingly I was not prepared to increase the entry level under clause 10.10.4(c).
- 4.11. I also considered under clause 10.10.4(a) whether the Player was an offender of the Laws of the Game and for the reasons that follow I determined that he was not.
- 4.12. I therefore found there were no aggravating features that warranted any increase on the entry point.

### **Mitigating Factors**

- 4.13. I took into account the following mitigating factors (with reference to the following) (TDP 10.10.5).
- a. The Player is 26 years of age and has played 25 Tests for Fiji. He commenced playing rugby from the age of 9 years. He presently plays professional rugby in Romania and before that he played first division/top tier rugby in Fiji for Suva and Fiji Navy. Since the age of 18 years he has received one red card in 2012 (aged 23 years of age) for a high tackle for which he was suspended for 3 weeks. In 2011 he received a yellow card for collapsing a scrum. The Player also received a yellow card in 2009. Apart from those three matters the Player's disciplinary record was otherwise unblemished.
  - b. I accepted that the Player's remorse and contrition for his offending was genuine and timely.
  - c. The Player conducted himself respectfully and appropriately as one might expect from a player of his standing.
  - d. The Player's acceptance that he committed an act of Foul Play at the earliest opportunity and his frankness in accepting responsibility for his actions including submitting that on the scale of seriousness his offending was Top End.
  - e. I accepted the Player's good character as attested to by Mr McKee, Mr Tawake and Mr Muir.
- 4.14. Accordingly, taking into account the above mitigating factors including his early admissions, good disciplinary record, good character and remorse and the absence of any off-field aggravating factors, I reduced the 16 week sanction to a period of 10 weeks.

## **5. Finding as to Sanction**

- 5.1. Accordingly, the Player was suspended for a period of 10 weeks. In the context of the Rugby World Cup Tournament a week equates to one match. The suspension took effect immediately, therefore the Player was suspended for Fiji's last Rugby World Cup match against Uruguay scheduled to be played on Tuesday, 6<sup>th</sup> October 2015.
- 5.2. As required by the TDP I requested information as to the Player's upcoming schedule of matches and was provided with the Player's provisional or tentative playing schedule between now and the start of 2016. Based on the available information before me the Player was suspended from all forms of rugby up to and including 16 January 2016. He is free to resume playing on 17 January 2016. The Player's suspension is, however, subject to confirmation of his Club's domestic and European playing schedule for the coming season. In that regard I directed the Player and the DDO to provide to me the additional information as soon as was reasonably practicable.

## **6. Right of Appeal**

- 6.1. The Player was advised that he has 48 hours in which to appeal from the time he is notified of the written decision.

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**Adam Casselden**  
**Judicial Officer**

**Dated: 6 October 2015**