



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

Hearing held at the offices of Clifford Chance, 10 Upper Bank Street, Canary Wharf, London.  
Tuesday 13 October 2015 – starting at 6:45 pm

In respect of

**Marcelo Bosch** of Argentina (“**the Player**”)

And

A citing by **Peter Larter (England)**, Citing Commissioner, in respect of an alleged offence under Law 10.4 (e) namely , a player must not tackle an opponent early, late or dangerously in a Match played between Argentina and Namibia on 11 October 2015 at Leicester City Stadium, Leicester (“**the Citing Complaint**”)

Judicial Officer appointed to hear the case:

**Jean Noel Couraud (France)** (“**the Judicial Officer**”)

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

- (i) The Player admitted the act of foul and the citing complaint was upheld.
- (ii) The Player is suspended from taking part in the game of rugby union for a period of 1 week, up and to including 18 October 2015. The Player is free to resume playing on 19 October 2015.

## **Introduction**

- 1.1 I was appointed to consider the Citing Complaint against the Player in the Match played between Argentina and Namibia on Sunday 11 October at Leicester, in the Rugby World Cup 2015 ("The Tournament").
- 1.2 Peter Larter (England) was appointed as Citing Commissioner to this Match and cited the Player for an alleged offence under Law 10.4(e) namely, "a player must not tackle an opponent early, late or dangerously".
- 1.3 Pursuant to Section 2 of Appendix 5 to the Tournament Disciplinary Programme ("TDP") I issued pre-hearing directions.
- 1.4 In addition to the Judicial Officer the following persons were present at the hearing:
  - The Player
  - Chris Smith (The Player's representative)
  - Nestor Galan (Vice President, UAR)
  - Victor Luaces (Vice Secretary, UAR)
  - Ms Yvonne Nolan, ( Designated Disciplinary Official ("DDO"), Rugby World Cup Limited (RWCL"))
  - Ms Brigitte Hall, interpreter
  - Ms Patricia Bianco, interpreter
- 1.5 As a preliminary issue I referred to the terms of the responses to the pre- hearing directions. The Player confirmed that he admitted the act of Foul Play contrary to Law 10.4(e). As the Player admitted the act of foul play, the hearing therefore would deal with the issue of what sanction, if any, should be imposed on the Player in accordance with the provisions of clause 10.10 of the Tournament Disciplinary Programme ("TDP").

## **2. Evidence**

- 2.1 I admitted into evidence the following material:
  - Citing Commissioner's report;
  - Letter from the DDO to the Player dated 12 October 2015;
  - Match Summary Sheet (including Team Sheet);
  - Yellow card report;
  - An email statement from the Assistant Referee 1, Mr Jerome Garces;
  - An email statement from the Assistant Referee 2, Mr Mike Fraser;
  - An email statement from Mr Wessel Kotze;

- Statement in support of the Player from Mr Mark McCall (Saracens Director of rugby);
- Decision of the Judicial Officer in respect of Mr Faibili Levave;
- Memorandum from Joël Jutge, World Rugby High Performance Match Officials Manager and Tim Gresson, World Rugby Judicial Panel Chairman regarding Dangerous Tackles, 22 May 2015

2.2 In addition, video footage was admitted.

2.3 Peter Larter (England) was appointed as Citing Commissioner to this match. He described the incident in his report in the following terms:

*“The incident occurred at 52.05 but the TMO came in at 52.55 telling the referee that he wanted to look at a potential dangerous tackle by the Argentinian number 22 (Marcelo Bosch) on the Namibian number 10 (Theuns Kotze). Having viewed different angles the referee and the TMO agreed that it was a dangerous tackle and that Kotze had landed on his chest; the referee then awarded a Yellow Card against the Argentinian number 22. Having viewed the incident at many different angles it is clear that Bosch was committed to the tackle, which initially was legal. He then lifted Kotze just above the horizontal and, as Kotze was going down head first, he extended his arms and contacted the ground in an attempt to break his fall, but was unable to stop his head next coming into contact with the ground. During the course of the tackle Marcelo Bosch maintained his hold on Kotze’s waist with his right hand and his upper leg with his left hand, apparently in an attempt to minimise the impact, but he was not able to prevent Kotze’s head from hitting the ground. Bosch did not drop or drive Kotze to the ground. The clips which best show Kotze’s head contacting the ground are: Yellow Card clips at 01.01; 01.31; 02.51; 03.03 and 03.27. Discard Clips at 00.34/00.35.”*

2.4 He described the nature of the alleged offence as follows :

*“The tackle was a dangerous lifting tackle, which could come under 10.4(j). However, Marcelo Bosch did not drive or drop the Namibian number 10 and he did maintain his hold but was unable to prevent Theuns Kotze’s head from making contact with the ground just after Kotze tried to break his fall with his extended arms.”*

2.5 Therefore the Citing Commissioner considered that the infringement is an offence under Law 10.4(e) namely a player must not tackle an opponent early, late or dangerously.

2.6 The Player accepted that the Citing Commissioner’s report was an accurate description of the incident.

2.7 The video footage which was reviewed in detail during the hearing, confirmed the description given by the Citing Commissioner.

2.8 During the match the TMO told the Referee that he wanted to look at a potential dangerous tackle by the Player on N 10. Having viewed the incident the Referee and the TMO decided that the infringement merited a yellow card.

2.9 The Referee's report on yellow card reads as follows: "*Tackled and passed beyond the horizontal whilst being tackled*".

2.10 The Assistant Referee 1 stated :

*"On the field I was on the opposite side of the tackled and not in right position to determine if the tackled was legal or illegal. I asked the TMO to check this tackled."* (sic)

2.11 The Assistant Referee 2 said in his statement that he did not see the incident.

2.12 Mr Wessel Kotze stated in his email that the N10 was not injured in the incident in question.

2.13 The Player presented evidence on his own behalf.

2.14 The footage was played and viewed with no sound (angle 1, camera 1, angle 2, camera 12) in slow motion (25 %).

2.15 The Player gave the following evidence (transcription page 9 and 10) :

*" MR SMITH: So can you talk to me about the dynamics of the tackle at this point, and what you were feeling in terms of what you thought was going to happen and what started to happen.*

*MR BOSCH: I thought that the impact was going to be more harder. But as he released the ball, always when you release the ball it's like you are not more in a position of strength sometimes. You are seeing more where it goes. You are seeing where it goes and you are not seeing what is coming ahead of you. So I felt really not surprised but, well, in that moment when I shifted I seen a shoe like in my face, like it's going to be the moment now, and there I realised that I was in a risky position with him.*

*MR SMITH: Great. So if we can just play on.*

*Yes. Just there.*

*Now, at that point you have the player' (inaudible) to be lifted. Now, just talk to me about how that happened and what do you start to feel like at that point?*

*MR BOSCH: In that point, of course, I felt that -- well, if I am seeing his shoes that his legs is more than in a horizontal position and that's not in the rule. Of course I know it because of the rule, but in the moment I felt like this is not supposed to be done. So I tried -- I tried to go as smoothly as I could with him to the ground because I couldn't -- I couldn't lift him back because his body weight was going down. So I tried like this to keep him up as much as possible and go with him to the ground as smoothly as possible, not to harm in any way."*

2.16 The Player accepted that he did place N10 in a position of risk and said that he tried to make the landing as safe as possible. He accepted that he made a mistake and said that his act was not intentional.

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

- 3.1 The DDO had no particular submission on the entry point. The DDO wanted to refer to the vulnerability of N10 in accordance to clause TDP 10.10.2.
- 3.2 On behalf of the Player it was submitted that this act of Foul Play merited a low end entry point. It was submitted that the act of Foul Play was not covered by the 22 May 2015 Memorandum and therefore there were no aggravating factors. I was advised that the Player had a clean disciplinary record. The Player's representative made submissions on behalf of the Player to the presence of mitigating factors.

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

- 4.1 In assessing the seriousness of the offending and by reference to TDP Clause 10.10.2, I find as follows:

- a. The offending was reckless. The Player knew (or should have known) there was a risk of committing an act of Foul Play and exposed his opponent to a risk of serious injury (TDP Clause 10.10.2(b) (c) (d));
- b. There was no provocation, the Player did not retaliate, nor did an act of self-defence (TDP Clause 10.10.2 (e) (f) (g));
- c. No injury was caused (TDP Clause 10.10.2 (h));
- d. The conduct had no effect on the match (TDP Clause 10.10.2 (i));
- e. N 10 was vulnerable (TDP Clause 10.10.2 (j));
- f. The offending was complete and was not premeditated (TDP Clause 10.10.2 (k) (l));
- g. There were no other relevant features (TDP Clause 10.10.2 (m)).

- 4.2 Accordingly I concluded that the act of Foul Play was at the lower end of the scale of seriousness of offending. The applicable entry point in terms of TDP Appendix 3 is 2 weeks.

- 4.3 With regard to Aggravating factors I found that :

- a. The Player is not an offender of the Laws of the Game (TDP Clause 10.10.4(a))
- b. As for the need for a deterrent to combat a pattern of offending, The act of Foul Play was not covered by the 22 May 2015 Memorandum (TDP Clause 10.10.4 (b));

- c. There were no other relevant off-field aggravating factors (TDP Clause 10.10.4 (c)).

4.4 I considered the following Mitigating factors with reference to TDP Clause 10.10.5 :

- a. The Player acknowledged at the early stage, his culpability for the offence and the evidence submitted on his behalf indicated the he took responsibility for his actions (TDP Clause 10.10.5 (a));
- b. The Player has a clean disciplinary record and a good character (TDP Clause 10.10.5 (b)) ;
- c. The Player's conduct before and at the hearing was exemplary (TDP Clause 10.10.5 (d));
- d. The Player was remorseful (TDP Clause 10.10.5 (e));

4.5 Accordingly, after taking into account the above Mitigating factors, I have concluded that the Player is entitled to a 1 week reduction of sanction.

4.6 The Player's representative on behalf of the Player submitted that the Player ought to receive the benefit of a sanction less than fifty per cent reduction pursuant to TDP Clause 10.10.7 while there are off-field Mitigating factors. He referred to the Faifili Levave decision. The DDO submitted that the sanction could not be wholly disproportionate to this type of offending. I did not consider that the sanction of 1 week was "*wholly disproportionate for the level and type of the offending*". The Player's conduct was dangerous and exposed N10 to a risk of serious injury. In those circumstances, a sanction of 1 week notwithstanding the off-field Mitigating factors is not wholly disproportionate.

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

5.1 Accordingly, the Player is suspended from playing rugby union for 1 week, up and to including 18 October 2015. The Player is free to resume playing on 19 October 2015. The effect is that he is suspended for the match, Argentina against Ireland on 18 October 2015.

## **6. Right of Appeal**

6.1 The Player has a right of appeal from the decision in accordance with TDP Clause 10.13.

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**Jean Noel COURAUD**  
Judicial Officer

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**14 October 2015**