



Decision of the Independent Judicial Officer

Hearing held at the offices of Clifford Chance, 10 Upper Bank Street, Canary Wharf, London on 12 October 2015 commencing at 1.30pm.

In respect of

Paula Ngauamo of Tonga (“the Player”)

And

A citing by **Mike Rafter (England) Citing Commissioner**, in respect of an alleged offence under Law 10.4(j) namely: *“lifting a Player from the ground and dropping or driving that Player into the ground whilst that Player’s feet are still off the ground such that the Player’s head and/or upper body come into contact with the ground is dangerous play”*, in a match played between New Zealand and Tonga on 9 October 2015 at St James’ Park, Newcastle (“the Citing Complaint”).

Judicial Officer appointed to hear the case:

Terry Willis (Australia) (“the Judicial Officer”)

Decision of the Judicial Officer:

- (i) The Judicial Officer confirms the admission of an act of foul play by the Player, as alleged in the Citing Complaint;
- (ii) The Player is suspended from all forms of rugby up to and including 30 October 2015.

1. Introduction

- 1.1. I was appointed to consider the Citing Complaint against the Player in a match played between New Zealand and Tonga on 9 October 2015 at St James' Park, Newcastle in the Rugby World Cup 2015 ("The Tournament"). The alleged incident occurred in the 29th minute of the second half.
- 1.2. Mike Rafter of England was appointed as Citing Commissioner to this match and cited the Player for an alleged offence under Law 10.4(j) namely, "*lifting a Player from the ground and dropping or driving that Player into the ground whilst that Player's feet are still off the ground such that the Player's head and/or upper body come into contact with the ground is dangerous*".
- 1.3. The following persons were present at the hearing:
 - **The Player**
 - **Mr Peter Harding** (Tonga Team Manager)
 - **Mr Chris Smith, Lewis Silkin** (Player's legal representative)
 - **Mr Ben Rutherford**, Designated Disciplinary Official ("DDO"), Rugby World Cup Ltd
 - **Ms Yvonne Nolan**, Designated Disciplinary Official ("DDO"), Rugby World Cup Ltd
- 1.4. In response to the Directions I received email correspondence from Mr Chris Smith (Smith) dated the 11th October 2015. Smith confirmed that the Player admitted that he committed an act of foul play and that the Citing Complaint was a true and accurate account of the incident.

2. Summary of Citing Complaint

- 2.1. The Player was cited for a "tip tackle" in breach of Law 10.4(j). The incident was described by the Citing Commissioner Mike Rafter as follows:

"New Zealand 10 steps inside Tonga 16 who grasps NZ10 around the legs and proceeds to lift his legs above the horizontal. Tonga 6 then, recklessly, releases the NZ Player and allows him to fall to the floor (sic) with no due care or attention for the safety of the tackled Player. NZ10 is, very fortunate to have been able to place an arm out and on the ground as he released by (sic) Tonga 16, to break his fall. Following the tackle and lift, Tonga 6 showed no regard whatsoever, for the safety of NZ10, dropping him to the floor (sic)."
- 2.2. In support of the Citing Complaint, I received recorded match footage of the incident. My findings in relation to the camera angles are set out below in paragraph [4.1] below. At this stage, I need only record that the quality of the footage was excellent and generally accords with the narrative in the Citing Report.

3. Evidence

3.1. Smith confirmed that the Player admitted that he executed a tip tackle on Daniel Carter (NZ10) in breach of Law 10.4(j). Accordingly, the hearing involved an assessment of the applicable sanction, if any.

3.2. I admitted into evidence the following documents as Exhibits (Ex):

- 'A' The camera angles referred to below
- 'B' The Citing Commissioner's Report from Mike Rafter referred to above (Tab1)
- 'C' Letter of referral from the DDO Ben Rutherford (Tab 2)
- 'D' Letter of Service of Preliminary Documents from Patrick Lloyd (RWC) (Tab 3)
- 'E' Match Summary (Tab 4)
- 'F' The Referee's Report from John Lacey with respect to the Temporary Suspension Report (Tab 5)
- 'G' Email exchanges with the Match Officials J P Doyle (G1) and Marius Mitrea (G2) (Tab 6)

3.3. In the Temporary Suspension Report (ExF) the Referee John Lacey noted that:

'Red 16 lifted a black Player from the ground and his legs went beyond the horizontal and dropped him onto his side. The referee used the TMO and both agreed this was a yellow card'

3.4. J P Doyle (Assistant Referee) indicated (ExG1) that he did not see the incident and Marius Mitrea (Assistant Referee) indicated (ExG2) that:

'NZ10's legs went beyond the horizontal and he was not brought to the ground in safe manner'

4. Analysis of Camera Angles

4.1. The match was recorded by many cameras at the field. The hearing was conducted on the basis that I viewed each one of the camera angles relied upon by the Citing Commissioner and then again, whilst submissions were made by Smith during the course of viewing the vision of the angles. A helpful and detailed analysis was carried out by Smith, by way of submissions. Discarded camera angles were made available to the Player, but were not referred to. So as not to overly extend these Reasons, I have not referred to each of the submissions made by Smith. I have only referred to those parts of the camera angles that were of assistance in enabling me to make my findings in relation to the applicable sanction. Set out below is my analysis and findings of fact in relation to the angles viewed by me:

Broadcast Angle

- Illustrates the tackle
- Shows that the referee examined the incident on the screen and issued a yellow card
- Shows that NZ10 is lifted by the Player beyond the horizontal his legs almost directly above the head
- Further illustrates the Player's total disappointment at viewing the incident on the screen

Angle One – Camera 6

- This is a back view and shows the Player lifting with his elbow pointed up in the air and the hand remains on the left hip of NZ10 until he makes contact with the ground
- There is then a movement forward of the right hand more consistent with the force being placed on the hip rather than guiding the hip
- It was submitted by Smith that there was no force used by the Player on NZ10 as he dropped to the ground. This angle does not support this submission
- This also illustrates that NZ10's head lands on the ground
- This is as a result of the side of his body making contact with ground and then the head reacts
- When comparing NZ10's actions and that of the Player's, it is evident that the Player was caught off balance. This is consistent with the Player's evidence that he expected NZ10 to offload the ball. The Player led with his non-dominant left shoulder

Angle Two – Camera 11

- This angle includes the broadcast angle
- Immediately after the incident, the Player seems to duck his head to hide behind Tonga 4. I cannot find that this was deliberate, but probably a stumble by him as he went back into the defensive line
- It, however, shows that he does not look towards NZ10 at any time after the tackle, but continues on with play consistent with the Citing Commissioner's comment "*showed no regard whatsoever for the safety of NZ10*"

Angle Three – Camera 13

- Shows that the Player was in good body position with his elbows down ready to tackle
- NZ10 steps inside and the tipping tackle occurs

5. Evidence from the Player

- 5.1. The Player confirmed that when viewing the angles A1C6 at 25% (2.46) that he got caught on the back foot. He confirmed that he was not in a strong position due to

NZ10 changing his angle and not passing. He stated that his intention was to execute a dominant tackle, which he described as tackling NZ10 and not allowing the Player to go forward and driving NZ10 backwards. He confirmed that, his main objective was to 'win the contact contest'. He confirmed that after viewing the angles, that he was too upright and that, in part, caused him to lift his elbow in order to form a dominant tackle. In his evidence he further confirmed that:

"My mindset was to make a dominant tackle that's why I carried on. But once I got there it was the wrong sort of dominant tackle that I wanted... I got sort of halfway and it was only at that point that I sort of realised that you know he was in the air."

5.2. When questioned by Smith he acknowledged that lifting a Player in a manner in which he executed the tackle on NZ10 was dangerous. He explained his actions by saying that it all happened very quickly, he 'sort of froze'.

5.3. With respect to sanctioning generally, he expressed real remorse. This can be seen on the Broadcast Angle and he was extremely disappointed with himself. He gave evidence that:

"I was gutted because I'm not the sort of Player who plays dirty (sic), I don't think I've ever had a yellow card in my whole career. And straight away I knew that it was bad once I saw the replay. I was just really gutted because I don't get much chance to play in a World Cup (sic)"

6. Submissions on Sanction

6.1. Smith submitted that the Player's actions in standing up and going through with a tackle, were reckless. He submitted that the Player's intention was not to be involved in a lifting tackle, to lift NZ10 off the ground. He confirmed that the Player's intention was to drive NZ10 back towards his own goal line and to win the tackle contest. It was submitted in all the circumstances that I would not find that the actions were intentional, but reckless. Smith submitted that the Player apologised to NZ10 after the match and that I should accept the evidence given by the Player that he apologised to NZ10 in the changing room and 'they had a beer'. This was confirmed (in part) by NZ10 (ExH). Further, it was submitted that NZ10 was not injured, he played on such that the actions of the Player had no effect on the game, other than to cause his own team to be without a Player, because of the yellow card. The lack of injury to NZ10 was confirmed in the statement made by NZ10 (ExH). An overall submission was made that I should assess the offending as lower end and apply no sanction after considering Clause 10.10.7. Smith indicated that the issuing of a sanction would have a significant effect on the Player. He confirmed that Tonga had no further part in the Tournament and that the Player had returned to appear at the hearing, to accept his responsibilities. Peter Harding, the Tongan Team Manager gave evidence as to the culture that had developed within the Tournament squad and that the Player was a vital part of the future of Tongan rugby. Smith submitted that the Player was a person of good character.

7. Findings in relation to Sanction

7.1. I have done the best I can when referring to the vision above, to make findings in relation to the specific issues raised by the Player. After analysing all the evidence including the evidence of the Player and having regard to the submissions made by Smith, I make the following general findings necessary for me to embark upon the sanctioning regime in TDP Clause 10.10 *et seq.* I find:

- (a) That, immediately before contact, the Player was caught off balance and didn't anticipate that NZ10 would change his direction. The Player anticipated that NZ10 was going to pass the ball.
- (b) The Player lead with his non-dominant left shoulder into contact.
- (c) The Player was caught off balance, but continued to attempt a dominant tackle. He was in a bad position and could not complete the tackle in the manner in which he was trained.
- (d) When the Player embarked upon the tackle it was not his intention to execute a 'tipping tackle', however, as his body position was compromised, due to the change in direction, it is clear that the Player used his right arm to tip NZ10 beyond the horizontal. This is illustrated with the use of the right elbow being in an elevated position.
- (e) I find that once the Player had NZ10 in this dangerous position, he followed through with dropping NZ10 with a degree of force. This was referred to above in the camera angles with the right hand remaining on NZ10, until he struck the ground. The right hand can be seen to flick out, consistent with following through with the use of the right hand.
- (f) I accept that the Player never intended to hurt NZ10.
- (g) I find that the Player's actions were more the result of a manifestation of the 'agony of the moment', rather than a premeditated act of foul play committed on NZ10.
- (h) Thankfully, there was no injury to NZ10 and he played on.

7.2. Having made the general findings, it's necessary to carry out an assessment of the seriousness of the Player's conduct that constitutes the offending and categorise that conduct, in accordance with TDP Clause 10.10.2. I intend to assess the seriousness of the Player's conduct in accordance with the features identified in Clause 10.10.2 as follows:

- (a) The offending was intentional. The Player was losing the tackle contest at the breakdown and could not execute a dominant tackle, legally. He used his right arm to elevate NZ10 during the tackle and then lifted NZ10 above the horizontal, resulting in a 'tipping tackle'. I accept the submissions made on his behalf that he did not intend the consequences of his actions. I accept the evidence from the Player that he did not intend to injure NZ10.
- (b) See (a) above.
- (c) As to the gravity of the Player's actions in relation to the offending. I accept the submissions made by the Player that what occurred was an instinctive

reaction to the change of angle made by NZ10, although the offending had the potential to cause serious injury.

- (d) Other than the potential for serious injury there were no other relevant considerations.
- (e) There was no provocation.
- (f) The Player did not retaliate.
- (g) The Player did not act in self defence.
- (h) NZ10 was not injured.
- (i) The Player's actions did not have any effect on the match.
- (j) The lifting of NZ10 into the air, did place NZ10 in a vulnerable position.
- (k) There was no element of premeditation.
- (l) The 'tipping tackle' was completed.
- (m) There were no other relevant features.

7.3. Bearing in mind the task required of me in Clause 10.10.2, I determine the seriousness of the Player's conduct is best characterised as lower end on the scale of seriousness, namely four weeks on the World Rugby Sanctions Table Appendix 3.

7.4. Having identified the applicable entry point, it is now necessary for me to consider the factors referred to in TDP Clause 10.10.4 to determine whether or not, if any, an additional period of suspension should be applied to the applicable entry point for the offence, should any of the factors apply. I accept the submission that the Player has an exemplary disciplinary record (TDP Clause 10.10.4(a)). It was submitted on behalf of the Player that I would not apply an uplift for the need to combat a pattern of offending in the game, namely 'tipping tackles' (TDP Clause 10.10.4(b)). On 8 June 2009 the IRB issued a Memorandum, entitled 'Dangerous Tackles' to Referees, Citing Commissioners, Judicial Officers and Non-Legal Judicial Committee Members. It was circulated to Member Unions on 10 June 2009. The purpose of the 2009 Memorandum was to '*emphasise that they [lift and tip tackles] must be dealt with severely by referees and all those involved in the off-field disciplinary process*'. Smith submitted that I should not take into consideration the 2009 Memorandum, because of the reference in the Memorandum to a Red Card being required, when there is a circumstance where there is '*no regard for the Player's (victim) safety*'. It was argued that I accepted that the Player *did* have regard for NZ10's safety, once he had the Player beyond the horizontal. I have made specific findings of fact, that there was force used by the Player and, factually, cannot accept that there was genuine regard for NZ10's safety, at the time the tackle was executed. In any event, I do not agree in principle with the submission that the Memorandum can be utilised by the Player to avoid the consequences of a 'tipping tackle'. These types of tackles are dangerous and should be eliminated from the game.

7.5. The pattern of offending is 'tipping tackles'. The Memorandum was issued to all parties. The instruction in relation to a penalty or issuing of cards was a reference to the referees, not the direction to a Judicial Officer (JO). Players committing acts of foul play with respect to lifting or tip tackles, is still a feature in the game of rugby today, as has been witnessed in this Tournament. A JO does not carry out an enquiry as to whether or not an incident was worthy of a penalty, yellow card or red card. The task of the JO is to determine whether or not an act of foul play has been committed

(or relevantly, admitted by the Player) and then to embark upon the sanctioning procedures, in accordance with TDP Clause 10.10.

- 7.6. The tackle executed by the Player was a classic 'tip tackle'. The 2009 Memorandum remains in force. I am required to assess the offending in this case, to determine whether or not an additional period by way of an uplift for this offending was required. I find that the offence is of the type referred to in the 2009 Memorandum and there is a need for a deterrent to combat the offending that occurred in this case. I therefore add a period of one week to the entry point of four weeks.
- 7.7. With respect to mitigating factors and with reference to TDP Clause 10.10.5, I make the following findings:
- (a) I accept that the Player acknowledged he committed an act of foul play and did not dispute the essential facts.
 - (b) The Player has an exemplary playing record. He is aged 27 and currently a Player for Mont de Marsan in France and has previously played for Oyonnax, also in France. He has played in New Zealand for the Crusaders in the Super 15 Competition and had a season in Sydney playing for the West Harbour RFC. I accept that he came back to face his responsibilities and he is a person of good character.
 - (c) The Player's conduct before and at the hearing was excellent and could not be faulted.
 - (d) He expressed real remorse for what occurred. The vision of him watching the tackle with his arms above his head and wiping his face when viewing the image of the incident on the screen, as it was being viewed by the TMO, was compelling. He apologised to NZ10 in the changing rooms, at the first opportunity.
- 7.8. Having regard to the mitigating factors identified above, I consider a reduction of the other applicable sanction by two (2) weeks, is appropriate in all the circumstances.
- 7.9. In respect of the submission made that I should apply TDP Clause 10.10.7, I propose to reject this submission. In cases involving offending that has been classified pursuant to Regulation 10.10.2 as lower end, I may apply a sanction less than 50% of the lower end sanctions when there are off-field mitigating factors and where I consider that the sanction would be '*wholly disproportionate to the level and type of offending involved*'. I have identified the relevant mitigating factors in paragraph [7.7] above. However, I do not consider that the sanction of three (3) weeks is wholly disproportionate to the offending that occurred in this case. I consider that the adverb 'wholly' modifies, by addition, the word 'disproportionate'. Its ordinary meaning is completely, totally or entirely. It connotes a sanction which is exceptional for the level and type of offending. It is worth noting that the sanctions are of universal application and were determined at the 2012 Morality of the Game conference with contributions from all stakeholders.
- 7.10. Further, I note that the 2009 Memorandum addressing this type of offending remains in force. On my factual findings, the Player's conduct was dangerous. It exposed

NZ10 to the risk of potential serious injury. In those circumstances, a sanction of three weeks, notwithstanding the off/field mitigating factors, is not wholly disproportionate.

7.11. Accordingly, I impose a sanction of three (3) weeks. It is a core sanctioning principle that one (1) week equals one (1) game. I was informed that the Player is scheduled to play against Montauban on 16 October; Bayonne on 23 October and Albi on 30 October. Accordingly, the Player is suspended from all forms of rugby up to and including 30 October 2015.

8. Right of Appeal

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

9.2. Each Player has a right of appeal from the decision in accordance with the DTP Clause 10.13.



Terry Willis
Judicial Officer

Dated: 15 October 2015