

RUGBY WORLD CUP FRANCE 2007

INTERNATIONAL RUGBY BOARD (IRB)

THE DECISION OF THE APPEAL COMMITTEE IN RELATION TO THE APPEAL BY OTAR ELOSHVILI

Appeal Committee:

Bruce Squire QC (New Zealand)
Judge Guillermo Tragant (Argentina)
Maître Paul Mauriac (France)

In attendance were:

Mr. Otar Eloshvili – Player
Monsieur Henri Le Gland – Vice-Président du Club de Saint Nazaire

Ms. Susan Ahern – Counsel for the IRB
Mr. Payam Beheshti – Counsel assisting Ms. Ahern

Ms. Alison Moore – Interpreter
Ms. Joanna Farmer – Interpreter

DECISION

1. Introduction

1.1 This is an Appeal by the Georgian player Otar Eloshvili who was suspended from all rugby for a period of seven weeks up to and including 18 November 2007 following a hearing before a Judicial Officer in Paris on 2 October last at which Eloshvili acknowledged he had been guilty of a dangerous tackle on a French player in the match played between Georgia and France at Marseille on 30 September 2007. The suspension imposed by the Judicial Officer was expressly designed to cover five club matches in the club competition in which Eloshvili's club team Saint Nazaire participates and which is to commence on 14 October 2007, and his possible selection for an International match scheduled to take place on 10 November 2007.

1.2 The dangerous tackle for which Eloshvili was cited and which led to his suspension occurred when he lifted the French player in the tackle, turned him, and in the words of the Judicial Officer who dealt with the case "... dumped (him) head first to the ground ... (making) no attempt to bring his opponent safely to the ground". The Judicial Officer described the tackle as "inherently dangerous with the potential of very serious injury to the tackled player". In the view of this committee who viewed the same video recordings of the incident seen by the Judicial

Officer those descriptions of the tackle were both accurate and apt. Rightly in this appeal, except in one respect referred to below, Eloshvili did not challenge the Judicial Officer's finding the tackle was dangerous in the respects he identified; his appeal was based solely on the contention the period of suspension imposed by the Judicial Officer was excessive in the circumstances of the case.

- 1.3 The observations made by the Judicial Officer about the tackle quoted in the preceding paragraph were made in conjunction with a finding that Eloshvili had acted intentionally in executing the tackle in that fashion. Those features of the tackle satisfied the Judicial Officer that it was within the most serious category of offending of this kind attracting an entry point of not less than ten weeks suspension as specified in the Schedule of Recommended Sanctions within the Tournament Disciplinary Regulations. The Judicial Officer found no aggravating features but allowed a discount of three weeks for the mitigating factors identified in his decision resulting in the seven weeks suspension referred to. In doing so the Judicial Officer properly followed and applied the three step sanctioning process he was required to by the Tournament Disciplinary Regulations.

2. The Appeal Hearing

- 2.1 As indicated the appeal was advanced on the basis the period of suspension imposed by the Judicial Officer was excessive in the circumstances. Various points were made in support of this submission. These included the fact Eloshvili was an important member of his club team which would itself be penalised by his unavailability for selection by reason of the suspension imposed upon him. It was said that the club, for this reason, sought an "indulgence" from the Appeal Committee. Comparisons were drawn with the periods of suspension imposed in other cases, notably the case of the South African player **Burger** and it was said that in comparative terms the suspension imposed on Eloshvili was disproportionately severe. Further it was claimed Eloshvili had not "dumped" the French player head first to the ground as found by the Judicial Officer and to the extent that was a significant factor which influenced the Judicial Officer's assessment of the level of culpability his finding in that respect was in error. It was said also that because the Referee who saw and dealt with the incident on the field of play had dealt with it by the issue of a yellow card only the Judicial Officer was in error in taking a more serious view of the incident than the Referee. Various other points were made in the course of exchanges which occurred during the hearing but essentially the principal points made on Eloshvili's behalf were those just outlined.
- 2.2 Some of the matters advanced on Eloshvili's behalf unfortunately demonstrate a lack of appreciation of how the rugby judicial process works and the Committee endeavoured to point this out during the course of the hearing. In the same way it was necessary to explain to the player and his representative the limits of the Appeal Committee's

jurisdiction and the limited basis upon which an Appeal Committee may properly overrule and change a decision made by a Judicial Officer. This is explained more fully in the instructive decision of the Appeal Committee in the case of the appeal by the Samoan player **Brian Lima** dealt with earlier in the Tournament and issued on 26 September 2007.

- 2.3 Approaching the issues raised on Eloshvili's behalf in the fashion outlined in the **Lima** case the Appeal Committee could find no basis which would warrant any interference with the Judicial Officer's decision. Specifically there was ample evidence before the Judicial Officer to justify his finding that Eloshvili had intentionally dumped the French player head first to the ground as he found. Comparisons with the suspensions imposed in the case of **Burger** and other like instances of dangerous tackling were not helpful and did not advance the player's case. The tackles were obviously of a different kind involving different levels of risk of serious injury. The case of the American player **Paul Emerick** dealt with by the Appeal Committee on 18 September 2007 did involve a similar kind of dangerous tackle to that effected by Eloshvili and the suspension of five weeks imposed in that case, bearing in mind there were material differences between the two cases, underlines the fact the seven weeks suspension imposed on Eloshvili was clearly within the range properly available to the Judicial Officer.
- 2.4 The fact the Referee elected to deal with the matter on the field of play by way of a yellow card only is not a material consideration. Under the Tournament Disciplinary regulations the Judicial Officer was entitled to impose a greater penalty if he found the Referee was wrong to have dealt with the matter as he did and the Judicial Officer specifically so found in this case. The unavailability of the player to play for his club whilst under suspension is simply part of the penalty imposed. The fact the club is indirectly penalised is regrettable but cannot in any way justify the Appeal Committee interfering with a suspension properly imposed by the Judicial Officer.
- 2.5 Monsieur Le Gland presented Eloshvili's appeal to the best possible advantage but not even the persuasiveness of what he said on the player's behalf can justify any finding by the Appeal Committee the Judicial Officer erred in imposing the suspension of seven weeks referred to. In the result the Appeal is dismissed but in the exercise of our discretion we direct that 50% of the appeal deposit is to be refunded.

Dated this 11th day of October 2007

Bruce Squire QC
Judge Guillermo Tragant
Maître Paul Mauriac