

WORLD RUGBY U20 CHAMPIONSHIP 2016

Decision of an Independent Judicial Officer

Held at The Park Inn Hotel Manchester on 9th June 2016

In respect of Gurami Kandaorishvili No 23 Georgia ("The Player")

AND

A citing by Stefano Marrama (Italy) Citing Commissioner, in respect of an act contrary to good sportsmanship contrary to Law 10.4(m) in the match between Georgia v New Zealand on Tuesday 7th June 2016 at the Etihad Academy Stadium, Manchester.

Judicial Officer: Mike Hamlin (England)

Attending:

The Player

Oto Iashvili - The Georgia Team Manager

Ben Rutherford (via telephone) - Designated Disciplinary Official, World Rugby

Mitchell Jacobson – New Zealand Player No 7 - present only when giving evidence

Paul Galletta – New Zealand Team Manager – present only when NZ 7 giving evidence

Joyce Hayes - World Rugby Disciplinary Administrator

DECISION OF THE JUDICIAL OFFICER

The Judicial Officer found that The Player committed an act of foul play, namely Acts Contrary to Good Sportsmanship – Biting NZ 7 contrary to Law 10.4(m).

The Player is suspended from taking part in the game of rugby union for a period of 9 weeks. The Player is suspended for the remaining 4 matches in this tournament which represents a 4 week suspension in the context of this tournament. Thereafter, The Player is suspended until midnight on 16th October 2016. The Player is free to resume playing on 17th October 2016.

The Judicial Officer made no award of costs.

INTRODUCTION

1. I was appointed as an Independent Judicial Officer by The World Rugby Judicial Panel Chairman pursuant to The Tournament Regulations. I was appointed to consider the Citing Complaint against The Player in the above match in accordance with World Rugby U20s Championship 2016 Tournament Regulations ("the Regulations").
2. Stefano Marrama (Italy) was appointed as Citing Commissioner to this match and cited the Player for 'acts contrary to good sportsmanship' contrary to Law 10.4(m).
3. Pursuant to Section 2.5(c) of Appendix 5 to the Regulations I issued pre-hearing Directions.

PRELIMINARY MATTERS AND PROCEDURE

4. At the commencement of the hearing, I noted the identities of all present and narrated the allegation. The Player did not speak English. It was agreed that Oto Iashvili, his team manager, would interpret for The Player. It was confirmed by The Player and Mr Iashvili that The Player's position remained as set out in his response to the directions, namely that he denied that he had bitten the hand of the NZ No7 in a maul in the 38th minute of the second half of the above match.
5. I reminded all present that The Tournament Disciplinary Regulations 2016 applied. I outlined the procedure I proposed to adopt to determine the matter. All present agreed to proceeding on that basis. No Preliminary matters were raised. However, I explained in detail, for the benefit of The Player and Mr Iashvili, the evidence I proposed to admit. I also explained the burden of proof which applies in these cases, namely the balance of probabilities, as set out in Regulation 12.8.
6. I considered the following evidence:
7.
 - The Citing Complaint
 - The Player's response to standing directions
 - Notice of Hearing
 - The DVD of the incident
 - The written and oral evidence of Mitchell Jacobson (NZ No 7)
 - Various emails including a medical statement from the NZ Doctor, Dr Whitehead
 - The Player's evidence and submissions from Mr Iashvili

SUMMARY OF THE EVIDENCE

8. The Player was alleged to have bitten the left wrist of the NZ7 contrary to Law 10.4(m). The Citing Commissioner's Complaint states:

"The Player (G23) is the ball carrier and runs into 13NZ, who holds him up in the tackle, supported by 10NZ and Jacobson Mitchell (7NZ). Immediately after, other players arrive from both teams and form a maul. 23G is completely surrounded by NZ players and held up in the maul, that becomes unplayable and the referee blows his whistle. 7NZ, just before the referee blows his whistle (21:27:38 in the video clip attached), appears to suddenly pull away his left arm as if it has been stung/hit/bitten by something/someone. He then complains to the referee that he has been bitten. 7NZ has not been treated and resumed playing.

After the game I asked the referee if he could see a mark on 7NZ left wrist/thumb area and he confirmed he saw something resembling a bite mark. I then interviewed and recorded 7NZ in the presence of his team manager, Paul Galletta, and took a picture of his left wrist/thumb (see attachments)"

9. The NZ7 stated in his audio statement as follows:

"I came into the maul and I was in around the ball and my hand slipped up towards the ball carrier's chin area. I didn't have eyes on him, I was eyes on the maul and then I felt a bite, a biting sensation on my thumb/wrist area, left side. It took me a split second to realise what it was. I pulled away and then went back in and carried on with the maul and then once the maul had been blown up by the referee I

showed the referee what had happened and told him that I'd been bitten and then I showed the Team Doctor also.

NZ7 was asked by the Citing Commissioner whether he had any idea who the possible player involved would have been or do you have no idea because you were involved in the maul?

NZ7 replied it would have been the ball carrier which was No 23. This is because he was the only one I was attached to and that's where my hand slipped up to his chin. NZ7 confirmed that this happened in about the last 2 minutes of the game."

NZ7 also gave oral evidence at my request. He confirmed his statement was true and accurate. He confirmed to me that he was not sure it was G23 who bit him, but he believed that he did. He did not see the player who bit him. His left hand initially was very close to or on the ball and it was then that his hand slipped up to what he believed was the chin of the ball carrier - G23.

I reviewed the video footage with NZ7 and he confirmed that he was bitten immediately before he pulled his left arm from the maul.

He showed me (and The Player and Mr Iashvili) the small mark and slight laceration mark at the base of his left thumb.

10. I also received, in support of the Citing, recorded match footage of the incident which reflects the narrative in the citing complaint. Crucially, it also shows the positions of the supporting NZ players and the Georgian players at the time NZ7 states he was bitten. No other Georgian player was bound in the middle of the maul with or near The Player. Numbers 11, 12, 10 and 15 were at the time of the alleged bite bound onto the back of the maul. They were neither in the maul, bound onto or within the close proximity of The Player. The Player was surrounded by NZ players as described in the citing complaint, all of whom, save for NZ19, were in an upright or semi upright position supporting NZ 13 who was holding The Player up (as admitted in evidence by The Player). It would appear that NZ were intent upon holding The Player up from the ground in the maul to achieve an unplayable maul and thereby secure a turnover and the put in at the resultant scrum, which happened. NZ19 joined the maul in a classic position, at 90 degrees, and bound on his fellow NZ players. He joins the maul with his head and shoulders under the left arm/elbow of NZ7 (see clip 3.40 – 21:27:29) of the recorded match footage). It is at 21:27:38 of the recorded match footage when NZ7 pulls his left arm away from inside the maul.

(It was possible, therefore, for me to identify with some accuracy the positions of the players from the two respective teams when NZ7 states he was bitten - see paragraph 16 below)

11. The Referee and Assistant Referees confirmed by email that none of them saw the incident. The Referee, Andrew Brace, confirmed by email that NZ7 brought the alleged bite to his attention and showed Mr Brace the mark on his hand immediately after he had blown the whistle for a collapsed maul.
12. The NZ team Doctor, Dr N Whitehead, confirmed by email as follows:

"My attention was sought by Mitch Jacobson after he felt that he had bitten by an opposition player. On assessment at the time there was an ellipse shaped impression with a bite mark on his left hand, there was a small laceration of the skin that is apparent in the photo below (photo attached). The lesion was shown to

the referee at the time. Post match the lesion required irrigation, treatment with topical antibiotic ointment wound and dressing. (NZ7 was not wearing any dressing when he appeared before me on 9th June). It is my opinion that the lesion shown to me immediately following the incident could not have originated in any other way than from a bite. The risk of significant infection from bite wounds is high which contributes to the seriousness of the incident.”

13. The Player in compliance with my pre-hearing directions stated:

“I disagree with the citing complaint because I did not commit the offence that I have been accused of. I did not commit an act of foul play.”

14. At the hearing, The Player told me that he secured possession of the ball and in a low driving position came into contact with NZ13 who held him up off the ground. He then demonstrated, with the assistance of Mr Iashvili, how NZ13 held him up with one arm around his torso and one arm around and under his neck/upper chest. The Player was trying to go to ground to set up a ruck and was resisting the force by which he was being held by NZ13. He was being held very tightly by NZ13, so much so, that he said, as the maul around him developed, he started to struggle to breathe properly. This was because he felt he was being crushed, initially the pressure was against his chest and then it moved up to his chin. From what he could recollect, NZ13 was holding him up. He could not get to ground as he believed a number of NZ players may also have been holding him and his chin up. He tried to force himself to the ground but could not do so, he then heard the whistle and he stopped. He denied biting NZ7.

I then asked The Player to review the video footage of the alleged incident with me. He agreed with my suggestion that none of his team mates could be seen in the middle of the maul and at the time NZ7 pulled his arm away, he was the only Georgian player in the midst of the maul. Numbers 11, 12, 10 and 15 from Georgia were all at the rear of and/or the outer edge of the maul, bound onto NZ players in front of them. I then asked him, given the position of the NZ players (who were surrounding him) and his team mates, if he accepted that he was the only Georgian player in the middle of the maul and, therefore, it was he who was responsible for biting NZ7. He agreed that he was the only Georgian player in the middle of the maul but suggested that, as he did not bite NZ7, possibly another NZ player bit NZ7. I suggested that as he had told me he was being held up and crushed, making breathing difficult, he bit NZ7 to try and make the NZ player let go and relieve the pressure on his chest or chin. He denied that this was the case.

The Player told me that he had been playing rugby for 6 years. He was 19 years of age. He played for Kharabi Rugby Club in Georgia who had been relegated from the premier division at the end of season 2015/16. He had never been sent off in his career nor had he ever appeared before any disciplinary panel. He was playing in his first ever tournament for Georgia.

15. Mr Iashvili made no submissions in respect of the evidence admitted at the hearing. He was content for me to determine the issue. He did state, however, that the Georgian management team had agreed that if I found on the evidence that The Player had bitten NZ7 then I should suspend him for a very long time and furthermore he would never play for the Georgian team again. Whilst noting his comments, I confirmed that I would determine the case in accordance with the Tournament Regulations.

16. Mr Rutherford did not make any specific submissions in respect of the evidence.

DECISION AS TO CULPABILITY

17. In private, I reviewed all the evidence. Given the serious nature of the allegation, the circumstantial evidence concerning the bite and the necessary caution in reviewing video footage evidence, I reminded myself of the burden of proof and the need to analyse the evidence with care and caution. My function is to determine whether or not on the balance of probabilities The Player committed an act of foul play. There are 2 issues for me to determine, first was NZ7 bitten and secondly, if he was bitten am I satisfied to the required standard that it was The Player who bit him. If I am so satisfied, I must uphold the citing complaint.
18. My findings of fact as to the alleged biting are as follows:
- (i) I am satisfied that NZ7 was bitten in the 38th minute of the second half of the match. I accept NZ7's evidence that he was bitten whilst participating in the maul described in the citing complaint. This is supported by the evidence of Dr Whitehead who described the small lesion he observed at the time of the incident together with his professional medical opinion that the lesion and mark on NZ7's left hand could only have been caused by a bite. The mark was also shown to the referee by NZ7. The Citing Commissioner produced a photograph highlighting the mark on NZ7's lower hand. For the avoidance of doubt, I am not satisfied that the apparent scratch marks on NZ7's wrist shown in the photograph were caused in this incident.
 - (ii) The NZ7 was bitten immediately before he extracted his left arm from the maul in which he was participating. I accept NZ7's evidence on this point. It is a natural reaction to withdraw a limb or hand if it is subject to a bite or sudden pain. I also find that NZ7 had positioned his arm and hand very close to or on the ball which subsequently moved upwards towards the chin of the ball carrier (The Player). At that time, The Player was facing forward with the ball in his possession in the middle of the maul. He was being held up and surrounded by NZ players. At least 5 NZ players were surrounding the Player, four of whom were in an upright or semi upright position and therefore could not have bitten (by mistake) NZ7. NZ 19 as described in paragraph 9 above entered the maul with his head and shoulders underneath the left arm and elbow of NZ7. As NZ19's head and shoulders were lower than the position of NZ7's arm and hand it was highly improbable, if not physically impossible, for NZ19 to have bitten NZ7. No other Georgian player was in the middle of the maul. The Georgian players (including Numbers 11, 12, 10 and 15) who joined the maul were at the rear or outer edge of the maul as can be seen on the video footage. This fact was also conceded by The Player.
 - (iii) I accept The Player's evidence that he was being held by NZ13 and that he was being held in such a way he was having difficulty breathing and that the hand/arm which he described on his chest and then underneath his chin was the hand and arm of NZ7.
 - (iv) By a careful analysis of the stature and positions of all the NZ and Georgian players, as described in sub-clause (ii) hereof, I am satisfied by a process of elimination that no other participant other than The Player, who was in the middle of the maul, was in a position to bite NZ7's hand. Furthermore, based upon my above finding, as The Player was held up in such a way that he experienced difficulty breathing, it is probable that he bit NZ7 to relieve the pressure. Therefore, I reject his evidence that he did not bite NZ7 and am satisfied on the balance of probabilities that he committed an act of foul play by biting the hand of NZ7 and accordingly uphold the citing.

SANCTION

19. As to sanction, Mr Iashvili made no submissions on behalf of The Player save to repeat his comments set out in paragraph 14 above.

20. In assessing the seriousness of the offence pursuant to Regulation 12.10.1 (a) I find as follows:-

- (i) The biting was deliberate.
- (ii) The offending was not reckless.
- (iii) Biting is an insidious act which has no place in the game and therefore this is a grave act of foul play.
- (iv) This was a single bite with sufficient force to cause a small lesion and mark on the hand of NZ7.
- (v) I accept there was an element of provocation in that The Player was being held in such a way that he was being crushed at chest level and experienced some difficulty breathing.
- (vi) Retaliation and self-defence are not relevant.
- (vii) NZ7 sustained a small lesion and ellipse shaped impression to his left hand. He was able to continue the match. His hand was treated with antibiotic ointment. I note the potential risk of infection.
- (viii) There was no effect on the match.
- (ix) NZ7 was not vulnerable, save that he would not have anticipated being bitten.
- (x) There was no premeditation-it was a spontaneous act of intent.
- (xi) The act was completed.
- (xii) There is no other relevant feature of the Player's conduct in relation to the offending.

I therefore determine that the offending merited a low-end entry point of 12 weeks in accordance with Appendix 3 of the Regulations. Pursuant to Regulation 12.10.3 I find there are no aggravating features.

21. Pursuant to Regulation 12.10.3, I make the following determination in respect of mitigating factors:

- (i) The Player denied the allegation and did not accept his culpability.
- (ii) The Player has an excellent disciplinary record having never appeared before a disciplinary panel or a judicial officer previously.
- (iii) The Player is 19 years of age and to that extent young and inexperienced in adult rugby.

- (iv) The Player's conduct before me was appropriate despite his denial of the allegation.
- (v) The Player having denied the allegation demonstrated no remorse. I noted, however, that he shook hands with NZ7 and Mr Galletta as they left the hearing room.
- (vi) There are no other off field mitigating factors, save that I was conscious that the sanction I was to impose would mean him missing the rest of his first U20 World Championship. In addition Mr Iashvili had indicated that if I found him responsible for the bite then he would be sent home as soon as possible and should be suspended for a very long time. The Player would not represent Georgia again.

Based upon the above mitigating factors I determine that The Player is entitled to a reduction in sanction from the entry point of 3 weeks. The Player is therefore suspended from playing for a period of 9 weeks.

22. The suspension of 9 weeks means that in the context of the Tournament Regulations he will miss match days 2, 3, 4 and 5, equivalent to a suspension of 4 weeks. I was informed by Mr Iashvili, so far as he and The Player were aware, that the season for Kharabi in the second division commences on 18th September 2016 but certainly not later. If it transpires that the Player's club season commences prior to 18th September then he may apply to World Rugby for the dates of suspension to be reviewed by me subject to providing the necessary documentary evidence. Therefore, the Player is suspended from playing rugby until midnight on 16th October 2016. He is free to play again on 17th October 2016.

23. The Player's right of appeal was drawn to his attention pursuant to Regulation 12.13.

Mike Hamlin (England)
Judicial Officer

13th June 2016