

BRITISH & IRISH LIONS TOUR OF NEW ZEALAND 2017

DECISION OF INDEPENDENT JUDICIAL COMMITTEE

Hearing held at 8.30pm on Sunday, 2 July 2017 at NZ Rugby House, Wellington, New Zealand in the Jock Hobbs Room.

In respect of

Sean O'Brien ("the Player")

and

A citing by **Scott Nowland (Australia) Citing Commissioner**, in respect of an alleged offence under Law 10.4(a) namely, a player must not strike an opponent with the arm, in a Test match played between the All Blacks and the British & Irish Lions on Saturday, 1 July 2017 at Westpac Stadium, Wellington in New Zealand ("the Citing Complaint").

Judicial Committee appointed to hear the case:

Adam Casselden SC (Chair)

David Croft (Ex-Australian and Queensland Reds player)

John Langford (Ex-Australian, Brumbies and Munster player)

Decision of the Judicial Committee:

- (i) The Judicial Committee found, on the balance of probabilities, that the Player did not commit the act of Foul Play that was the subject of the Citing Complaint. Accordingly, the Citing Complaint was dismissed and the Player was free to resume playing immediately.

Introduction

1. The Judicial Committee convened a hearing to consider the Citing Complaint against the Player in a Test match played between the All Blacks and the British & Irish Lions ("BIL") on Saturday, 1 July 2017 at Westpac Stadium, Wellington in New Zealand.
2. Mr Scott Nowland of Australia was appointed as the Citing Commissioner to this Test match and cited Mr Sean O'Brien, the Player (BIL #7) for an alleged offence under Law 10.4(a) namely, *a player must not strike an opponent with the arm*. It was alleged by the Citing Commissioner that the Player struck Mr Waisake Naholo (All Blacks #14) with a swinging right arm making contact with his head in the 18th minute of the second half.
3. The following persons were present at the hearing:
 - The Player
 - Mr Max Duthie (Player's counsel)
 - Mr Warren Gatland (Head Coach, British & Irish Lions)
 - Mr John Spencer (Tour Manager, British & Irish Lions)
 - Mr Keith Binnie (NZRU, Judicial Presenter)
4. At the hearing the Player, through his counsel, denied the incident for which he had been cited.

Evidence

Exhibits

5. The Judicial Committee admitted into evidence the following material:
 - 5.1 The Citing Commissioner's report;
 - 5.2 The Referee's report;
 - 5.3 A medical report prepared by Dr A J Page, New Zealand Team Doctor;
 - 5.4 Video camera footage of the alleged incident submitted by the Player;

- 5.5 Video camera footage showing various angles of the alleged incident obtained by the Citing Commissioner; and
- 5.6 The Player's response to the Standard Directions including annexures.

Oral Evidence

- 6. The Player gave evidence. He denied committing an act of Foul Play. He did not remember making any contact with Mr Naholo. His first knowledge of the alleged incident was when he was first made aware of the Citing Complaint the morning after the match. He denied that he used a swinging right arm in an attempt to dislodge the ball from Mr Naholo as suggested by the Citing Commissioner in his report. He said his intention was to wrap around the ball or get on the ball if the opportunity presented itself. It was for this reason, he said, why the palm of his right hand was, at all relevant times, open as can be seen in the video footage. The Player also said that he did not have any markings or signs of injury consistent with a strike on his forearm.

Documentary Evidence

- 7. The Citing Commissioner in his report recorded the following:

"New Zealand No 14, Waisake Naholo, caught the ball and was then 'wrapped up' in a tackle by Lions No 11. Lions No 7, Sean O'Brien, then ran into the contact zone and swung his arm forward in what appeared to be an attempt to dislodge the ball from Naholo (noting that there was no clenched fist and he swung in the direction of the ball).

O'Brien's swinging arm was such that his forearm made a forceful and direct contact to the head region of Naholo. Further, the contact was such that this resulted in Naholo immediately falling to ground and suffering concussion. Naholo received treatment on the field of play and then left the field of play for a head Injury Assessment. A medical report gained from the All Black team doctor post the match stated Naholo "experienced a brief episode of loss of consciousness and that this met the criteria for permanent removal".

Upon review of all the available camera angles of the incident together with attached medical report I have found that O'Brien's actions were such that he had no regard for player safety and his swinging arm which made direct contact to the head region had the potential for causing serious injury and indeed caused a concussion injury requiring a player to leave the field of play.

The incident therefore breached the Red Card threshold and has been cited."

8. Dr Page in his medical report recorded the following:

"To whom it may concern I ran onto the field of play in the second half of the second All Blacks versus BIL Test in Wellington on 1 July to attend to Waisake. Waisake was lying relatively motionless for a short time then sat up. He was slow to respond to questions. I signalled for a head injury assessment and accompanied him towards the tunnel. He was then taken to the medical room by the match day medical staff for head injury assessment. However within a few seconds of Waisake leaving the field I received a message from our manager Darren Shand who conveyed a message to me from the video doctor that the player had experienced a brief episode of loss of consciousness and that this met the criteria for permanent removal. Therefore the HIA was not required."

Submissions

9. The Player denied the incident for which he had been cited. The Player submitted, through his counsel, that he did not commit an act of Foul Play as he was legitimately trying to play the ball at all relevant times. He does not recall making any contact with Mr Naholo at the relevant time, but contends that if he did make contact with Mr Naholo than it was not deliberate or reckless but accidental and therefore does not amount to a strike as required by Law 10.4(a). In addition to the Player's evidence explaining his actions the

Player's counsel relied upon the following factors in support of the Player's submission that his actions were accidental:

- 9.1 First, there is no video footage of the Player swinging his right arm backwards;
- 9.2 Secondly, the video footage shows the Player moving his right arm towards the ball in a forward motion with an open right hand. This, it is submitted, is inconsistent with an intention to punch or strike as you would expect to see a closed right fist; and
- 9.3 Thirdly, moments before the Player's right forearm makes contact with Mr Naholo's head Mr Naholo can be seen to dip or drop towards the ground such that his head leans into the Player's right forearm.

Judicial Committee's decision

10. The primary or threshold issue for determination by the Judicial Committee was whether the Player had, on the balance of probabilities, committed the act of Foul Play the subject of the Citing Complaint or whether his conduct was accidental.
11. The Player was cited by the match Citing Commissioner for a breach of Law 10.4(a) of the Laws of the Game namely, *a player must not strike an opponent with the arm.*
12. A breach of Law 10.4(a) falls under the umbrella of dangerous play which is Foul Play within the meaning of that term contained in the introductory section of Law 10 of the Laws of the Game.
13. The Judicial Committee watched all the video footage in real time and in slow motion numerous times without sound. The alleged incident happens in a split second. There are a number of different video angles of the incident, the last of which is the most instructive. The Player can be seen entering the contact zone and approaching the ball carrier, Mr Naholo who, by this time, is

in the process of being wrapped up from behind by the tackler, Mr Elliot Daly (BIL #11) and is being forced downwards and across to the left of the video screen.

14. As the Player approaches Mr Naholo there is no clear footage of where he is looking. The Player never has a closed fist, his right palm is always open. At no time does one see the Player cocking his right arm or swinging his right arm backwards. To the contrary, it appears that as the Player is moving towards the contact zone and towards Mr Naholo his right and left arms are positioned in a manner consistent with him readying or preparing himself to wrap around the ball or get on the ball depending on the dynamics as they unfolded at the relevant time. As the Player moves closer to Mr Naholo his left arm wraps around the back and left shoulder area of Mr Daly (BIL #11) consistent with his evidence that he intended to wrap around or get on the ball.
15. Further, from our observations of the video footage the Player's body height and leg positions are set in a manner consistent with him putting himself in the best possible position, given the dynamics, to wrap around the ball or get on the ball depending on the circumstances presented to him at the relevant time. Contrary to the Citing Commissioners opinion, we do not agree that the Player's actions are consistent with him trying to dislodge the ball from Mr Naholo but are, when viewed objectively and in their entirety, consistent with the Player legitimately trying, at that brief moment in time, to wrap around the ball.
16. Whilst no positive submission was put by the Player that he did not make contact with Mr Naholo, in our opinion, there is clear contact made with the Player's right lower forearm and Mr Naholo's head. Shortly thereafter Mr Naholo is seen to go to ground consistent with a loss of consciousness.
17. Importantly, moments before contact is made with the Player's right lower forearm and Mr Naholo's head, Mr Naholo's body height and head drop down and into the Player's right arm. Given the speed at which the events unfolded

the Player would not have known nor foreseen that this was to occur and therefore could not have, in our opinion, given the speed of the events and the dynamics at play, taken any preventive steps to avoid contact with Mr Naholo's head.

18. Whilst it is unfortunate that there was contact made between the Player's right arm and Mr Naholo's head causing Mr Naholo to suffer a loss of consciousness, be removed permanently from the match and be put in doubt for selection for the third Test match this weekend we did not consider that the contact by the Player's right arm with Mr Naholo's head was deliberate or reckless but was accidental.
19. Therefore, having regard to the totality of the evidence the Judicial Committee was not satisfied, on the balance of probabilities, that the Player committed the act of Foul Play that was the subject of the Citing Complaint. The Judicial Committee found that the Player was legitimately playing at the ball and that the contact made between the Player's right lower forearm and Mr Naholo's head, whilst most unfortunate, was not intentional or reckless but was accidental. Accordingly, the Citing Complaint was dismissed.

Adam Casselden SC

David Croft

John Langford

(Chair)

Dated: 4 July 2017