

**An appeal by Motu Matu'u against the written decision of the
Judicial Committee dated 28 September 2019**

Tournament: Rugby World Cup 2019

Player: Motu Matu'u

Team: Samoa

Match: Samoa v Russia, 24 September 2019, Kumagaya Stadium

Hearing venue: Offices of Atsumi & Sakai, Uchisaiwaicho, Chiyoda-Ku, Tokyo

Appeal panel: Sir James Dingemans (England, chair); Jean-Noel Couraud (France);
Jose Luis Rolandi (Argentina)

Representation: Aaron Lloyd, Counsel for Motu Matu'u. Ben Rutherford, DDO and
Alistair Maclean, General Counsel for World Rugby

Date of the hearing: 1 October 2019

Introduction

1. This is the hearing of an appeal by Motu Matu'u ("the player") against a decision of a disciplinary committee (Wang Shao-ing, judicial chair; John Langford, former Australia international; and Olly Kohn, former Wales international) "the committee". The committee's decision was announced following a hearing which commenced on Thursday 26 September 2019 and concluded on Friday 27 September 2019, and a written decision was given on 28 September 2019.
2. The committee imposed a 3-match ban on the player for an offence of a dangerous tackle, contrary to law 9.13 which was committed in the match between Samoa and Russia on 24 September 2019. The committee took a mid-range starting point of 6 weeks because there was contact with the tackled player's head, and applied full mitigation of 50 per cent to leave a 3 week sanction. This was converted into a 3 game sanction because this is a tournament. The committee directed that the match on Monday 30 September 2019 between Samoa v Scotland should not count as part of the 3 game sanction because the player was not available to be selected for that game because, following the injuries which the player suffered in the tackle, he was undergoing a head injury assessment and following the graduated return to play protocol. The committee also directed that if Samoa reached the quarter finals that match should count as part of the suspension but if Samoa did not reach the quarter

finals the suspension should be carried forward to the Gallagher premiership where the player is registered with London Irish.

3. The appeal raised issues about whether: (1) whether the disciplinary committee erred in finding that the red card test was satisfied given the circumstances of the high tackle and in particular the drop in height of Russia number 15 before the tackle; (2) the Committee should not have excluded the match against Scotland on 30 September 2019 from the calculation of the period of suspension; and (3) the Committee were wrong to make provision for the suspension to take effect in the Gallagher Premiership if Samoa do not reach the quarterfinals.
4. We are very grateful to Mr Lloyd and Mr Rutherford for their succinct and helpful written and oral submissions on the issues raised by the grounds of appeal.

The circumstances of the tackle

5. The full circumstances of the tackle are set out in the decision of the Committee. By way of short summary in the 29th minute of the first half the player had received a yellow card (or temporary suspension) for a high tackle on Russia's number 15. As a result of the high tackle the player appeared to lose consciousness for a brief period and Russia's number 15 suffered bruising to the back of his head. The game was stopped immediately that the referee was alerted to the player's condition.
6. On 25 September 2019 the player was cited for the high tackle on the basis that the red card threshold or test had been met. The relevant parts of the citing report were: "Russia 9 catches a high kick on the half-way line and runs towards the touchline. As he is tackled, he passes inside to Russia 15. Samoa 2 (Motu Matu'u), who has a clear line of sight of Russia 15, runs forward at pace and tackles Russia 15 high whereby he strikes the head of Russia 15 with his left shoulder. Both players fall to the ground where a ruck is formed with Russia still in possession. Before any further play, the referee stops the game as Samoa 2 had obviously received a head injury as a consequence of the tackle, whereby his head made contact with the shoulder of Russia 15. He receives on-field medical assistance and was subsequently removed for a Head Injury Assessment. He did not return to the game. Following a review of the tackle by the referee and TMO, the on-field decision was a yellow card as they considered there was mitigating circumstances in that Russia 15 dropped his body as the tackle was made. Taking into consideration the Decision Making Framework for High Tackles, Samoa 2 committed an illegal high tackle causing clear contact with his shoulder to the head of Russia 15 with a high degree of danger. I arranged for the Citing Commissioner Liaison Officer (Simon Kibble) to obtain a statement from Russia 15 (Vasily Artemiev). As a consequence of the tackle Russia 15 indicated that he had sustained a bruise to the right side of his neck. This injury was photographed. Although the match officials had issued a yellow card for this incident, having carefully considered all of the available video angles I deem that this action breaches the red card threshold and cite Motu Matu'u for a contravention of Law 9.13 as I considered that the tackled player did not suddenly drop sufficiently to mitigate the actions of Samoa 2."

The hearing before the Committee

7. At the hearing the relevant reports from the referee, assistant referees and citing commissioner were considered and set out in the judgment. The player's evidence was summarised in the Committee's decision as being that "the Player's memory of the incident was as follows: a). The ball was turned over by Samoa and Samoa 9 kicked the ball over; b). The Player knew he was not as fast as the winger and he had to try and catch up to chase the kick; c). Russia 9 who caught the high ball was tackled by the winger but managed to get a pass away; d). as Russia 9 was getting the pass away, the Player said "I knew I had to just try and shut the ball down. And by shutting that ball down, I had to make a tackle and wrap the fullback off the ball". e). as the Player was approaching Russia 15, he said "I was dipping into the tackle, I don't actually know, like, how quickly -- he kind of braced, and that was it. That's all I can remember. So all I can remember was trying to make my decision off on our winger, making a tackle, then missing a tackle, then me having to -- I don't know -- race up even faster on our defensive line and try to wrap the ball, slow the ball down, because if he had got that pass off, that would have been us done. They would have scored in the corner because obviously our forwards are all still stuck in that ruck that they kicked the ball over. In further questioning the player said: "well, obviously, I had to -- as I've been practicing in and I have been training is just duck really low and try to aim for, like, the belly button region and just try to -- I don't know -- just get below his chest and try to -- where -- to where the ball was coming. But I can remember getting there, but just I don't know -- just really quickly how it happened, that's how quickly he went down. Because he must have known that I was just coming on the side of him. So just him dropping down was kind of what popped me off. I mean, that's all I can remember." It was apparent that the player's recollection was affected by the head injury which he suffered in the course of the tackle.
8. The player's position was that he accepted a breach of law 9.13 but he said that the match officials were right to consider that the tackled player dropped suddenly and that was mitigation meaning that the yellow card was the appropriate sanction.

The decision of the Committee

9. The Committee set out its material findings of fact. These were illustrated with stills from the video footage and the relevant timings. The material findings were: "As Russia 9 tries to get the pass to Russia 15, the Player moves forward and by his admission, moves to "shut the ball down". From 29:30 – 29:31, as the ball arrives to Russia 15, he catches the ball as he shifts from his right to his left foot, and simultaneously lowers his body to brace for impact. The Player starts to lower his upper body as he approaches Russia 15. At 29:31, Russia 15's weight is on his left, he steps wide to his right and his height is lowered further. At this point, the Player's weight is over his right foot. As the Player's upper body moves further forward, Russia 15's right foot pushes into the ground; Contact is made between the left side of the Player's head and his shoulder and the left side of Russia 15's head. The impact of the contact is with considerable force, and the Player goes limp and falls around the outside of Russia 15.
10. The Committee then addressed World Rugby's Decision-Making Framework for high tackles which they referred to as the "DMF". The decision records that the majority of the Committee determined: "a. the Player had made a high tackle - Arguments

were made by the Player's Counsel that it was no more than a head clash which sometimes happens in the Game and that the Committee may even come to the conclusion that it was accidental. Majority of the Committee were of the view that the Player had initiated contact with his left shoulder to tackle Russia 15. The Player may have injured himself in the process but it was nonetheless a high tackle under the 9.13 of Laws of the Game – which is tackling or attempting to tackle an opponent above the line of the shoulders; b. a high degree of danger was present – in that the Player was attempting an active or dominant tackle; c. the factors against mitigation were also present – both the Player and ball carrier were in open space and the Player had clear line of sight. Based on the DMF, at this point, the Red Card threshold had been met.”

11. The Committee specifically addressed the player's case that there was mitigation because Russia number 15 had gone from a full position to a squat position. The Committee concluded: “The majority of the Committee concluded the Player as the tackler, had full control of the terms of the contact (approach and tackle technique). He was in open space and chasing the kick to close out the attacking threat. He picks up pace approximately 7m out from Russia 15 (Paragraph 16 screenshots) and has clear line of sight of Russia 15's circumstances. Russia 15, on the other hand, was in the process of receiving the ball, his focus and movement was limited by the flight path of the ball. b. in bracing for contact with the Player, Russia 15's timing and change in height was not unreasonable or outside the Player's estimation given the dynamic of the situation referred to in subparagraph a. above; c. however, due to the speed and approach of the Player, he had left himself a very small margin of error to control the terms of his engagement with Russia 15: as he approaches Russia 15, the Player is bent at the hip, but he then plants his right foot and launches his body across to the left and upwards slightly to contact Russia 15. The Player loses control of the terms of the contact with Russia 15 because he has lost his feet (his centre of gravity is well past his right foot [a photograph was shown]; at the hearing, the Player acknowledged that his left foot would have been the closer foot and that he would have ideally planted his foot there to get his left shoulder on. The Assistant Coach opined that it looked like the Player was trying to get his left foot down but because the Player had suffered a concussion, he was unable to. The majority of the Committee, with respect, disagrees. The Player's foot pattern in the approach to the tackle was wide (as opposed to narrow) and at speed. He was not able to adjust to Russia 15's movement, not because Russia 15 was exceptionally nimble or evasive, but because the Player had lost control by launching himself in the manner he did. The Player may have lined Russia 15 up for a dominant hit, but that does not absolve him of his duty of care to the Russia 15's head; d. the Player's tackle was recklessly executed without regard for the safety of himself or Russia 15. This is dangerous, both to the Player and Russia 15; e. the severity of the contact is reflected in the injury to the Player who was dazed and was removed from the field of play. Russia 15 was also in discomfort from the impact”.
12. The Committee concluded: “Rugby Union is a contact sport. Inherent in the Game are collisions between bodies with high impact and with velocity. The contest for possession is part of the appeal for players and fans. However, the terms of engagement between players are set out in the Laws of the Game, which regulate what is dangerous contact between players. To this end, the head is regarded as sacrosanct. As such, the Player had a duty of care to ensure he engaged with Russia

15 in a safe manner. He did not. In view of the above, Committee, by majority, was not satisfied that the Player had shown on the balance of probabilities that the Citing Commissioner's decision was wrong to cite the Player. Consequently, the citing was upheld."

Some principles relating to appeals from judicial committees

13. The material provisions of paragraph 4.5 of appendix 1 to regulation 18 provide that (save where there is a de novo hearing which is not applicable to this appeal) the grounds of appeal are that the decision being challenged "(a) was in error (either as to central factual findings or in law); ... (c) the sanction imposed was manifestly excessive or wrong in principle ...".
14. Paragraph 4.6 of appendix 1 sets out the approach to be taken by an appeal panel. So far as is material it provides "... appeals shall be conducted on the basis that: (a) the evidential assessment or decision involving an exercise of discretion or judgment of or by a Judicial Committee or Judicial Officer shall not be overturned save in circumstances where the relevant findings made by the Judicial Committee or Judicial Officer are manifestly wrong; (b) the evidential assessment or decision involving an exercise of discretion or judgment of or by a Judicial Committee or Judicial Officer shall not be overturned save in circumstances where the Judicial Committee or Judicial Officer applied wrong principles in the exercise of its/his discretion which has resulted in an erroneous decision being made ...".
15. The first ground of appeal relating to the red card relies on the fact that the committee was in error in finding that the red card test was satisfied. The second and third grounds of appeal raise issues about whether the sanction was wrong in principle.
16. The reason for the restrictions on the approach of an appeal panel as set out in regulation 18, appendix 1 at paragraph 4.6 are well established. This is because appellate panels have to be very cautious in overturning findings of fact, including evaluative findings of fact to the effect that a red card test has been met, made by committees sitting at first instance. This is because such committees have seen the players and taken into account the whole of the sea of the evidence as opposed to indulging in impermissible hopping on to islands or parts only of the evidence in an appeal. For those reasons appellate panels will only interfere with findings of fact if committee was plainly wrong. This means making a finding of fact which had no basis in the evidence, or showing a demonstrable misunderstanding of relevant evidence or a demonstrable failure to consider relevant evidence so that the decision cannot reasonably be explained or justified, compare *IRB v James Horwill* dated 1 July 2013.

Permissible finding that red card test was met

17. The grounds for the appeal set out on behalf of the player were that: (a) the Judicial Committee erred in finding that the circumstances of the tackle in question did not give rise to sufficient mitigating factors to reduce the tackle to a yellow card offence; (b) the Judicial Committee therefore erred in finding that the tackle at issue met the red card test; and (c) the Judicial Committee therefore erred in finding that the citing was upheld. Particular emphasis was placed on the fact that the match officials were

best placed to make the assessment that the red card test had not been met, and that there was mitigation because of the sudden reduction in height of Russia number 15.

18. In further submissions in support of the appeal reliance was placed by Mr Lloyd on the matters that: there was an accidental clash of heads caused by the drop in height by Russia number 15 and that it would be “unusual for an accidental clash of heads to result in a red card”; the committee was wrong to consider the open space in this case was significant and reference was made to another recent decision of a judicial committee; there was nothing to suggest that the player should have anticipated the drop in height by Russia number 15 given that the relevant action happened over 4/10ths of a second; the committee was wrong to analyse the movements of the player in fractions of a second; the committee failed to take proper account of the evidence of the assistant referee Mr Brendon Pickerill who can be seen to have had a clear view of the incident and who agreed that there was mitigation in this case so that a red card was not appropriate; and it was unfair and unreasonable to say that the player’s actions were recklessly executed without regard for the safety of himself or Russia number 15. Mr Rutherford on behalf of World Rugby noted that the committee had carefully considered all of the camera angles and properly evaluated the extent of the drop in height by Russia number 15. The distinctions between this case and other cases was emphasised.
19. The relevant provisions of Law 9.13 provide: “A player must not tackle an opponent early, late or dangerously. Dangerous tackling includes but is not limited to tackling or attempting to tackle an opponent above the line of the shoulders even if the tackle starts below the line of the shoulders”. As noted above World Rugby have issued guidance in the form of the DMF. This guidance is intended to improve consistency in decision making about high tackles by referees, TMO’s, citing commissioners and judicial panels. It is however important to remember that the DMF is guidance and does not replace the law. It is common ground that the guidance was not intended to and cannot cover every specific situation and “rugby common sense” needs to be applied.
20. In the DMF mitigating factors identified include the ball carrier “suddenly drops in height (eg from earlier tackle, trips/falls, dives to score)”. The guidance also states as factors against mitigation “if the tackler and [ball carrier] are in open space and the tackler has clear line of sight and/or time before contact”.
21. In this case the material findings of fact by the Committee were that: the player came from a distance to shut down the ball; the player came at speed, as part evidenced by the fact that the collision caused lasting injury to the player and some injury to the Russia number 15; and the reaction of the Russia number 15 was to be expected. It is right to note that in this case the Russia number 15 did drop in height (we were shown camera angles showing a reduction measured against the background hoarding of about half the hoarding) as the player approached over a distance of about 7 metres in a period of about 4/10ths of a second. However it is apparent that the player was running over that distance at a substantial speed and, as the committee found, lost control of the tackle, as evidenced by the fact that there was a clash of heads as well as contact between the player’s shoulder and the head of Russia number 15.
22. The analysis carried out by the committee showed that even at the end the player did not attempt to pull out or avoid the tackle, and this is a relevant factor which

distinguishes this case from others. The committee did set out the evidence of Mr Pickerill in paragraph 6 of its decision and there is nothing to suggest that it was ignored. Mr Pickerill's evidence showed his consideration that there was mitigation, but the panel gave clear reasons for finding that the citing commissioner was right to find that there was not sufficient mitigation in this case.

23. The material facts are that the tackling player charged over a distance at speed aiming to wrap up the other player. The player was certainly being reckless as to what part of the body or head he would contact. In this case the findings show that the Committee found that the player was coming at speed and at the end "launches his body across to the left and upwards slightly to contact Russia number 15". The dynamics of such a collision mean that the red card test is very likely to be satisfied where there is contact with the ball carrier's head. The fact that there was a clash of heads cannot sensibly be called accidental in circumstances when the player has run at speed into the collision intending to wrap up the ball.
24. In our judgment there is no basis for finding that the decision of the Committee was wrong. It is enough for the purposes of the appeal to say that the finding of the majority of the committee was a proper finding, but we can confirm that if the issue had been for us we would all have upheld the citing. This is because the player travelled at speed over open ground for a period into a dangerously high tackle without any attempt to avoid the collision, and the ducking reaction (or reduction in height) of Russia number 15 was to be expected.

Samoa v Scotland game properly excluded for the purpose of the suspension

25. As to sanction, the player's grounds of appeal are that: "(a) assuming the citing was correctly upheld (which is denied) and that the appropriate sanction was 3 weeks taking into account starting point and mitigating features (which is accepted if the citing is upheld), the Judicial Committee erred in not considering the match between Samoa and Scotland in Kobe on 30 September to count for the calculation of the Player's suspension; (b) the Judicial Committee so erred because the Player was "scheduled to play" that game, and would have played that game, but for the fact he was suffering the effects of a head injury following the HIA1 failure on 24 September 2019; (c) that being "scheduled to play" and actually playing a game (for whatever reason) are two entirely different things, and Regulation 17 does not require that a player be actually playing a game for it to count; and (d) that if Regulation 17 is interpreted to mean that players who would play a game other than for mandatory stand downs for head knocks are precluded from relying on those games as part of any period of suspension, this would be manifestly unfair and against the policy of player welfare which encourages players and teams to genuinely and honestly acknowledge and engage with situations of potential head injury in the game."
26. The sanctions set out in regulation 17 are required to be meaningful. They are normally measured in weeks, see regulation 17.1.1(b) but in a tournament can be measured in matches. Sanctions must be meaningful so that if a player is not scheduled to play, or there is a week off in league competitions, that week will not apply. The provisions of regulation 17.19.10 are intended to ensure that matches which are not meaningful are not counted towards a period of suspension.

27. If a player is injured or unable to play then in our judgment that player cannot be “scheduled to play” within the meaning of regulation 17.19.9 because he is unavailable to play. The burden, which is on the player, to show that the player is scheduled to play cannot therefore be satisfied. In our judgment there is nothing unfair or against the policy of player welfare about ensuring that a sanction is meaningful. The sanctions were set out to deter, among other matters, dangerous play. The mid-range starting point for dangerous tackles making contact with the head was incorporated by amendment to the regulation 17 following a conference at which players, referees, judicial officers and unions were represented to ensure that dangerous high tackles become a rarity (as is now becoming the case with tip tackles and taking out a player jumping in the air). The increased penalties are designed to protect both the tackling player and the tackled player. It would undermine the sanctions if a player was encouraged to think that if he undertook a dangerous high tackle which caused injury to himself, he could escape the intended deterrent effect of the sanction to be applied to dangerous high tackles by using up the time of his suspension to recover from injury.

Part of the suspension to be served in the Gallagher premiership if Samoa does not reach the quarter finals

28. In written submissions it was said that the committee was wrong to state that if Samoa does not reach the quarter finals, then the final match should be converted into a match in the Gallagher Premiership between London Irish and Sale Sharks on 26 October 2019, in circumstances where the player plays in the Premiership in England.

29. Sanctions are intended to apply across the whole of the game. The committee provided in its decision for the situation if Samoa did reach the quarter finals, and made provision in case Samoa did not reach the quarter finals. It is right that if the Committee had decided that it was likely that Samoa would make the quarter finals then the game could have been counted, see regulation 17.19.10(d). However it is apparent from the committee’s decision that the committee did not make any such finding. It would have been surprising if the committee had made such a finding in circumstances where only one pool game had been played at the time of the committee’s decision. In such a case where the committee did not know whether Samoa would play the quarter finals there was nothing impermissible in the approach which was taken to make provision in case Samoa do make the quarter finals and to make provision in case Samoa do not make the quarter finals.

Other matters relating to sanction

30. It might be noted that the player received the maximum possible mitigation of 50 per cent. This is the maximum available under regulation 17, even though the player maintained that his tackle had not crossed the red card test. The maximum discount of 50 per cent can be applied under regulation 17 having regard to: “ (a) the presence and timing of an acknowledgement of culpability/wrongdoing by the offending Player; (b) the Player’s disciplinary record and/or good character; (c) the youth and inexperience of the Player; (d) the Player’s conduct prior to and at the hearing; (e) the Player having demonstrated remorse for his conduct to the victim Player including the timing of such remorse; and (f) any other off-field mitigating factor(s) that the Disciplinary Committee or Judicial Officer considers relevant and appropriate.”

31. In circumstances where a player does not accept that the red card test has been met it might be thought wrong to allow a full discount because there has not been “(a) the presence and timing of an acknowledgement of culpability/wrongdoing by the offending player” to the full extent of the wrongdoing that has been found to apply in his case. It is apparent that in an earlier case in this tournament involving the player Reece Hodge a full discount of 50 per cent was applied even though a citing was fully contested. For the sake of consistency in this particular tournament that approach has been followed in the case of this player, and other players.
32. We can see that in the light of this player’s excellent playing record and proper approach to the disciplinary proceedings that a reduction for mitigation from the 6 week starting point was required. However it is not readily apparent why the reduction should have been a full 50 per cent when the player was contesting that the red card test had been met, other than to ensure consistency with earlier decisions in this particular tournament. Therefore nothing that we say in this judgment is intended to endorse the approach of allowing a 50 per cent reduction for mitigation in circumstances where the player has not fully acknowledged his wrongdoing by accepting that the red card test has been satisfied. Giving a full discount of 50 per cent where the player continues to contest the extent of his wrongdoing risks discouraging players from accepting the full extent of their wrongdoing. It also risks judicialising the process of sanctions for foul play because there will be more contested hearings and appeals, none of which is desirable for the game of rugby.

Conclusion

33. For the detailed reasons set out above we: (1) dismiss the ground of appeal against the Committee’s finding that the red card test had been met, this is because the Committee was entitled to make the findings that it did; (2) dismiss the ground of appeal relating to the Samoa v Scotland game because the player could not be scheduled to play, this is because he was unavailable for selection because of injury; and (3) we dismiss the ground of appeal to the effect that if Samoa do not get into the quarter finals the suspension is carried forward to the Gallagher premiership, this is because the committee did not find, and could not have found on the materials before them, that Samoa were likely to get into the quarterfinals, this is because the committee’s decision was made after only one pool game.
34. The effect of this is that should Samoa qualify for the RWC quarter finals on 19 October or 20 October 2019 the player will be free to play on the day after the quarterfinal match. In the event that Samoa does not qualify for the quarterfinals the 3rd game of his suspension shall be served in the Gallagher premiership.
35. We order the return of 50 per cent of the appeal bond on the basis that there was a majority decision from the committee and the appeal on the red card raised proper points to be considered.

Sir James Dingemans (Chairperson and England)

Jean-Noel Couraud (France);

Jose Luis Rolandi (Argentina).

2 October 2019