

## **RBS 6 NATIONS 2013**

### **DECISION OF THE DISCIPLINARY COMMITTEE**

**Held at Sofitel Hotel, Heathrow, England**

**19 March 2013**

#### **In respect of:**

Brian O'Driscoll ("the Player")

and

A citing complaint ("the Citing Complaint") brought by Mr Aurwel Morgan the independent citing commissioner in respect of an alleged act of foul play on the part of the Player contrary to Law 10.4(b) of the Laws of the Game in the match between Italy and Ireland played on 16 March 2013 at Stadio Olimpico, Rome.

#### **Members of the Disciplinary Committee ("the Committee"):**

Mr Robert H P Williams (Chairman) (Wales)

Mr Mike Hamlin (England)

Mr John Doubleday (England)

#### **Decision of the Committee:**

- i. That although the Player had accepted that the Citing Complaint was a true and accurate account of the incident that resulted in the citing and had accepted that he had committed an act of illegal and/or foul play as alleged in the Citing Complaint he denied that the said act merited a red card. The Committee, however, was satisfied that the said act merited a red card and that the Player should have been ordered off for the offence.
- ii. The Player is suspended from taking part in the game of rugby up to and including 8 April 2013. This represents a three week suspension, having commenced on 18 March 2013.
- iii. The Committee made no order as to costs

#### **Introduction**

The Committee was convened pursuant to the Disciplinary Rules and Anti-Doping Programme applying to the 2013 6 Nations Championship to consider the Citing Complaint which concerned the conduct of the Player during the 6 Nations match between Italy and Ireland played on Saturday 16 March 2013 at Stadio Olimpico, Rome. The Citing Complaint alleged that the Player had stamped on the Italian no. 7, Favaro, in contravention of Law 10.4.(b) of The Laws of the Game.

Present at the hearing in addition to the Committee:

The Player

Mr Declan Kidney, Ireland team coach

Mr Michael Kearney, Ireland team manager

Mr Donal Spring, solicitor and legal representative of the Player (“Mr Spring”)  
Mr Jon Davis, Disciplinary Officer 6 Nations Rugby Limited  
Mr Max Duthie, solicitor and legal representative of the Disciplinary Officer (“Mr Duthie”)  
Ms Belinda Armstrong of 6 Nations Rugby Limited

Also present were:

Ms Liz Riley of Messrs Bird & Bird solicitors London who was observing the proceedings with the consent of the parties

The Chairman said the hearing would be conducted under the provisions of the 6 Nations Disciplinary Rules applying to the 2013 6 Nations Tournament (“the Rules or Rule” in the singular). The Player and all present agreed to proceed on that basis. The Chairman ascertained that there was no objection to the composition of the Committee. He had already established that the Player accepted that he was the player referred to in the Citing Complaint. He said that when the Committee considers the evidence, they will need to be satisfied on the balance of probabilities that the act of foul play had been committed and had merited a red card.

The Chairman established what evidence and papers were to be considered and that the parties had received the evidence prior to the hearing and there were no issues as to the timing of the delivery of any part of the evidence. The parties confirmed that this was the case, save that Mr Spring said that, at a later stage in the proceedings, he would be asking permission of the Committee to introduce video clips of other incidents.

The evidence to be referred to comprised:

#### Reports

- i The Citing Commissioner’s report of Mr Aurwel Morgan
- i The referee’s report from Mr Wayne Barnes
- i The assistant referee’s report from Mr Romain Poite
- i The report from Simone Favaro the Italian no. 7 who was the player said to have been stamped on
- i The medical report of Dr Simone Procelli, the Italian team doctor
- i The Player’s response to the pre-hearing directions

#### Correspondence

- i The hearing confirmation letter dated 18 March 2013
- i The panel and view confirmation letter dated 19 March 2013
- i The request on behalf of the Player for an extension of time for complying with the pre-hearing directions dated 19 March 2013
- i Various e-mails forwarding reports/video links 18/19 March 2013

#### Other

- i Disciplinary and Anti-Doping Rules for the 2013 6 Nations Championship
- i A copy of the IRB Regulation 18
- i A copy of the IRB Law 10

The Chairman ascertained that there was no objection to the composition of the panel. He also noted the Player’s responses to the standing directions and they read as follows:

- c) Mr O'Driscoll accepted that the Citing Complaint is a true and accurate account of the incident
- d) Mr O'Driscoll accepted that he committed an act of foul play as set out in the Citing Complaint
- e) Mr O'Driscoll does not accept that the act warranted a red card.

The Chairman therefore indicated that the Committee would prefer to deal with the issue of the red card separate from the issue of sanction as if they determined that the act did not merit a red card, they would be entitled to state that they did not need to consider the matter any further. It was agreed to proceed on that basis.

The Chairman ascertained that there were no other preliminary issues and said they would proceed to consider the evidence.

The Chairman therefore put the Citing Commissioner's report to the Player as follows:

“Law 10.4(b) – A player must not stamp or trample on an opponent

Green 13 (O'Driscoll) regains his feet after being knocked over during a tackle made by blue 7 (Favaro) on Green 22 (Madigan), he then joins the ensuing ruck, raises his right leg and stamps in a downward motion on the chest area of blue 7 who is lying on his back on the floor. The stamp is not proximity to the ball. Blue 7 receives treatment but is able to continue. Green 13 is yellow carded on the advice of a/r (Roman Poite)”

The Chairman asked the Player whether:

- i. he accepted the Citing Complaint as a true and accurate account of the incident which resulted in the citing
- ii. he accepted he had committed an act or acts of foul play as set out in the Citing Complaint
- iii. he accepted that those act/acts warranted a red card.

The Player said that he stood by the responses to the standing directions (see above)

The Chairman said that the Committee would consider the evidence to decide initially whether or not the incident merited a red card.

## **The evidence**

It was agreed the reports and written evidence could be taken as read. They are summarised as follows:

- 1) The assistant referee's report from Roman Poite stated that “after a tackle made by 7 blue, 13 green joined the breakdown area and stamped the 7 blue who was in the green side. The act has come far away from the ball and on the 7 blue body who was on the ground.” He called the referee Wayne Barnes to give his report and recommend a penalty reverse for Italy and a yellow card for 13 green.
- 2) Mr Wayne Barnes, the referee, confirmed that he did not see the incident .
- 3) The report of Simone Favaro said that, during the match, he had tackled a player falling to the ground and because of that, a ruck was formed. In the dynamics of the action, he found himself on the side of the defence. He tried to free himself from the ruck and at that time felt the foot of an opponent hitting him on the right side of the chest. He continued to play without consequences – having some scratches on the skin.
- 4) The medical report refers to Simone Favaro having medical attention immediately after the “hit” and there was “pain in the right costal arch and mild dyspnea”. After an initial field assessment, Simone Favaro was raised and went on to play for several minutes before being replaced. \* NB1 “In the locker

room after the game, he showed a skin abrasion in the corresponding zone and dyspnea only inhalation and exhalation.”

\*NB1 The Committee were advised the incident occurred in about the 29<sup>th</sup> minute and Simone Favaro continued playing until about the 59<sup>th</sup> minute.

#### 5) The video evidence

There was a broadcasting clip and a clip which had been seen by the Citing Commissioner. Both clips were shown to all present on more than one occasion without any comments or explanations being made.

The Committee’s description of what was in the video clips is as follows:

- i The Italian no.7 Favaro tackles the Irish no.22. They both go to ground.
- i Favaro rolls over the Irish 22 and is lying on the wrong side of the ruck which has formed.
- i The Player has been knocked off his balance having attempted to join the ruck over the tackled player. He is seen lying on the side of the ruck and then on one knee.
- i His mouth can be seen wide open as if he is shouting something.
- i He is seen getting up to his feet.
- i Favaro is now on his back and his arms are outstretched behind him.
- i Having got to his feet, the Player raises his right leg and his foot comes down on the front of Favaro
- i The boot lands on the Favaro’s upper stomach/lower chest area.
- i The Player is off-balanced and his left hand is outstretched and comes into contact with the top of the face of the Victim Player.
- i Favaro’s head is pushed downwards.
- i The Player steps over Favaro and walks away.

After they had viewed the clips on several occasions, the Player was invited to give his explanation and account as to what had occurred.

The Player’s account was noted as follows:

“Ian Madigan who has the ball is tackled by Italian no.7”

“I attempted to join the ruck but am knocked off balance.”

“I am shouting to him to roll away”

“I got up and put my foot on him to try and encourage him to roll away”

“He is blocking the ball”

“Tacklers should roll away - referees have been hot on this – players rolling away.”

“Push down on him to try to relieve the ball”

“I am trying to get him to roll away”

Mr Spring pointed out that the incident was very close to the touchline. It is near to where the assistant referee was positioned and the assistant referee’s view was unimpeded. The assistant referee had

recommended a yellow card. He went on to state that the Player's weight was on his left foot and there was no transfer of weight to the right foot which is the foot which came down onto Favaro. He emphasised that the right foot did not come down on any pivotal part of the body such as the ankle. None of Favaro's Italian teammates reacted as if there had been a red card incident. No-one engaged with the Player which they would have done if he had been guilty of a red card offence. There was no damage to Favaro. The Player's purpose was to get Favaro to roll away and the Player had been asking and shouting at Favaro to roll away and he did not.

The Chairman put to the Player that his viewing of the video clip showed that there was a "fierce stamp". The Player's response was that he was trying to free up the ball and he was off balance.

The Player was asked his state of mind when he had ".... done a quick stamp and had pushed him down". The Player's response was that "I was a little annoyed that he (Favaro no 7) was reluctant to roll away."

It was also said, on the Player's behalf, that the ball was "not a million miles away". The Player's explanation for seeming to push down on Favaro's head after stamp was that he was off balance. He said he had been the first to arrive at the ruck and he put his hand down to stop himself from falling.

Mr Spring asked the Committee to view video clips of other incidents of a similar nature. He said that this would show that match officials and citing commissioners had not sought to impose red cards for similar incidents as the matter now before the Committee. He said that the law (Law 10.4(b)) was not being questioned. The issue was that the incident did not merit a red card. He accepted there was no written test as to what was a red card. It is a matter of skill and judgment. All players are, however, entitled to be treated with fairness. One should look to see what has happened in other similar incidents. There should not be one test on the pitch and a different test at a disciplinary hearing. There needed to be consistency.

Mr Duthie responded that although the Committee could receive such evidence as it deemed fit, in his opinion, little or no weight should be attributed to video clips of other similar incidents. The Committee's role was to adjudicate as to whether, in this particular matter, the act of foul play was worthy of a red card. He pointed out that similar requests have been made to other disciplinary committees and they are invariably rejected.

The Committee considered Mr Spring's request in private and decided that although they had a discretion to consider any evidence which they deemed appropriate, they were considering the facts of this case. Their decision would be fact specific.

The hearing reconvened and the Chairman announced they would not be looking at video clips of other incidents.

Mr Spring made closing submissions:

- i The red card test is a rugby test and applying that test – this is not a red card.
- i The incident was not malicious nor was it dangerous.
- i The incident did not cause any damage
- i At its height, it would be no more than a yellow card
- i The incident had been seen by the assistant referee who saw it clearly and did not view it as a red card
- i The Italian players reaction was not of a red card incident having occurred
- i There was no transfer of body weight onto the Player
- i There was just a bit of weight applied to the stomach
- i It was a mild incident

- i From what he had seen in this current season of other incidents, this was not a red card and decisions should have some consistency

Mr Duthie drew the Committee's attention to Rule 2.5.68 which is a departure from the IRB Regulation 17.7.4(a) in that under the IRB procedures, once a citing complaint is upheld, one proceeds to sanction, whereas the Rules for 2013 6 Nations Championship provide that one should consider the red card test before moving to sanction.

Mr Spring was invited to make closing submissions as was the Player. Mr Spring reminded the Committee that the assistant referee was in close proximity and his decision was a yellow card – not worthy of a red card. The Player said he was looking for the ball which he did not think was far from the ruck.

### **The deliberations of the Committee**

The Committee deliberated in private and reviewed all of the evidence i.e. the written and verbal statements, the DVD clips and the submissions. It was noted that:

- 1) The Player accepted the Citing Complaint was an accurate account of the incident which occurred in the 38<sup>th</sup> minute of the game
- 2) The Player accepted that the incident was a breach of Law 10.4.(b).

The Committee reviewed the DVD evidence and played the clips several times and their conclusions are:

- 1) Favaro is lying prone on the ground
- 2) He is on his back with his arms outstretched backwards
- 3) It was accepted that Favaro is in an illegal position
- 4) It is accepted that the Player was shouting at him and was doing so to tell him to roll away.
- 5) The Player is seen to get to his feet and raise his right leg, bringing it down onto the front of Favaro.
- 6) The boot lands on the upper stomach/chest of Favaro
- 7) Favaro's chest is compressed by the impact
- 8) Favaro is unprotected, not able to guard against the impact
- 9) It was a short, quick, deliberate stamp delivered with some force while he was looking down at Favaro
- 10) It was not a rucking action.
- 11) The ball could not be seen.

In all the circumstances, the analysis of the Committee was that the facts did not support the contention of the Player that he was putting his foot on Favaro to try and get him to roll away to relieve the ball.

The Committee took note that the assistant referee who saw the incident recommended a yellow card. It was their duty, however, to weigh up all the evidence and to come to their own conclusions. Under the Rules, they are not obliged to follow the match officials decisions. The Committee had the luxury of viewing the

incident from different angles, frame by frame, in slow and real time. There is no written formula for a red card test. The cases are fact specific.

The Committee was therefore unanimous that the incident merited a red card and that the hearing would proceed to consider what sanction should be imposed.

The hearing reconvened and the Chairman announced the decision that the incident merited a red card and they would proceed to sanction.

## **Sanction**

The entry level set out in Schedule 5 of the Rules (Appendix 1 of the IRB Regulation 17) sets out the tariff for an offence in contravention of Law 10.4(b) as:-

1. Lower-end – 2 weeks
2. Mid-range – 5 weeks
3. Top-end – 9 weeks up to a maximum of 52 weeks.

The Chairman asked the Player and his representative to address them on the appropriate entry point by reference to the on-field criteria as per Rule 2.5.87. The Chairman added that having conferred with his colleagues, they did not need to be addressed on off-field aggravating factors as they accepted there were none. They would be addressed on the off-field mitigating factors by reference to Rule 2.5.90.

Mr Spring made submissions by following the numbered sub-paragraphs in Rule 2.5.87 as follows:-

- a. He accepted the finding of the committee and it was an intentional act.
- b. Recklessness – Mr Spring referred to the part of the body that had been struck – it was not pivotal. NB: The committee, however, dealt with this issue under ‘c’.
- c. As to the gravity of the Player’s actions in relation to the offending, Mr Spring said that it was a low-end matter.
- d. The nature of the actions and the manner in which the offence was committed to include the part of body used – it was accepted that in this case the boot was used but Mr Spring said there was no weight on the Player and there was no danger of any injury.
- e. The existence of provocation – Favaro was lying on the wrong side and the Player had warned him on several occasions.
- f. Retaliation – this was not a matter of retaliation.
- g. This was not a case of self-defence.
- h. As to the effect of the Player’s actions on the victim – the extent of the victim’s injury whether he was removed from the match. Mr Spring pointed out that Favaro played on.
- i. The effect of the Player’s actions on the match – the adverse effect was for Ireland not Italy as they were without a player for 10 minutes and they went on to lose the game.

- j. The vulnerability of the victim, including the part of the victim's body involved/affected, the position of the victim and his ability to defend himself. Mr Spring said that in his opinion this was a less vulnerable victim.
- k. The level of participation depending in the level of premeditation – it was not premeditated.
- l. Whether the conduct of the Player was completed or amounted to an attempt – Mr Spring accepted the action was completed.
- m. Any other feature of the Player's conduct in relation to or connected with the offending. Mr Spring referred to the Player shouting at Favaro warning him to roll away.

Mr Spring's submissions are summarised that, although it was an intentional act, it was not grave, there was provocation and Favaro was a less vulnerable victim than many others. There was just a bit of weight to the stomach. It was mild. In the circumstances, the Committee should therefore regard it as a lower-end matter.

As it was accepted there were no aggravating features, Mr Spring referred to the mitigating off-field factors by reference to Rule 2.5.90 as follows:

- a) As to the presence and timing of acknowledging culpability, Mr Spring accepted that the Player had challenged that the incident merited a red card
- b) The Player had an exemplary disciplinary record. He had never been red carded previously. A yellow card had only been for a technical offence. His playing record spoke for itself.
- c) Mr Spring said that the Player conducted himself well prior to and at the hearing.
- d) There was no injury to Favaro and that Favaro had over-reacted after the incident.

Mr Spring called for maximum mitigation.

Mr Duthie drew the Committee's attention to Rule 2.5.91 which provides that in mid and high end matters, where there are mitigating factors which would justify reducing the period of suspension, they could not apply a greater reduction than 50% from the entry point. In assessing the level of reduction from the entry point, the Disciplinary Committee should start at 0% and work up to a maximum of 50%. He also drew their attention to Rule 2.5.92 which provides that for acts of foul play that are categorised as at the lower end of the scale, they could apply a greater reduction than 50% from the entry point, provided there are off-field mitigating factors (plural) and without such a reduction, the sanction would be wholly disproportionate to the level and type of offending. Mr Duthie emphasised that for the reduction to be greater than 50% it had to be wholly disproportionate and indicated that in his opinion it was really aimed at where the low end entry point is of itself high.

Before the Committee deliberated on the sanction, the Player was asked his views on the matter and he responded by saying that he had always prided himself on being a hard but fair player. He genuinely thought it would not have warranted more than a yellow card. He was disappointed with the outcome after such a long career and disappointed for his team mates as he had to sit in the bin while Ireland were losing.

### **The Committee's deliberations and conclusions**

The Committee deliberated in private on the issue of sanction and their conclusions were as follows:

- a) It was an intentional and deliberate stamp.
- b) As it was intentional, the Committee did not consider recklessness.



- c) As to gravity, it was grave – it was a short but quick, deliberate stamp, delivered with some force while looking down at the Player.
- d) It was the boot which came into contact with Favaro but this is inherent in the offence.
- e) There was some provocation in that Favaro had not rolled away. Nonetheless, this was a technical offence, not a foul being committed upon the Player.
- f) No issue of retaliation.
- g) It is accepted that there was no issue of self defence.
- h) Although Favaro had in the Committee's view over-reacted, he did need some medical attention. The medical report bears this out. Nonetheless, he played on immediately and was not removed from the match until about the 59<sup>th</sup> minute and there was no evidence or indication that he was removed because of the incident.
- i) The Player's actions had no adverse effect on the match insofar as Italy was concerned.
- j) Favaro was in a vulnerable position. He was lying prone on his back with his arms stretched backwards behind him. He was in no position to protect himself or to guard against the stamp. The stamp was to the upper stomach/ribcage area. Favaro's chest compresses. The Committee did not accept the description of it being a "bit of weight applied to the stomach" and it being a mild incident.
- k) Although it was an intentional act, it was not premeditated. The Committee accepted it was a spontaneous act born out of frustration.
- l) The act was completed.
- m) The Committee did not consider there were other features of the Player's conduct in relation to or connected with the offending.

There was a lengthy discussion amongst the members of the Committee as to the entry point and they were not unanimous. The majority, however, were of the view that this was not an incident of little consequence. Favaro was vulnerable and it could have caused a serious injury. The majority took the view that a stamp with a boot - even if the stamp was only on the stomach – should not be taken lightly. An act borne out of frustration does not lessen the sanction. The referee was in control of the situation and had awarded a penalty because Favaro was lying on the wrong side.

By a majority of two to one, the decision was that the entry point was mid-range which is a sanction of 5 weeks.

Turning to the mitigating factors, the Committee accepted that the Player had an exemplary character and is one of the leading rugby players in the world.

N.B. The Committee was aware that the Player had over 130 test caps and that he was the second most capped player in rugby union history. He had had 125 caps for Ireland, 83 of which were as captain and 6 for the British and Irish Lions. He was the highest try scorer of all time in Irish rugby. He had been chosen as player of the tournament in 2006, 2007 and the 2009 6 Nations Championship. He is widely regarded as one of the best centres to have ever played the game.

The Committee had been reminded by Mr Duthie that for mid and high end matters Rule 2.5.91 provided that they could not apply a greater reduction than 50% from the entry point suspension and that in assessing the level of reduction from the entry point, they should start at 0% and work up to a maximum of 50%. In this case, the Player had challenged that it was a red card matter. The Committee took the view that, in all of the circumstances before them, that of itself should not prevent them from applying the maximum amount of mitigation. The sanction, therefore, would be reduced by 50% which is 2.5 weeks but as a sanction has to be for whole weeks, in effect the sanction would be a 3 week suspension.

The suspension took effect from the date that the Player was notified of the Citing Complaint i.e. Monday, 18 March 2013 and 3 weeks would take it up to 8 April 2013 and he would eligible to play from 9 April 2013.

### **Announcing the decision**

The hearing was reconvened and the Chairman advised the Player and his representative that by a majority of two to one, the decision was that the incident warranted a mid range entry point of 5 weeks. Having regard, however, to the mitigating factors, this would be reduced by 50% but because half weeks are rounded up to whole weeks, the sanction is reduced by 2. The Player would be suspended for 3 weeks from 18 March 2013 to 8 April 2013.

The parties were advised that they had a right of appeal.

The parties were advised that the written decision would be available from Monday 25 March 2013.

There were no orders as to costs.

**DATED** 25 March 2013

**SIGNED** .....

Robert H P Williams