

IN THE MATTER OF AN APPEAL

DISCIPLINARY APPEAL HEARING

RUGBY FOOTBALL UNION

THE RUGBY FOOTBALL UNION

- V -

ROHAN JANSE VAN RENSBURG

Venue: Via Video Link

Date: Friday 7th February 2020

Match: Exeter Chiefs EFC v Sale Sharks RFC
25th January 2020

Match Venue: Sandy Way Stadium, Exeter

Appeal Panel: Ian Unsworth QC (Chairman, Appeal Panel)
Oliver Clark

Secretariat: Rebecca Morgan, Disciplinary Hearings Manager

Attendees: **For the Appellant**

Stuart Tennant, Legal Counsel (Discipline)
David Barnes, RFU Head of Discipline

For the Respondent

Steve Diamond, Head Coach, Sale Sharks

The Player Rohan Janse van Rensburg was not present.

At the start of the hearing, we introduced ourselves. The parties did not object to our composition.

DECISION OF THE APPEAL PANEL

A. INTRODUCTION

1. This is an appeal brought by the RFU Head of Discipline against a decision of an RFU Disciplinary Panel (“the Disciplinary Panel”)¹. That decision followed a hearing on the 4th February 2020 when the Disciplinary Panel considered a citing brought against the Player following a match on the 25th January 2020 between Exeter Chiefs RFC and Sale Sharks RFC.
2. The Disciplinary Panel found that the Citing should not be upheld.

B. GROUND OF APPEAL

3. By way of written notice, dated the 6th February 2020, the RFU now seeks to appeal that decision on the grounds that the Disciplinary Panel
 - (1) Came to a decision to which no reasonable body could have come (RFU Regulation 19.12.2(a)); and/or
 - (2) Made an error of law in reaching its decision (RFU Regulation 19.12.2(b)).

C. TIMING OF THIS APPEAL

4. On 6th February 2020, the Chairman considered competing representations as to the timing of this appeal. The RFU sought to have the appeal heard as soon as possible and in particular before a Premiership Rugby Cup fixture between Sale Sharks and Saracens at 19:45 today, Friday 7th February 2020.

¹ Original Decision [can be read here](#)

5. Unsurprisingly, Sale Sharks expressed concern about the hearing being listed on the very day of a fixture with the inevitable inconvenience caused.
6. It is manifestly clear that an Appeal Panel should be convened as soon as is reasonably practicable once an appeal is lodged. Equally, it is only fair that any Player affected by such proceedings, their Club and, of course, any opposing Club, should have certainty as to the playing status of those selected to play. Here, the Player has been named in the starting XV.
7. The decision of the Chairman was communicated² to the Parties:

“I have carefully considered the competing submissions as to the timing of the appeal hearing.

In my judgement, balancing all relevant factors, the appropriate course is for the appeal to go ahead, tomorrow Friday 7th February 2020.

I am sympathetic to the representations made by Mr Blood and also by Mr Diamond in his earlier email regarding the fixture tomorrow evening and, in that regard, would be content to deal with the matter by video link if that would assist. Equally, mindful of the tight timetable, I would be content to consider any response to the RFU’s grounds of appeal either in writing submitted at any time prior to the hearing and/ or orally during the hearing.”

D. MATERIAL CONSIDERED

8. Prior to the hearing we had sight of the original hearing seen by the Disciplinary Panel, consisting of:
 1. Charge sheet
 2. Sanction table extract
 3. Citing report Paul Hull 25.01.20

² Email sent at 17:25

4. World Rugby Decision Making Framework for High Tackles
 5. World Rugby memorandum 14.12.16 'Law Application Guideline Contact to the Head'
 6. Email Adam Reuben, Exeter Chiefs club doctor 27.01.20
9. In addition, we had sight of the relevant footage and, of course, the written decision of the Panel.
10. During the hearing we were shown and had access to further footage provided by Mr Diamond. We are grateful to him and his staff for facilitating this.

INTEGRITY OF THE PROCEEDINGS

11. During the hearing we were made aware that footage of the incident has been deployed in a presentation regarding high tackles. We made clear that the Appeal Panel had not seen it nor had we seen any commentary online or elsewhere. Clearly, it is vital that any footage of any incident which is the subject of any disciplinary hearing is handled sensitively and must not in any way prejudice the outcome of an independent hearing or suggest what that outcome might be. We were reassured by the RFU (who were not responsible for this) that they took the matter very seriously and were acting to ensure that any misunderstanding that led to this was taken very seriously.

E. THE CITING

12. The Citing Report of the incident read as follows:-

"From a Sale restart, they kicked right and long; they have a good chase with No 12 (Rohan Janse Van Rensburg) leading chase. Exeter's No 10 (Gareth Steenson) catches the ball and almost immediately gets tackled high by Janse Van Rensburg. Janse Van Rensburg sprinted from the half way line after the kick off, had a clear line of sight and didn't slow down to adjust to the tackle/contact situation, he didn't have any control and the tackle was highly dangerous! The actual tackle was an upright

tackle, with a lot of force, they was a (sic) arm wrap but due to the height of the tackler contact was high on chest and head, forcing a nasty clash of heads.

The incident was reviewed by the Referee (JP Doyle) and the TMO (Geoff Warren) and after a lot of deliberation Doyle issued a yellow card. Rohan Janse Van Rensburg went off for a HIA due to the collision and wasn't replaced when the sin bin time had elapsed.

In my opinion the tackle was dangerous, had a lot of force, he had a clear line of sight of the ball carrier, they was no control from the tackler and contact was made direct to the head; this is a clear breach of Law 9.13, so I am issuing a Full Citing to the Sale Sharks No 12 (Rohan Janse Van Rensburg)."

13. The Disciplinary Panel observed that,

"The footage shows the incident from two angles: the first showing the point of impact from behind and to the right of Van Rensburg and the second showing the point of impact face on to Van Rensburg. It shows the Sale kick described in the citing report, the Van Rensburg chase and the tackle on Steenson. Van Rensburg approaches Steenson at speed but square on, with his arms out to wrap. Van Rensburg is upright but does dip into the tackle. Steenson also dips, ready to push off his right leg. The footage does not show contact between Van Rensburg's shoulder and Steenson's head - it is a shoulder/shoulder contact. Steenson's head is not propelled backwards, but it does catch Van Rensburg's chin and appears to knock him out, at which point Van Rensburg loses his grip and falls to the ground."

14. In their Judgment the Disciplinary Panel further observed:

"The citing report confirms that Van Rensburg was injured, received medical treatment from his medical team, went off for an HIA and was

not replaced when the YC time had elapsed. This was confirmed by Van Rensburg and Sale Sharks RFC at the hearing.

The citing report confirms that Steenson continued play without medical treatment. This was also confirmed by Exeter Chiefs' club doctor Adam Reuben in his email of 27.01.20 which states "I reviewed Gareth immediately after the highlighted incident. There were no medical concerns and he was deemed fit to continue playing without [the] need for further off pitch assessment".

F. THE ORIGINAL HEARING

15. In their Judgement, the Disciplinary Panel referred to matters heard at the Hearing:

“There was no written statement from the Player, but he confirmed in his evidence the mechanism of the incident as submitted on his behalf by Mr Diamond, namely:

- Sale are coached to kick high and it is the job of the chasing player to wrap the receiver and keep them on their feet
- The footage shows that the receiving player dips by 10 or 12 inches
- It is denied that the tackle is uncontrolled: nothing in the laws of rugby to say the chasing player cannot run quickly or hit hard
- At 19 seconds on the footage, it shows the Player in control, with his shoulders square: there is an attempt to keep opposition player on his feet and it was a chest to chest contact
- As Steenson has ducked, the Player's chin was caught by Steenson's head – it was a slight touch but a “knockout blow”

- The TV footage (which continued beyond the section of footage provided for the hearing) shows the referee asking to review the incident to see if there is shoulder to head contact in open field: he concludes it was shoulder to shoulder contact and then a clash of heads, so cards him for a reckless tackle
- This Referee is extremely experienced and the TMO is the third most experienced TMO in the world
- They agree with the TMO and Referee who have seen it exactly as it was
- They do not agree it passes the red card test
The Player also confirmed that:
- He had no intention of hurting the player and in fact came off worse
- It was a wrap tackle: he dipped down to get the wrap around but Steenson also dipped down as well
- Steenson's head hit his chin and knocked him out
- Steenson was not injured."

G. DECISION OF THE DISCIPLINARY PANEL

16. In not upholding the citing, the Disciplinary Panel made the following findings of fact:

- The Player sprinted from the half way line after the kick off and had a clear line of sight
- He did not slow down into the tackle but did not accelerate into it
- He remained in control for the first part of the tackle and that, as submitted, his intention was to wrap the receiving player and hold him up
- The tackle was high
- The footage does not show shoulder to head contact, but the players' shoulders collide

- As Steenson dips in anticipation of the tackle, the top of his head catches the Player's chin
- The Player appears to be knocked out by the blow to his chin, automatically releases his grip and falls to the ground
- Following the Decision Making Framework, the tackle falls into (3) namely a high tackle with shoulder or head contact
- When considering the degree of danger, none of the three 'Preparation' indicators were present (i.e. the tackler did not draw his arms back prior to the tackle, the tackler did not leave the ground and the tackler's arm does not swing forward prior to contact)
- As to the 'Contact' indicators, whilst the tackler is attempting an active tackle, on the balance of probabilities his intention was to wrap the receiver and keep him on his feet. The tackler was travelling at speed but does not accelerate into the tackle nor is there a rigid arm/elbow making contact with the ball carrier's head as part of a swinging motion
- As to the 'Follow through' indicator, the tackle was incomplete as the player was knocked out and released his grip
- Following the Decision Making Framework therefore, the Panel considered on the balance of probabilities that the degree of danger was low and that the referee's decision to award a yellow card was correct

H. RFU SUBMISSIONS ON APPEAL

17. In written submissions the RFU argued that the Disciplinary Panel erred when concluding, on the balance of probabilities, that the citing of the Player for a breach of World Rugby Law 9.13 should not be upheld on the basis that, although there was Foul Play, the act in question did not meet the red card test.³

18. In particular, it argued that the Panel failed to give appropriate weight to the following points:

³ RFU Regulation 19.11.4.

1. With reference to the *World Rugby Decision making framework for high tackles*, the Panel was wrong to conclude that there was a “low” degree of danger in relation to the high tackle by the Player’s shoulder or head. The degree of danger was patently “high” for the following reasons:

(1) This was an active/dominant tackle as opposed to a passive/soak tackle. The inevitable consequence of the Player’s upright body position coming into the tackle was always going to be that Gareth Steenson of Exeter Chiefs would be knocked to the ground. To suggest otherwise is an unreasonable conclusion. The video footage clearly does not support a determination that the Player’s intention was to “*wrap the receiver and keep him on his feet*” (page 5 of the judgment).

(2) The Player’s speed and acceleration into the tackle was clearly high. As the Panel themselves noted, the Player “*approaches Steenson at speed*” (page 2 of the judgment) having “*sprinted from the half way line after the kick off*” and “*did not slow down into the tackle*” (page 5 of the judgment). This is not conduct which is suggestive of a “low” degree of danger.

(3) The Player completes the tackle. There is clearly no immediate release/withdrawal. The conclusion from the Panel that the tackle is not complete because “the player is knocked out and released his grip” is not accurate. The tackle is completed. But even if this were an accurate conclusion, it was unreasonable to determine that the degree of danger was “low” rather than “high” in these circumstances. Scenarios where a player hits an opposing player with such force to knock himself out must, in our respectful submission, lead to a conclusion that the degree of danger is “high”. To do otherwise is unreasonable and, frankly, a damaging conclusion for player welfare in rugby union.

2. The Panel, therefore, should have concluded that the degree of danger was “high” and, therefore, the correct outcome was a red card. Thereafter, the Panel should have considered mitigation from the Player. The Panel did not provide any analysis on whether the “factors to consider against mitigation” and/or “mitigating factors” applied but, suffice to say, the RFU Citing Commissioner did consider these boxes on the decision-making framework and concluded that:

(1) The Player had a clear line of sight (as the Panel also concluded – see page 5 of the judgment) and time before contact (and, therefore, the mitigating factors should not apply); and

(2) Even if the mitigating factors did apply then none of them are engaged in this incident as they are not “clear and obvious”. In particular, it is not clear that there is a sudden drop from Gareth Steenson prior to the tackle being made and, in particular, the suggested 10 or 12 inches drop (page 4 of the judgment) is unquantified and should be disregarded.

19. Thus, the RFU asserted that the Disciplinary Panel came to a decision to which no reasonable body could have come⁴ and, when applying the *World Rugby Decision making framework for high tackles*, made an error of law in reaching its decision⁵. They argued that had the Panel given appropriate weight to points (i) and (ii) above, they would and should have concluded that the citing met the red card test and it should have been upheld.

20. These written submissions were supplemented at the hearing. It was argued by Mr Tennant that the real issue was not whether this was a high tackle (which was accepted) but whether this amounted to a high tackle with a high degree of danger.

⁴ RFU Regulation 19.12.2(a)

⁵ RFU Regulation 19.12.2(b)

21. It was accepted that the Disciplinary Panel had properly approached the issue of Preparation in the video signs indicating a higher degree of danger with the Decision-Making Framework.

22. The real area of concern he submitted, was around the area of Contact. This was he suggested a tackler attempting an active/ dominant tackle at speed and/or accelerating. He further relied on the agreed fact that there was a clash of heads, resulting in the tackler being momentarily rendered unconscious, as axiomatic that the tackle was inherently dangerous. Mr Tennant took us through a number of areas of concern amplifying his written grounds.

I. THE PLAYER'S SUBMISSIONS ON APPEAL

23. On behalf of the Player, it was argued by Mr Diamond that the Referee, his Assistants, the TMO (the on-field tribunal) and original Disciplinary Panel (the off-field tribunal) were all correct. He clearly respected the decision of the Citing Officer but argued that, in effect, there had already been two reasonable bodies of experts view the evidence and consider the framework, both concluding that the Red Card test had not been met. Mr Diamond argued that the appellant's submission that the Disciplinary Panel, "came to a decision to which no reasonable body could have come" could not be correct. In words to this effect he stated, 'seven people had already reached that decision'. He further argued that the framework was a flawed document, but in so far as it had been possible to follow it, the original Disciplinary Panel had done so, with no errors of law.

24. Mr Diamond took us through his further footage which was shown to the original Disciplinary Panel.

25. Mr Diamond indicated that the Player accepted that this was a Yellow Card based on the degree of danger and did not suggest that the mitigating features had any material affect.

26. Mr Diamond addressed us at some length on the detail of the tackle, accepted that this was high but by reference to the Framework urged us to find that the Disciplinary Panel were correct in their analysis.

J. POWERS

27. Pursuant to RFU Regulation 19.12.12 an Appeal Panel has the power to:

- (a) dismiss the appeal;
- (b) quash a finding and any sanction imposed;
- (c) remit the matter for a re-hearing;
- (d) substitute an alternative finding and/or sanction;
- (e) reduce or increase the original sanction; and/or
- (f) make such further orders as it considers appropriate.

K. APPROACH

28. As a properly constituted Appeal Panel, and having regard to the grounds advanced, we must consider whether, on the balance of probabilities, the Disciplinary Panel:

- (a) Came to a decision to which no reasonable body could have come (RFU Regulation 19.12.2(a)); and/or
- (b) Made an error of law in reaching its decision (RFU Regulation 19.12.2(b)).

L. ANALYSIS

29. An Appeal Panel is charged not with determining whether it or another Panel would have made the same decision as a Disciplinary Panel but rather, whether, on the balance of probabilities, the Disciplinary Panel fell into error as set out above.

30. By reference to the submissions made by the RFU, our analysis is as set out below.

31. Firstly, the RFU argued that with reference to the *World Rugby Decision making framework for high tackles*, the Disciplinary Panel was wrong to conclude that there was a “low” degree of danger in relation to the high tackle by the Player’s shoulder or head. It argued that that this was because the Disciplinary Panel failed to give appropriate weight to:

(a) This was an active/dominant tackle as opposed to a passive/soak tackle.

We determined that the Disciplinary Panel did pay express attention to that.

(b) The video footage clearly does not support a determination that the Player’s intention was to “*wrap the receiver and keep him on his feet*” (page 5 of the judgment).

We determined that the Disciplinary Panel considered this aspect of the case and came to a conclusion which was open to them as a fact-finding tribunal.

(c) The Player’s speed and acceleration into the tackle was clearly high. His conduct was not such which was suggestive of a “low” degree of danger.

We determined that the Disciplinary Panel considered the issue in accordance with the Framework. The reference to the Player not accelerating was merely a statement of fact and did not suggest a departure from a proper approach.

(d) The conclusion from the Disciplinary Panel that the tackle was not complete because “the player is knocked out and released his grip” was inaccurate.

We determined that the Disciplinary Panel came to a finding which was open to them.

- (e) Even if this were an accurate conclusion, it was unreasonable for the Disciplinary Panel to determine that the degree of danger was “low” rather than “high” in these circumstances. Scenarios where a player hits an opposing player with such force to knock himself out must lead to a conclusion that the degree of danger is “high”. To do otherwise is unreasonable and, frankly, a damaging conclusion for player welfare in rugby union.

We determined that the Disciplinary Panel carefully took a staged approach to their analysis and having made the findings that they did were entitled to come to the conclusion that they did.

- (f) The Panel, therefore, should have concluded that the degree of danger was “high” and, therefore, the correct outcome was a red card.

The Framework is such that it gives a non-exhaustive list of factors to be considered when coming to a determination on the degree of danger. Whilst it lists a number of actions by the tackler prior to, during and on completion of the tackle, it does not give weight to any particular factor over another, rather relies upon the experience of the Disciplinary Panel to reach a determination in the safe knowledge that they have given due consideration to all of the relevant factors. We determined that the Disciplinary Panel had discharged their duty in this respect and that their ultimate finding was one which was in accordance with their findings of fact.

M. DECISION ON APPEAL

32. Firstly, this was a proper appeal to be brought. The hearing was quite properly expedited and the parties are to be congratulated for assisting with its smooth conduct.

33. The speed at which the appeal came about did not diminish from its focus. The hearing was a lengthy one and every possible issue was explored by the parties.

34. Reminding ourselves that it was not the purpose of this or any Appeal Panel to consider whether another Panel would have made the same decision, the issue was whether there was any procedural irregularity in the original decision-making process as set out above.

35. In our judgment there was none and accordingly the appeal is dismissed.

36. Accordingly, for all the reasons stated:

- (i) We dismiss the appeal;
- (ii) The decision of the original Disciplinary Panel remains; and thus
- (iii) The Player is free to play with immediate effect.

N. COSTS

37. We fully understand why the RFU brought this Appeal. It was, in our view, an important case and one which demanded proper scrutiny. As custodians of the game in this country and its safety, the decision to appeal was a responsible one. In all the circumstances we make no order as to costs.

**Ian Unsworth QC
Oliver Clark**

7TH FEBRUARY 2020