

RUGBY FOOTBALL UNION

INDEPENDENT JUDICIAL HEARING

VENUE: The Holiday Inn, Bloomsbury

DATE: 9 December 2019

IN THE MATTER OF: A CITING BROUGHT BY SHELFORD RFC ('Shelford')

Player: Thomas MOWLE

Club: Southend RFC ('Southend')

Match: Southend Priors (2nd XV) v Shelford Nomads (2nd XV)

Venue: Southend

Date of match: 9 November 2019

Panel: Jeremy Summers (Chair), Rebecca Harris and Mark Langley (the 'Panel')

Secretary: Rebecca Morgan

Present:

Tom Mowle (the 'Player')

Andy Speed – Southend Priors General Manager

Noel Woodgate – Chairman of Playing Committee, Shelford

Witnesses as referred to below.

DECISION

1. **The citing was upheld and, for the reasons set out below, a sanction of 8 weeks was imposed upon the Player. The period of suspension was ordered to run from 9 December 2019 until 10 February 2020. The Player is free to play again on 11 February 2020.**

PRELIMINARY ISSUES

2. The Player did not object to the composition of the Panel and no preliminary issues arose.

THE CITING

3. The Panel convened to consider a citing brought by Shelford in consequence of which the Player was charged with an offence of verbally abusing an opponent contrary to Law 9.12 of the Laws of the Game.
4. The Player confirmed before the Panel that he accepted the charge in part. He however wished to challenge the actual words used.

5. In summary, the citing alleged that the Player had called an opponent a "black c**t". The Player asserted that he had not used the word "black" but had called the Shelford player concerned a "silly f***ing c**t".
6. As such, the issue for the Panel was clearly defined and required determination in the main following an assessment of the oral evidence called.

EVIDENCE

7. The Panel considered:
 - 1) The Shelford hearing pack in support of the citing.
 - 2) The Southend hearing pack in response.
 - 3) Match footage of the incident.
 - 4) Oral evidence from:
 - a) Takudzwa Collins Musavengana ('Collins') - Shelford wing.
 - b) Adam Hodgkinson – Shelford hooker.
 - c) Oliver Elmsley – Shelford replacement.
 - d) Harry Quantrill- Shelford replacement.
 - e) Tom Duffy – Shelford scrum half and captain.
 - f) The Player – Southend hooker.
 - g) Jackie Flynn – Southend supporter (by phone).
 - h) Will Bannister – Southend wing (by phone).
 - i) Andrew McClintock – Southend lock.
 - 5) Oral submissions on behalf of Southend and the Player.

THE FACTS

8. The incident had occurred at or around the 15th minute of the first half. The available match footage was taken from the far side of the pitch from where the incident occurred. There was no sound and accordingly any words spoken were not audible.
9. It was however possible to detect a visible reaction from Collins, the Shelford right winger, immediately following his being in close proximity to the Player.
10. Written evidence was adduced from the Referee and the Referee Assessor, neither of whom had heard the alleged abuse despite appearing to have been positioned relatively close to the alleged incident.
11. An email from the Referee confirmed that the Shelford captain had approached him with the allegation, and he had advised that, as he had not heard the alleged abuse, he was unable to take any action. It further recorded that he had then spoken to the Player (the Player indicated in his evidence that this was at half time), who had strenuously denied the allegation.
12. Collins gave evidence. He identified himself on the footage, and explained the part he had played in the attack. He spoke of earlier incidents in the game and that how as one of the more experienced Shelford player's he had sought to prevent intimidation by Southend.
13. At a breakdown following the attack shown on the footage, he had spoken to the Player to make it clear that he would take him if he came down his defensive channel. The Player had then said "Fuck off you black c**t". He had asked the Player

to repeat what he had said. One of his teammates had said leave it and he then reported the incident to his captain (Mr Duffy). Mr Duffy then spoke to the Referee. He was aware that the Referee had said that he had not heard the incident.

14. He stated that the Player had not spoken the words in a particularly loud way, but had done so in a demeaning manner, as if he (Collins) had disgusted the Player. He had then gone back into the defensive line and been told by his coach to keep his cool.
15. He had no doubt as to the words that had been spoken at him, and was aware of the serious consequences that could flow from the citing. If the Player had apologised he might have been satisfied, but this had not happened. He had thought very carefully about bringing the citing but felt that it was important for the game to do so.
16. He had not met the Player previously, and had nothing against him or Southend.
17. The Panel next heard from the Shelford hooker, Mr Hodgkinson. He had been involved in the breakdown and gone to ground. As he got up he heard the words "black c**t" but did not see who had uttered them. He looked over his left shoulder and only saw the Player and Collins. He did not see the Southend winger.
18. Collins had been visibly shaking. He had known him for 5 years and had not seen him like that before.
19. In response to cross examination as to the lack of reaction, he spoke of the inexperience in the team and the fact that none of them knew how to react. It was put to him that a Southend witness standing on the touchline had not heard the word "black", but he was clear in his evidence as to what he had heard.
20. Mr Elmsley then gave evidence. He was a replacement but had been on the field at the time and pointed to his position on the touchline from the footage. He thought he had been about 5-7 metres away. He had seen the altercation between Collins and the Player and had heard the words "F***ing black c**t". This had not been screamed but was loud enough for people to have heard. The Player had been aggressive.
21. The Panel next heard from Mr Quantrill who, as a replacement, had been running touch and could be seen from the footage at around the half way line and so apparently very close to the incident.
22. He had heard the words "F***ing black c**t". There might have been other words but he was unsure. The Player had been aggressive. He had assumed Collins had said something and the Player had then retaliated. Collins had become very upset and this was the most disturbed he'd ever seen him. It was put to him that the Southend witness on the touchline had not heard the word black, but he remained clear in his evidence as to what had been said. He was similarly questioned about the lack of reaction, and replied that he had not known how to react.
23. The final witness called in support of the citing was Mr Duffy, the Shelford captain. He had not seen or heard the incident. At the next break of play he had been spoken to by Collins who had alleged racial abuse. He had then immediately drawn this to the Referee's attention. Collins had been visibly shaking with anger, and he had never seen him that angry before. The Referee was unable to take any action having not heard the incident.

24. The Player then gave evidence in his defence. He described how Collins had grabbed his shirt with both hands and that he had then wrapped his arms around Collins. He thought that Collins had wanted a bit of niggles. Collins walked him back about two paces at which point he had said "You silly f***ing c**t" as he had thought the whole thing was a bit silly. He had made legal contact to clear out Collins out who had then reacted.
25. He accepted that Collins had called him a racist almost immediately, but there was no doubt in his mind that he had not used the word "black". As to why Collins had thought he'd heard that word, the Player noted that he (the Player) had been wearing a mould-it-yourself mouth guard, and that Collins could have therefore misheard him.
26. He had played against Shelford previously without incident. When asked why he had not gone to speak to the Referee when the complaint was made, he responded that he had not felt it was necessary and this was his first season as captain. He had though spoken to the Referee at half time.
27. Evidence was then received from Jackie Flynn by telephone. Ms Flynn is a police officer with 30 years' experience and integrity is of paramount importance to her. She had been positioned by the scrum machine and so had been quite near to play. She stated that she had clearly heard the words "F***ing c**t" and was certain that no other words had been used.
28. Whilst she did not condone the use of that language, had she heard the word "black" this would have immediately chimed and her hackles would have gone up. She would have made a report herself as such language would have been unacceptable and she is well aware of the serious consequences that can result from racial abuse.
29. She noted that there had been no reaction from any Shelford player until (Collins) had said that he had been called a "F***ing black c**t". She was positive that the Player had not used the word "black". She had not seen Collins shaking.
30. After the game she had seen a confrontation involving officials from both clubs relating to the incident and therefore realised that the issue might be taken forward. She had therefore approached the Southend Director of Rugby to advise him that she had witnessed the incident and was willing to give evidence. She had made handwritten notes of the incident that evening, and these had then been used to prepare her typed statement that was in evidence.
31. Evidence was also given by two further Southend players, Mr Bannister and Mr McClintock. Neither had heard the Player use any words, but both noted that there had been no reaction from any Shelford player. As such they did not think the Player could have racially abused Collins and that this, in any event, would not have been in the Player's nature.

SUBMISSIONS

32. On behalf of Shelford, Mr Woodgate stressed that the club had never cited anyone previously. They had thought very carefully before doing so and questioned all the players thoroughly before deciding to take action. The witnesses were young men who would not have come to the hearing unless they were sure about what they had heard. Shelford was aware of the gravity of the allegation, but felt it had a duty to the game.

33. For the Player, Mr Speed stressed that both he and Southend respected the process and also had not taken the matter lightly. The Player had accepted verbally, but not racially, abusing an opponent. If the Panel did not sanction him, the club would.
34. The Player had been at the club for 3 years and the behaviour alleged was wholly out of character. There had clearly been an incident but the volume used had not been great. In a neutral and constructive way, Mr Speed questioned whether Collins could have been pre-dispositioned to hear the word "black" and so that the reality was that this word had not in fact been used.
35. In his submission, the Shelford witnesses had perhaps not actually heard "black" but this had entered their memory when Collins had told them that the word had been used. There was nothing malicious in that and he did not criticise them, but he wanted to stress the fallibility of human memory.

FINDINGS

36. The Panel reminded itself that the burden of proof lay on Shelford to establish, on the balance of probabilities, that the Player had used the word "black" and carefully considered all the evidence and submissions accordingly. Having done so it made the following findings.
 - i. Collins was a credible and measured witness who had clearly been upset by the words spoken to him. In the finding of the Panel, he had not elaborated his account (and to the Player's credit he had not suggested this). In light of the corroborating evidence referred to below, the Panel was further satisfied that Collins had not been mistaken in what he had heard.
 - ii. From the footage available, it was clear that Collins had become immediately upset by something that had happened. He had then gone to speak directly to his captain alleging that he had been the subject of racial abuse and a report had then immediately been made to the Referee making that allegation. The proximity in time of the report being made to the Referee and the incident itself was significant in the view of the Panel.
 - iii. Both Mr Duffy in oral evidence and the Referee in his report, confirmed that Collins had alleged that he had been racially abused.
 - iv. Mr Quantrill, the Shelford replacement who had been running touch at the time of the incident appeared to have been the witness positioned closest to the incident, the Panel assessing that he was likely to have been within 4 or 5 metres from where Collins and the Player had come into contact. He is an 18 year old who had been willing to attend the hearing to give evidence and the Panel noted the clarity of his testimony. He was clear that the word "black" had been used. It was put to him that a Southend witness who had been standing on the same touch line had heard the words "f***ing c**t" but had not heard the word "black". Mr Quantrill remained certain that the word "black" had been used.
 - v. Mr Hodgkison and Mr Elmsley were also clear that they had heard the word "black" used, and again did not depart from that view on being told of the contrasting evidence of the Southend witness.

- vi. The Player presented well and did not appear to embellish his evidence. However, to the extent that he asserted that he had called Collins a "silly f***ing c**t", the use of the word "silly" did not seem likely in the context of the incident. Further the use of the word "silly" was not corroborated by any witness.
 - vii. The Panel further noted that the Player had been aware at the time that an allegation of racial abuse had been made and reported to the Referee. As he was the Southend captain, the Panel found it strange that he had not sought to engage in that conversation to clear up any possible misunderstanding that he now claimed had arisen.
 - viii. To the extent that the Player contended that the lack of reaction from any Shelford player was inconsistent with racial abuse having occurred, the Panel noted the relative youth and inexperience of the Shelford players and witnesses. In the Panel's view this was such that, in all the circumstances, the lack of reaction was explicable. The Panel accepted their evidence that they had been shocked and did not know what to do. The Player's argument in regard to the lack of reaction was accordingly rejected.
 - ix. Two of the three Southend witnesses had not heard any words spoken and so were of limited assistance to the Panel.
 - x. The Panel did however give close attention to the evidence of the remaining witness Jackie Flynn, who is a serving police officer with considerable experience. Under questioning from the Panel she was clear that she had only heard the words "f***ing c**t". This was in contrast to the Player's own account that he had said "silly f***ing c**t". In those circumstances, the Panel concluded that Ms Flynn had not fully heard what had been said and, taking all factors into consideration, preferred the evidence given by the Shelford witnesses over her account. In so doing, Ms Flynn's integrity was, however, in no way called into question. Mr Quantrill in particular appeared better placed to have heard the exchange and was clear in his evidence.
 - xi. The Panel did not attach any, or any significant, weight to other written evidence given by witnesses who had not attended the hearing.
37. In light of the above findings, the Panel was satisfied that it was more likely than not that the Player had used the word "black", which was the gravamen of the offence.
38. Whilst the Panel noted that there was some inconsistency between witness accounts in terms of whether the Player had called Collins a "black c**t" or a "f***ing black c**t", such inconsistency was, in the view of the Panel, not material. In particular it did not decrease the likelihood that the word "black" had been used and offensively directed at Collins.

SANCTION

39. Having regard to the findings it had made, the Panel assessed the offending as being at the mid-range of the scale of seriousness. In so finding the use of the word "black" was central. There is no place for racial intolerance in the game of rugby and the sanction must accordingly reflect the seriousness with which offending of this nature will be regarded.

40. The Panel was however satisfied that the offending comprised a single incident, which was likely to have been borne out of the heat of the moment rather than a malicious racist attack by the Player on an opponent. However, even with that qualification, behaviour of this kind will not be tolerated and will be dealt with severely.
41. The mid-range entry point for this offence as stipulated in Appendix 2 to RFU Regulation 19 is a suspension of 12 weeks.
42. No aggravating factors as set out in RFU Regulation 19.11.10 were found to be present that would have required an uplift from the entry point.
43. Addressing the mitigating features prescribed in RFU Regulation 19.11.11, the Player had not accepted the charge in so far as he challenged his having used the word "black". As such he was not entitled to full mitigation. Taking into account his previous good record however, and the way in which he had approached and conducted himself during the proceedings, the Panel concluded that the Player should receive a 30% discount from the entry point.
44. The Player was accordingly suspended for a period of 8 weeks.
45. The Panel was informed that in addition to playing for the Priors, the Player is a 1st XV squad player and has played for that team on a number of occasions this season. It was confirmed that Southend accordingly have meaningful fixtures in which the Player could participate on the following dates:
- December 2019 - 14th; 21st.
 - January 2020 - 4th, 11th; 18th; 24th
 - February 2020 – 1st; 8th
46. The period of suspension was accordingly ordered to run from 9 December 2019 until 10 February 2020, with the Player free to play again on 11 February 2020.

COSTS

47. The Player and/or Southend is ordered to pay costs of £125 as prescribed by Appendix 3 to RFU Regulation 19.

APPEAL

48. The Player was advised of his right of appeal as provided for in RFU Regulation 19.

Jeremy Summers

Chair

12 December 2019