

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

JUDGMENT

Venue: Remote via Zoom

Dates: Tuesday 30th March

Independent Disciplinary Panel:

Ian Unsworth QC (Chair), Rob Vickerman, Chris Skaife

Secretariat:

Rebecca Morgan, RFU Disciplinary Hearings Manager

The Player:

Player: Mark Best

Club: Doncaster Knights

In attendance at the hearing

For the Rugby Football Union:

Angus Hetherington, RFU Legal Counsel in Discipline

With the Player

Steve Bowden, Head Coach, Doncaster Knights

Observing

Veryan Boscawen

Decision

1. Mark Best admitted the offence of Reckless Or Dangerous Play, Contrary To World Rugby Law 9.11 following a citing arising from a match between Doncaster Knights and Cornish Pirates on the 27th March 2021.
2. The Citing having been upheld, and this case clearly passing the Red Card test, the Panel determined that the Player should be suspended for a period of 8 weeks.
3. He will be unable to play in the remaining 6 league matches of this season and 2 further meaningful matches. These are matches notified to the RFU and accepted by the RFU as being meaningful. In the event of no notification or matches not being accepted as meaningful, then the effect of this sanction is that it will extend into the 2021/22 season.
4. For the avoidance of any doubt, it is the intention of the Panel that the Player will be suspended from playing for 8 meaningful matches.
5. The 6 matches for this season are:
 - 10.04 v Jersey Reds
 - 17.04 v Saracens
 - 24.04 v Richmond
 - 02.05 v Bedford Blues
 - 22.05 v Ealing Trailfinders
 - 29.05 v Nottingham Rugby
6. The remaining 2 matches will be confirmed in due course.
7. Any appeal must be lodged within 24 hours of this judgment being sent.
8. There is an order for costs in the sum of £250.

Preliminary Matters

The Panel

9. There was no objection to the composition of the Panel.
10. The Panel gave the parties time to discuss the charge and the Player time to discuss his plea with Mr Bowden.
11. Following that, the Player admitted the charge.
12. He went on to add that whilst accepting that his actions were reckless he did not accept that his actions were intentional. The Panel carefully considered the charge and were satisfied given its wording, that this was an unequivocal plea to the offence charged.
13. Indeed, the further submissions made and on behalf of the Player made it clear that he fully accepted the charge.

Evidence

14. The Panel had sight of an 11 page bundle including
 - (i) Charge Sheet
 - (ii) Report from Danny Rumble, Citing Commissioner
 - (iii) Photograph of Injury of injured player
 - (iv) Medical Report from Simon Edwards
 - (v) Referee Report
 - (vi) Extract of RFU Regulations (Appendix 2)
 - (vii) Short statement from Mark Best

We also had sight of detailed RFU Written Submissions

15. The Panel also had sight of a match video showing the incident and a video statement of the injured player Will Cargill.

The Match

16. On 27th March 2021, Doncaster Knights hosted Cornish Pirates in the Greene King IPA Championship. In the 65th minute there was an incident involving the player Mark Best (unnumbered) and Will Cargill, the Cornish Pirates 10.

Citing Commissioner's Report

17. In his report dated 28th March, the Citing Commissioner Mr. Danny Rumble observed (emphasis added **in bold**) :

*“CP10 receives a low pass while crouched forward. He adjusts to an upright position and kicks the ball which is blocked by D no number (BEST). The two players momentarily collide whilst CP10 turns and falls on the loose ball behind. CP10 gets to all fours and attempts to stand, in between CP6 on his right and D1 on his left who wraps CP10 to take him back to ground. At this point, CP10’s head is in between the legs of CP6. BEST comes in from a crouched position behind CP6, bent at the hips with his right shoulder against the contact. **With his free left arm, BEST reaches around the right leg of CP6, and the head of CP10, all whilst looking down. BEST hooks his hand around the face of CP10 with sufficient force as to pull the head of CP10 upwards until the momentum of CP10 going to ground causes the head to come away from the grasp. This is foul play that passes the red card test as there is a sustained grasp, the face is not released immediately and the pull is with sufficient force to cause a laceration to the nose of CP10 that subsequently required 9 stitches to close.** After play moves on from this breakdown, CP10 stands and wipes his nose before entering a ruck a couple of phases after the contact. Following this, the ball is kicked downfield before being cleared into touch by Doncaster. At this point, CP10 goes down on one knee and receives treatment to his nose. A conversation can then be*

heard where the word “gouge” is mentioned. As per the statement from the match referee, the referee says CP10 said he was gouged, the referee asked him if that was correct, before checking with his assistants referees to ascertain if anyone saw anything. Neither AR saw the act of foul play. CP10 has subsequently confirmed by way of verbal statement that he was mistaken about eye area contact and was in fact in some level of discomfort as a result of the injury to his nose. He confirmed there was no contact to the eye or eye area, but said he felt a hooking motion with something inside his nostril. On the footage, you can see the hand on the face for a sustained period of time, without an immediate release when grabbing the face instead of the ball, he fingers can be seen in a hooked position and the hand continues up and over the face. Medical statement from the Cornish Pirates medic confirms that the player attended hospital the next day and required 9 stitches to the wound. ADDITIONAL EVIDENCE Video footage Recorded verbal statement from CP10 Note from referee Written statement from Cornish Pirates medic Photograph of injury taken same day as the match.”

Hearing

18. At the hearing we were addressed by Mr Hetherington for the RFU, Mr Best himself and also Mr Bowden.
19. Mr Hetherington summarised the position as set out in detail in his very helpful written submissions.
20. In essence, the RFU submitted that the facts of this case were suggestive of a case which was either towards the upper end of a mid-range offence or was a top-end offence. There is no need for us to repeat herein what was said within his written submissions but we took them fully into account.
21. Mr Best provided a statement in advance and addressed us. He explained what had happened by reference to the match video. He explained that he was simply trying to jackal or rip the ball at the time.

He had lost sight of the ball, had been impeded by Cornish Pirates 6 and he had recklessly caught Cornish Pirates 10 in the face whilst trying to grab the ball. He said that he had not intended what had happened and he was sorry for the injury caused. He said that there was learning to take from this.

22. In answer to a question from the Panel he said that he had not been sure what he had been touching at the time but that his intention was “to rip the ball”; he confirmed that he did not know it was No10s face he had hold off before commencing the ‘rip’. He went on to say that he was unable to see what was around him and that his peripheral vision was affected by the dynamics of the situation.

23. He explained that he had been playing rugby since he was a Mini at 5, professionally since 19 and told us of his club history. He had a clean record.

24. Mr Bowden said that although the Club had a competitive environment they did not condone Mr Best’s actions. He said that this was a reckless rather than an intentional act and, as a Club, they were keen to look at how they could do better.

Injuries

25. In his Medical Report to the Panel, Simon Edwards stated:

“I was summoned onto the field of play to attend the above mentioned, as he had sustained an injury to his nose.

On the field of play I was able to stem the blood flow from deep laceration to the Alar rim and nasal septum, to a point whereby the match official was content that the player could continue.

On return to Penzance the player has attended the local A and E, whereby he has had treatment in the form of 9 (nine) stitches to close the wound.”

26. The Panel had the benefit of hearing from Mr Cargill both in a pre-recorded audio video statement and also at the hearing.
27. He confirmed that he had received 9 stitches and was returning to hospital on Friday 2 April for a medical review and to ascertain whether the sutures could be removed. He did not know if there would be any permanent scarring: prognosis is uncertain.
28. His recuperation had coincided with a downtime in training and he was hopeful that he would be able to resume training and playing as would have been the case pre – injury.
29. The injury was still clearly visible with bruising and scratches running upwards for the length of his nose. The photographic evidence revealed a deep laceration consistent with a finger being inserted in the nostril and the head being ripped with force in a backwards and upwards direction. The wound was a gaping wound.
30. Mr Cargill impressed the Panel as someone who very much downplayed the severity of what had happened and his own plight. Significantly, he had not had any contact from Mr Best or Doncaster Knights as a whole.

Factual Analysis

31. The Panel carefully considered all matters. We concluded that the Player had recklessly placed his hand on the face of Mr Cargill.
32. We fully accepted that he had not set out to do that, but by recklessly placing his hand on Mr Cargill’s face this led to what was an

inherently dangerous action. He ought to have removed his hand and should never have done what he then did.

33. Even allowing for the fact that this was a dynamic situation, we were unable to accept that Mr Best could not tell the difference between the ball and the face of his opponent. He said that he could not see the ball but yet, as he freely admitted, he nevertheless decided to try and rip what he was holding. Thus, with his hand on the face of his victim, perilously close to the eyes, and with a finger or fingers in the nostril or nostrils he ripped the opponents head up using significant force. This ripping action caused the gaping wound that we have described and which we have seen in person.

34. It was a mercy that the injury was not a more serious one.

35. As Mr Rumble observed, and no one argued to the contrary, this serious act of foul play clearly passed the Red Card test.

36. We noted that the Player expressed his remorse in the hearing. We observe that he did not apologise to Mr Cargill on the pitch, after the Game, prior to the Hearing or during the Hearing. We were unable to accept that the Player demonstrated any remorse. There was simply no evidence of it.

37. Common courtesy would have demanded that this was done on the pitch when there was a lengthy delay caused by Mr Cargill's gaping wound. Mr Best clearly knew that he was responsible for it and yet did precisely nothing. It is to the credit of one of Mr. Best's teammates that he approached Mr Cargill expressing some concern as to his plight (a serious wound) and brought this to the attention of others. It was then that the game was paused. Mr Best appeared to still do nothing.

Approach to Sanction

38. We undertook an assessment of the Players conduct under Regulation 19.11.8 as follows:-

- a) We accepted that the Player had not intentionally placed his hand on the face of his opponent.
- b) This was reckless offending. Indeed, it was, in our judgement, highly reckless.
- c) The gravity of the Player's actions in relation to the offending;

This was a very grave matter. The Player's hands were placed on his opponent's face. It was perilously close to his eyes (if not actually in contact with them). It was clear that a finger became inserted in a nostril. Even on Mr Best's case, he went on to rip upwards not knowing if he was in contact with a face or a head. That would be serious enough. However, we were unable to accept that he could not have known the difference. On either case, this was a very grave matter applying significant force to the face/head.

- d) The nature of the actions, manner in which the offence was committed

We repeat our observations as above

- e) There was no provocation.
- f) There was no evidence of retaliation.
- g) The action was not in self – defence.
- h) The Player was able to carry on during the match but suffered a significant injury requiring 9 stitches.
- i) The Player was in a highly vulnerable position. He could not have been more vulnerable and had no opportunity to prepare for what

was to come, or to defend himself given his arms were constrained by Doncaster Knights No6.

- j) The match resumed with the score at 14-15. No 10 was able to carry on. The Player remained on the pitch. Had this been seen, a red card would have been inevitable. The match continued. Doncaster won 17-15.
- k) This was not pre-meditated. His participation was full.
- l) The conduct was complete.
- m) There were no other relevant factors.

Sanction Entry Point

- 39. In our judgement, the factors listed above inevitably demand that this case attracts a top end entry point (10 week+). A highly reckless action to the head (specifically the face) of a vulnerable and defenceless player, the application of significant force and a not insignificant injury caused mean that this case comfortably falls within the top end of such offences.
- 40. We carefully assessed the correct starting point and were careful not to “double count” any factors. A useful but not determinative benchmark was that of a Mid – Range entry point for reckless contact with the eye, namely 12 weeks. Certainly, here, it could not be argued that the instant case was any less serious than a reckless contact with the eye (with no injury caused), indeed, there is a strong case to suggest that this was more serious.
- 41. Having regard to all relevant factors, we determined that the appropriate entry point should be 12 weeks.

Aggravating Features

42. We considered the aggravating factors under regulation 19.11.10 as appropriate. In our judgment, none of those factors are present.

Mitigating Factors

43. We considered the mitigating factors under regulation 19.11.11.
- (a) the presence and timing of an acknowledgment of culpability/guilt by the offending Player;

The Player acknowledged his guilt at the hearing. His statement submitted to the Panel evidenced some equivocation but we recognised that there may be some confusion on his part as to the nature of the charge. Indeed, that is why we allowed him time at the commencement of the hearing.

- (b) the Player's disciplinary record and/or good character;

He has a clean record

- (c) the youth and inexperience of the Player;

He is a highly experienced player and is almost 27 years of age.

- (d) the Player's conduct prior to and at the hearing;

He behaved appropriately.

- (e) the Player having demonstrated remorse for the Player's conduct to the victim Player including the timing of such remorse;

There was no evidence of this. We have set out our analysis above. Common courtesy let alone the value of the Game demanded that he should have shown this. Players must recognise that simply saying sorry to a Panel whilst paying lip service to the plight of the

victim and failing at every turn to contact them is unlikely to persuade a Panel that they are truly remorseful. On the facts of this case, we reluctantly concluded that the Player had not demonstrated any true remorse.

- (f) any other off-field mitigating factor(s) that the Disciplinary Panel considers relevant and appropriate.

There was none

Sanction in respect of the charges

- 44. In our judgment, the mitigating features meant that we could deduct the entry point of 12 weeks by one third to a sanction of 8 weeks.
- 45. Given our conclusions to remorse, it would be wholly inappropriate for us to allow a full 50% credit. Nevertheless it is clearly right that his plea, record and other factors listed above be taken into account.
- 46. Accordingly, in relation to Mark Best the sanction is as follows:
 - (I) He is to be suspended for eight weeks.**
 - (II) He will be unable to play in the remaining 6 league matches of this season and 2 further meaningful matches. These are matches notified to the RFU and accepted by the RFU as being meaningful. In the event of no notification or matches not being accepted as meaningful, then the effect of this sanction is that it will extend into the 2021/22 season.**

(III) For the avoidance of any doubt, it is the intention of the Panel that the Player will be suspended from playing for 8 meaningful matches.

(IV) The 6 matches for this season are:

10.04 v Jersey Reds

17.04 v Saracens

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29.05 v Nottingham Rugby

(V) The remaining 2 matches will be confirmed in due course.

47. Any appeal must be lodged within 24 hours of this judgment being sent.

48. There is an order for costs in the sum of £250.

Ian Unsworth QC

(Chairman)

31st March 2021