

**RUGBY FOOTBALL UNION APPEAL PANEL
ON APPEAL BY SIALE VAILEA PIUTAU FROM A DECISION OF
A RFU DISCIPLINARY PANEL DATED 8 SEPTEMBER 2020**

Venue: A remote video hearing at which the panel, the legal representatives, the parties and the witnesses attended by Zoom.

Date of hearing: 10 September 2020.

Date of decision: 10 September 2020 (oral decision). Written decision 11 September 2020.

Player: Siale Piutau RFU Id No: 233794

Club: Bristol Rugby RFC (Bristol Bears)

Appeal panel: Sir James Dingemans; Sam Hillas QC; Becky Essex.

Secretary: Rebecca Morgan

Attending on behalf of the player: Dave Attwood (legal representative); Pat Lam (Director of Rugby); Mark Tainton (Chief Executive); Nick Fenton-Wells (Team Manager).

Attending on behalf of the RFU: Angus Hetherington (counsel); David Barnes (Head of Discipline, RFU).

Observing: Dan Leo (Pacific Rugby Players Welfare).

Summary of decision

1. Siale Piutau appealed against the decision of the RFU Disciplinary Panel (Matthew Weaver, Chris Skaife and Mitch Read) dated 8 September 2020 which imposed a three match suspension on him for punching or striking Andrew Kitchener, contrary to law 9.12, during the match between Worcester Warriors and Bristol Bears which was played on Friday 4 September 2020.
2. It was common ground before the Disciplinary panel and the appeal panel that Mr Piutau had punched Mr Kitchener and committed an act of foul play which passed the red card test. Mr Piutau appealed on the basis that the sanction imposed on him by the Disciplinary panel was excessive because he was acting in self-defence, and because he had mitigation from his good standing at the club and in the community.
3. The appeal was dismissed. This was because appendix 2 of RFU Regulation 19 provides that any act of foul play which results in contact with the head shall result in at least a mid-range sanction. This gave a minimum mandatory sanction of six weeks. The Disciplinary panel had then applied the maximum mitigation of 50 per cent, resulting in the suspension for three matches. The full reasons for dismissing the appeal are set out below.

The incident

4. The incident occurred in the 79th minute of the match between Bristol Bears and Worcester Warriors on 4 September 2020. Siale Piutau made a legal and dominant tackle on Worcester's number 6, Ted Hill and the ball was dislodged and knocked on. Siale Piutau celebrated the tackle and there was some pushing and shoving between Ted Hill and Siale Piutau. The referee, Wayne Barnes, told both players to stand up and awarded a scrum to Bristol for the knock on.
5. The panel noted that the incident had all but ended, but Siale Piutau was approached by Ted Hill and Worcester's number 19, Andrew Kitchener, became involved by approaching Siale Piutau in a threatening manner. In his statement Andrew Kitchener said that he became involved because Siale Piutau appeared to be taunting Ted Hill.
6. Both Siale Piutau and Andrew Kitchener grabbed each other's shirts. Andrew Kitchener threw a punch at Siale Piutau's head but missed. In the submissions before us Mr Atwood highlighted that the video shows that Andrew Kitchener also pushed his arm towards Siale Piutau, with his hand outstretched, before Siale Piutau punched Andrew Kitchener with a clenched fist, making contact with the jaw. This was highlighted because the panel below had noted a gap of 1-2 seconds after Andrew Kitchener had thrown the punch and before Siale Piutau had punched Andrew Kitchener. Siale Piutau said in his statement that he "feared for his own safety and therefore threw a punch at W19 in order to protect himself".
7. Other players joined in and the players went to the ground. Andrew Kitchener again attempted to punch Siale Piutau on the head and made contact. Andrew Kitchener said in his statement "... I felt him strike me in the face. I reacted by grabbing him and as more players came in I pushed him to the floor. I hit him in retaliation before being pushed off by other players". After the arrival of other players the incident was ended.
8. The referee saw the punch from Andrew Kitchener and issued a red card to Andrew Kitchener for punching. The referee issued a yellow card to Siale Piutau for an inappropriate celebration in the face of Ted Hill. The citing officer later identified the punch by Siale Piutau on Andrew Kitchener and Siale Piutau was cited. Neither Andrew Kitchener nor Siale Piutau suffered injury from the punches.

The judgment of the RFU Disciplinary panel

9. At the hearing before the Disciplinary panel Siale Piutau accepted that he punched Andrew Kitchener, and that the punch passed the red card test. This meant that the panel was concerned with the appropriate sanction for the offence. The panel set out the citing report and what was shown by the video footage. It referred to the statements from Andrew Kitchener and Siale Piutau, and the oral evidence from Siale Piutau given to the panel.
10. So far as is material, the panel found that the incident had all but ended before Andrew Kitchener became involved. The panel noted that because of Andrew Kitchener's threatening approach and size difference the panel found that it was "entirely possible that the player felt threatened and concerned for his safety". The panel recorded that having seen Andrew Kitchener throw what he perceived to be a punch, Siale Piutau retaliated by punching Andrew Kitchener. The panel noted the clear gap in time between the attempted punch and Siale Piutau's punch, and as such it could not "sensibly be viewed as an immediate or instinctive reaction by the player". The panel recorded "that said, the player's explanation that he was concerned for his safety is credible".
11. The panel said that notwithstanding those findings there was no excuse for the player's actions. The panel found that because of the delay between Andrew Kitchener's attempted punch and the response, Siale Piutau's punch was "more a reaction and response to W19's attempted punch than it was genuine self-defence". The panel did not doubt "that the player has concerns about being hit in the head (as many if not all rugby players almost certainly do)", this was not the dominant reason behind his decision to punch Andrew Kitchener. The panel also "considered that the presence of other Bristol Bears RFC players at the time the player threw his punch could be thought to diminish the player's concerns for his safety".
12. In setting out its assessment of the seriousness of Siale Piutau's actions the panel found that there was a deliberate punch, which was retaliation. It was also recorded that this was not premeditated but a reaction to Andrew Kitchener's attempted punch. The panel assessed the entry point as mid-range noting that "as this was a punch to the head, the mandatory minimum entry point is mid-range." This gave a starting point of 6 weeks. The panel noted the admission of the offence, the exchange of apologies after the match, and the glowing tributes to Siale Piutau from Pat Lam and members of the community. The maximum credit of 50 per cent was provided.

The issues on appeal

13. We are very grateful to the parties and their respective teams for the helpful written and oral submissions. It became apparent that there were two main issues on the appeal. The first issue concerned the finding of the Disciplinary panel that Siale Piutau had acted more in retaliation than self-defence. The second issue concerned the fairness of the imposition of the three match suspension.
14. As to the first issue, it was submitted on behalf of Siale Piutau that the Disciplinary Panel's finding that Siale Piutau's punch was more a case of retaliation than genuine self-defence was a finding that no reasonable panel could have made. It was said that that retaliation was not mentioned during the hearing and first appeared in the written decision produced by the Disciplinary panel, that Siale Piutau was concerned because of earlier incidents of concussion and the presence of other players could not protect him. The RFU noted that whether it was retaliation or self-defence made no difference to the result, because the note in appendix 2 to RFU Regulation 19 provided that that any act of foul play which results in contact with the head shall result in at least a mid-range sanction which was what the Disciplinary panel had imposed. It was also submitted by the RFU that the decision of the Disciplinary panel was one which was open to it on all the evidence which had been available.
15. As to the second issue it was submitted on behalf of Siale Piutau that, notwithstanding the terms of appendix 2 of RFU Regulation 19 requiring a mid-range entry point, the RFU disciplinary regulations had fairness as the overriding principle, and the effect of the Regulations compelling the Disciplinary panel to impose the same punishment to Siale Piutau as that received by Andrew Kitchener meant that there was no fairness in the proceedings. It was therefore submitted that the appeal panel should find a discretion in the RFU Regulations to reduce the sanction imposed on Siale Piutau. The RFU submitted that the appeal panel was bound to apply the Regulations, which ensured fairness through consistency.

Relevant principles on the hearing of an appeal

16. So far as is material RFU Regulation 19.12.1 provides that "a ... player ... that has been found guilty of an offence may commence an appeal ... on the grounds that the panel: (a) came to a decision to which no reasonable body could have come; or ... (d) the sanction imposed was so excessive as to be unreasonable."
17. RFU Regulation 19.12.4 provides that ordinarily an appeal shall be by way of a review of documents and video footage only. There was no request for a de novo hearing.

18. Appellate panels have to be very cautious in overturning findings of fact made by disciplinary panels sitting at first instance. As set out in the World Rugby decision on appeal by *Moto Matu'u v World Rugby* dated 2 October 2019 “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”.

Retaliation or self-defence (issue one)

19. It became apparent during the submissions on appeal that Siale Piutau’s principal complaint was that the Disciplinary panel found that he had acted by way of retaliation rather than in self-defence.
20. It is important to note that, under the RFU Regulations, a punch in self-defence, is still foul play contrary to the laws of the game. In circumstances where rugby involves tackles and physical contact between players, so that players might reasonably consider that they might be hit, the reasons for this rule are obvious. If a player punches another player it will be an act of foul play.
21. It is necessary to record that a Disciplinary panel is required to assess the seriousness of the foul play to determine whether the entry point (for the purposes of the sanctions table) will be “low-end”, “mid-range” or “top-end”. The assessment of seriousness will include matters such as whether the offending “was intentional or deliberate” or “reckless” (RFU Regulation 19.118(a) and (b)) and whether a player “acted in retaliation” or “acted in self-defence (that is whether he used a reasonable degree of force in defending himself)”, (RFU Regulation 19.11.8(f) and g)).
22. It is also apparent that because Siale Piutau’s act of foul play, namely the punch to Andrew Kitchener, made contact with Andrew Kitchener’s head, the RFU Regulations required in the note to appendix 2 to RFU Regulation 19, that there should be at least a mid-range sanction. This meant that whether Siale Piutau retaliated or acted in self-defence was not going to make any difference to the outcome in the particular circumstances of this case. If a player punches another player in the head it will be an act

of foul play which will merit at least a mid-range entry point for the purpose of the sanctions table.

23. As to the complaint made about the finding by the Disciplinary panel that this was more a case of retaliation than self-defence we note the advantage enjoyed by the disciplinary panel which heard live evidence, and we did not. Although it is right that the disciplinary panel did not refer to Andrew Kitchener's arm movement with the outstretched hand immediately before Siale Piutau's punch it is apparent that the Disciplinary panel had reflected on the evidence given to it and had studied the video of the incident. Further it is apparent that the disciplinary panel did accept the most important part of Siale Piutau's evidence in relation to self-defence when it found that "... the player's explanation that he was concerned for his safety is credible".
24. In these circumstances it appears that the panel's subsequent analysis of whether Siale Piutau's actions were in self-defence or retaliation were carried out on an objective basis, namely whether it was reasonable to act in self-defence. This explains for example the reference in the Disciplinary panel's reasons to the presence of the other players. We can see no basis for overturning the findings of fact made by the disciplinary panel.
25. However, and importantly given the concerns which were expressed on appeal about the effect of the finding on Siale Piutau's reputation and character, we can confirm that we do not read the disciplinary panel's findings as rejecting Siale Piutau's evidence about his concern for his own safety, and it seems to us that the Disciplinary panel expressly accepted that evidence. Further we do not read the panel's decision as rejecting Siale Piutau's subjective appreciation of whether it was reasonable to act in self-defence, but made a finding about whether self-defence was objectively justified in the circumstances. As appears above, whether the punch was by way of retaliation, objectively reasonable self-defence or subjectively reasonable self-defence, made no difference to the entry point in this particular case.

Sanction appropriate

26. It is right to record that RFU Regulation 19.1.5 provides that: "The overriding objective of RFU Regulation 19 is to maintain and promote fair play, protect the health and welfare of Players (and others involved in the Game), ensure that acts of Foul Play and Misconduct (on and off the field of play) are dealt with expeditiously and fairly by independent means within the Game and that the image and reputation of the Game is not adversely affected. Furthermore, to achieve consistency in the way in which discipline is

administered and uniformity in the manner in which the assessment of seriousness of Foul Play is conducted and sanctions imposed.”

27. Consistency in decision making is achieved in part by the application of the sanctions table, which is derived from World Rugby’s Regulation 17 and sanctions table. The sanction table includes the note to appendix 2 of RFU Regulation 19 which provides that contact with the head mid-range.
28. Further consistency is achieved because disciplinary panels are entitled only to apply a reduction of 50 per cent to reflect mitigating factors, see RFU Regulation 19.11.12, save where there is a low-end entry point and the sanction would be “wholly disproportionate” to the level and type of offending involved, see RFU Regulation 19.11.13.
29. In these circumstances although Mr Attwood made attractive submissions in support of a discretion to adjust further the suspension imposed on Siale Piutau, we do not consider that the RFU Regulations permit such an approach or that either fairness or consistency requires such an approach. The effect of the RFU Regulations is clear namely that any punch to the head of another player which passes the red card threshold will result in a minimum period of suspension of three weeks. This provides for consistency. The fairness is provided by the fact that all players know that, under the RFU Regulations, they must not punch any player in the head.

Conclusion

30. For the detailed reasons given above this appeal is dismissed.

Sir James Dingemans

Sam Hillas QC

Becky Essex

11 September 2020