



IN RE APPEAL OF JOSEPH WESTIN

APPEAL DECISION

11 September 2021

Introduction

1. This matter involves a complaint of Misconduct (as described in Regulation 18.3 of the World Rugby Regulations (“WR Regs”)) on the part of Joseph Westin (the “Player”) arising out of post-match comments made by the Player to the Referee, Alasdair Robertson (the “Referee”), outside the Cayman Rugby Football Union (“CRFU”) clubhouse on 27 February 2021.

Background

2. The Disciplinary Officer (“DO”) appointed by CRFU, James Austin-Smith, issued a Misconduct Complaint (the **Complaint**) in accordance with WR Reg 18.8 alleging that the Player had contravened the WR Regs in the following manner:
 - (a) acting in an abusive, insulting, intimidating or offensive manner towards the Referee, contrary to Reg 18.4(b);
 - (b) making comments that attack, disparage or denigrate a Match Official contrary to Reg 18(4)(i);
 - (c) making criticism of the manner in which a Match Official handled a Match contrary to Reg 18(4)(e) and Appendix 1 Reg 1.5;
 - (d) abuse of a Match Official contrary to Reg 18.(4)(e) and Appendix 1 Reg 10.
3. The details of Misconduct specified in the Complaint were as follows:

“The incident took place on Saturday 27 February 2021 immediately following the Advance Fire & Plumbing Buccaneers v Queensgate Pigs Trotters match.

The Referee Alasdair Robertson describes the Player approaching him in an angry and aggressive manner and stating: “I have enough of you lot, you are useless and like Joe Biden think you are elected.” At this point

Shane Aquart moved forward to ensure that the Player could not get any closer to the Referee and shepherded him away.

The Referee described himself as “stunned and taken aback”. He asked the Player: “If that is how you feel why don’t you take up refereeing?” to which the Player responded: “We should get the players to do it they would do a better job”. Following this exchange the Referee describes the Player being ushered away by Shane Aquart.

The Referee formed the opinion that what had taken place, in particular the manner in which the Player had approached and spoken to him, could constitute abuse of a Referee and as a result reported the matter to the CRFU Director of Rugby and VP Operations.

The incident was witnessed by two other players – Shane Aquart and Chris Jackson.

Shane Aquart describes standing talking with Chris Jackson and Alasdair Robertson just outside the changing rooms when the Player approach and “...said to Alasdair ‘you’re just like Joe Biden stealing the election from trump’ in a tone of all the seriousness of someone who actually believes that ... he was not being ‘ironic’”. He confirmed that it was apparent that the Player was making comments on his perception of the standard of refereeing of the match.

Chris Jackson describes the Player approaching and saying “Refs, you are all like Joe Biden no one elected you and no one can say anything to you, I’d rather we referee ourselves than what you do”. He describes the tone as “a bit confrontational” and says that he commented immediately afterwards “Wow that was a bit disrespectful and wasn’t necessary”.

Collectively these statements reflect the contemporaneous audio recording and handwritten notes made after the incident. The incident was also captured on the rugby club’s CCTV security video which has been retained by the club.

A summary of the allegations was provided to the Player. His full response is attached to this Misconduct Complaint. In summary he stated that as he walked past the Referee, the Referee “made eye contact with me and started to address me verbally and I interpreted his body language and facial expression as hostile and aggressive”. The Player stated that he interrupted the Referee and said “I am sick of you. You are like Joe Biden. You weren’t elected but you are making unilateral...” before he was interrupted by another player [Aquart] who was telling him to stop. The Player indicates that he stopped because his common sense prevailed.

The Player says that he walked away and the Referee “continued to yell at me “why don’t you referee then?”” to which he replied “I would prefer that we (the Players) Referred [sic] ourselves.”

The Player explicitly denied each of the allegations set out in this Complaint and stated that he only “reacted to being singled out and engaged in an ill-mannered and aggressive way...”.

4. The Player was provided with the evidence and background materials listed in the Complaint.
5. Rowena Lawrence was appointed Judicial Officer (“JO”) by CRFU to consider Complaint.
6. On 9 March 2021, having considered the Player's response to the Complaint (which denied that his conduct contravened any of the WR Regs listed in the Complaint), the JO sent an email to the Player and the Disciplinary

Officer clarifying that: *"The types of conduct in Regulation 18.4 [i.e. the Regs listed in the Complaint] are examples of acts which may fall within the definition of misconduct. However, for a finding of misconduct, I must be persuaded on the balance of probabilities that the conduct complained of falls within the definition of Misconduct set out in 18.3, not necessarily that it falls within one of the examples given in 18.4."*

7. On 12 March 2021, the Player sent an email to the CRFU Disciplinary Liaison Officer ("DLO") and the DO in which he again denied that his conduct was as alleged in the Complaint but went on to state: *"However...I accept that under the extremely broad definition of "misconduct" that what I said to Alisdair could fall within that definition. So I'd suggest there's no need for a hearing on the matter, further taking up everyone's time. I'll accept whatever sanction [the JO] decides is appropriate."*
8. The JO replied, by email, to the Player on 14 March 2021 in the following terms: *"Many thanks for your email. I agree that there is no need for a hearing now. I have sent a few follow up questions to [the DLO] in order that I can consider an appropriate sanction. I shall come back to you shortly."*
9. Accordingly, no oral hearing took place and shortly thereafter the JO, provided a written decision¹ (the "Decision") in relation to sanction. The sanction imposed was as follows:
 - a four match suspension;
 - 18 hours of 'Community Service' to CRFU; and
 - attendance at a Referee Training Course ("RTC") on the next occasion that the Player could reasonably attend, failing which an additional 4 match suspension would be incurred.
10. A copy of the Decision is attached to this decision at Appendix 1.

The Appeal

11. Notwithstanding his earlier statement that he would *"accept whatever sanction [the JO] decides is appropriate"*, on 31 March 2021, the Player filed a Notice of Appeal to appeal the sanction imposed.
12. The Notice of Appeal contained the following Grounds of Appeal:

"The Player appeals the sanction imposed by the Revised Decision on the following grounds:

8. Ground one: The Judicial Officer either failed to make any factual findings in relation to the alleged misconduct or erred in making factual findings (if made)

8.1 The Decision is deficient insofar as it fails to set out the Judicial Officer's findings as to the misconduct alleged. As set out above, the Player's account of the incident differs from the Referee's account in two key respects:

- (a) the Player denies that he acted aggressively, or that anyone needed to stand between him and the referee and/or escort him away;
- (b) the Player does not admit to saying that the Referee / the CRFU referees in general are *"useless"* or that the players would do a better job (only that he wishes the players would referee themselves).

¹ The original written decision dated 18 March 2021 was revised on 19 March 2021 and reissued on 24 March 2021

8.2 It is not clear whether the Judicial Officer attempted to reconcile these discrepancies, reach any findings about what took place and what was said, or reach a decision on whether what took place constituted any of the breaches of the Regs listed in the Complaint or misconduct more generally. The Decision is silent as to any such findings. It merely notes that the Judicial Officer does not need to find that any of the four Reg 18.4 charges are proven, and that Player has "*accepted the offense*" (but goes on to make numerous reference (sic) to "*abuse*").

8.3 To the extent that the Judicial Officer proceeded on the basis that the Player had admitted any of the specific offences listed in the Complaint, or any form of abuse of the referee, she was mistaken to do so. The Player was very clear that he only admitted that the statements he made could be considered misconduct given the very broad definition in Reg 18.3.

8.4 Alternatively, if the Judicial Officer concluded upon a review of the evidence that the Player acted aggressively (i.e. had to be held back by another player and shepherded (sic) away etc.) or that the Player used abusive or insulting language (such as "*you are useless*"), she was wrong to do so. The other evidence gathered by the Disciplinary Officer supports the Players account of the events and contradicts the Referee's account. In particular:

(a) the CCTV footage of the incident clearly shows that the nobody had to stand between the Player and the Referee or shepherd the Player away. The Player walks past the group involving the Referee and two other individuals, stops momentarily to say something, before continuing on. The entire interaction takes 4-5 seconds.

(b) as to the words spoken, there is no sound on the CCTV, but the other witness statements broadly support the Player's statement and not the account given by the Referee. In addition to the statements given by the Player and the Referee, the Disciplinary Officer collected statements from two other witnesses, neither of which recorded that the Player said "*you are useless*" or "*the players would do a better job*".

8.5 Finally, regardless of whether the Player or the Referee's version of events is accepted, it is simply wrong to characterise the incident as "*abuse of a referee*". In the disciplinary context, "*abuse*" has a specific meaning and, at the very least, must constitute insulting language, swearing or some form of personal attack. Even on the Referee's own case, the worst that the Player said was "*you are useless*". If said, this would constitute a statement that disparaged the match officials and disrespected their authority, but it would not constitute abuse.

9. Ground two: The sanction is excessive and not proportionate to the severity of the misconduct alleged

9.1 While the appendix to Reg 17 provides guidance on the applicable level of sanctions for various offences committed on the field, there are no equivalent guidelines for off-field misconduct offences under Reg 18. The Judicial Officer has broad discretion to arrive at a sanction they consider applicable. Nevertheless, general principles of natural justice and fairness² require that the Judicial Officer should arrive at a sanction that is reasonable, proportionate to the nature of the offence and as far as possible consistent with the approach taken to similar offences.

9.2 Regardless of whether the Judicial Officer accepted the version of events contained in the statements of the Referee or the Player (which, as described above, is not clear) the sanction handed out what wholly unreasonable and far exceeded the sensible range of sanctions that the Judicial Officer should have applied.

² Applicable pursuant to Reg 20.1.15.

9.3 *First*, while not directly applicable, the sanctions for Foul Play in Appendix 1 to Reg 17 are instructive. If the statements alleged by the Referee to have been made by the Player had taken place on the pitch, they would, at a maximum, have constituted a "low-end" incidence of disrespecting the authority of a match official³, warranting a starting point of a two-game ban (before any mitigation is applied). A ban of 4 – 8 games would be a suitable sanction for an abuse of a match official (a more serious offence) judged to be "mid-range".

9.4 *Second*, the sanction far exceeds the level of sanctions typically handed out for findings of misconduct in respect of post-match comments (examples of which from other unions will be provided to the Appeals Officer).

9.5 *Third*, while (to the best of the Player's knowledge) no misconduct charges have been brought in CRFU before, the sanction far exceeds sanctions handed out in CRFU disciplinary proceedings in respect of far more serious incidents that took place on the field. In particular:

- (a) In February 2021, a player was given a four-week ban (reduced from six-weeks on appeal) for shouting "fuck off!" at the referee in a manner which was held to be aggressive and intimidating.
- (b) In the 2020 CRFU Summer Sevens competition, a player was given a ban of four sevens matches (i.e. one day of sevens competition) for reacting to a decision by using vulgar language about the referee, after a yellow card for the same offense in that match.

9.6 Fourth, it is not entirely clear whether the Judicial Officer has the authority to impose compulsory community service (ie unpaid labour). In any event, in the context of amateur rugby, and in the particular circumstances of the Player, it is not appropriate to do so. The Player has a long history of volunteering at CRFU and has contributed hundreds of hours of his time over the years, including maintenance, building stands and coaching junior rugby. However, the Player now has three young children, a fourth on the way, and works long hours including weekends (often missing matches where work does not permit). The (sic)

10. Ground three: The Judicial Officer erred in applying the aggravating factors

10.1 The Decision references four aggravating factors, three of which are:

- a. *The CRFU has made it clear that referee abuse will not be tolerated*
- b. *The last notice from the CRFU went out just three days before the misconduct*
[...]
- d. *The Player has a history of Referee abuse and yellow cards*

10.2 With respect to the warnings from CRFU that referee abuse will not be tolerated, it should be noted that each of the warnings clearly relate to referee abuse *on the pitch*. For example, the notice quoted in the Decision states that "*If a Player (or anyone else) comes before the Disciplinary Committee in the future for an act of Foul Play involving or directed at a Referee or Match Official, they should expect to receive an additional period of suspension, above the applicable entry point, to reflect this aggravating feature and the need for deterrence.*" (emphasis added).

10.3 There had not been any warning of the need to mind what you say to match officials in the clubhouse. It is of course not the Player's case that he should be permitted to say what he likes to match officials as long as it is after the game, but the fairness of aggravating the sanction for a post-match interaction is questionable given: (i) no warnings had been given in that regard; and (ii) no misconduct complaints had ever previously been brought or threatened in respect of post-match conversations.

³ Putting aside the question of whether the statements would have warranted a red card, which is highly doubtful.

10.4 As to the allegation that the Player has "*a history of referee abuse and yellow cards*" this allegation was not put to the Player (either by the Disciplinary Officer or the Judicial Officer) prior the Decision being issued. If this allegation had been put to the Player, it would have been emphatically denied. While the Player accepts that he has a reputation for "*back-chat*" (i.e. questioning referee's decisions, speaking out of turn on the pitch) he categorically denies that he has ever abused or insulted a match official, or received a card of any colour for anything said to a referee.

10.5 In circumstances where there is no record of the Player receiving any cards of this nature, it is concerning that the Judicial Officer would accept that this is the case on the basis of there collections of match officials without giving the Player the opportunity to respond."

13. In addition, the Notice of Appeal, at paragraph 11, states that the Player does not wish to appeal on any procedural grounds but goes on to identify two procedural issues in case they are relevant to the other grounds of appeal.

14. I was appointed by CRFU to be the Appeal Officer ("**AO**").

15. The Player, who was originally represented by his brother Mr Shane Westin, objected to my acting as AO in this matter, primarily on the basis that I have previously sat as a member of disciplinary committees alongside the DO, Mr Austin-Smith, in other matters. Having considered the matter carefully, I declined the Player's request that I recuse myself. The full exchange of emails that explains both the Player's objections to my acting as AO and my reasons for declining to recuse myself are attached to this decision at Appendix 2.

16. On 7 April 2021, I received an email from Peter Sherwood which stated that he would assisting and representing the Player in connection with the appeal. That email included the following statement:

"Given that the Judicial Officer's decision doesn't contain any findings and limited reasons, we don't see any way the appeal can proceed except by way of a de novo hearing (by which we mean the appeal should consider the complaint afresh and decide on the right sanction, if any)."

17. Having reviewed the Decision, the materials provided to the DO, the Grounds of Appeal and Mr Sherwood's 7 April 2021 email, I formed the provisional view that there might well be some merit to Ground One of the Grounds of Appeal, which relates to the lack of any factual findings in the Revised Decision. Although the Player admitted that his behavior fell within the very broad definition of Misconduct contained in WR Reg 18.3, there are material differences between the evidence of the Player and the Referee (and other witnesses) and the resolution of those factual disputes might well have an impact on the appropriate sanction.

18. Therefore, later on 7 April 2021, I convened a brief pre-hearing conference with Mr Austin-Smith and Mr Sherwood to discuss that issue. It was agreed that the Player, with the assistance of Mr Sherwood, would provide an additional statement clearly identifying which of the alleged facts he accepted as part of his admission of misconduct and which he did not: a document that might be described as a basis of plea, to borrow a term from the area of Criminal Law.

19. The requested document, entitled "*Further Statement on Factual Discrepancies*" was provided by email on 12 August 2021. The 4-month delay in providing the Player's Further Statement was not the fault of the Player and has had no bearing on this decision.

20. After reviewing, the Player's Further Statement, I convened a further pre-hearing conference with Mr Sherwood and the DO on 9 September 2021. The nature of the discussion is evident from the follow up email that I sent to both on 10 September 2021:

"I write further to our conversation yesterday. As discussed, I accept your previous submission that the interests of justice require that this appeal proceeds by way of a de novo hearing. As discussed, whilst I am grateful for the "Further Statement on Factual Discrepancies", there are some factual issues that are potentially relevant to my decision that are not dealt with in the document. I therefore consider that it will be necessary for me to make my own findings of fact in order to reach a decision on the appropriate sanction.

You have previously stated that Joseph has a strong preference for me to review the Revised Decision without the need for an oral hearing.

I also note:

WR Reg 20.8.7: "Where the Appellant appeals against the sanction and/or cost order alone, the Appellant may request that the Appeal Committee or Appeal Officer review the sanction without the need for a personal hearing. The Appeal Committee or Appeal Officer may also determine that a personal hearing is not required in relation to any appeal but if they so wish, the Appellant always has the right to appear and make representations in all cases in person or by way of technology or alternatively they may make representations in writing." And:

WR Reg 20.6.3 "The Judicial Tribunal shall endeavor to ensure that disciplinary/judicial proceedings are heard in the presence of the Union, Player and/or Person who is the subject of the proceedings. Nothing in the Regulations, or otherwise, shall prevent a Judicial Tribunal hearing and determining disciplinary/judicial proceedings in their absence where the Union, Player and/or Person concerned (and/or their representatives) do not attend the hearing. However hearings may only be held in the absence of any of the parties if those parties have first been given the opportunity to attend and have declined or not responded to the opportunity to attend without reasonable excuse or consented to a hearing in absentia. In such circumstances the Judicial Tribunal may take any written representations into account in making its decision."

For my part, I am content to review the evidence, including the CCTV, and make factual findings without the need for an oral hearing but I want to be clear with both you and Joseph about that before proceeding to make a decision. If Joseph would like to have an oral hearing or make any further written submissions before I proceed to make a decision, I am happy to accommodate either.

Therefore, I should be grateful if you would confirm at your earliest convenience, whether, in light of the above, Joseph would like me to proceed to make a decision without any hearing or whether he would like to have an oral hearing or make any further written submissions."

21. Later on 19 September 2021, Mr Sherwood emailed in the following terms:

"Joey is grateful for your diligence in considering his interests so carefully, but remains content for you to proceed with a decision without a hearing any further submissions from us."

Decision

22. Pursuant to WR Reg 20.8.3, I have the power to order that a de novo hearing is adopted on appeal where it is established that it is in the interests of justice that a re-hearing of the case is necessary.
23. I have concluded that a de novo hearing is necessary. The primary reason for this conclusion is that, as set out in Ground One of the Notice of Appeal, the JO's written decision does not explain the factual findings made by JO. Whilst the Player admitted that his behavior amounted to Misconduct, there were material discrepancies between the evidence of the Player and the Referee (and other witnesses) that, in my view, must be considered and resolved in order to properly consider the appropriate sanction. By way of example, the Player's evidence was that he was walking past the Referee when the Referee initiated the verbal exchange in a "hostile", "ill-mannered" and "aggressive" manner. Conversely, the Referee's evidence was that Player approached him in an angry and aggressive manner and the Player initiated the exchange. Which of these competing descriptions of the incident is correct has the potential to have a material impact on the appropriate sanction. However, it is not clear from the JO's decision what factual findings were made by the JO, if any.
24. Further, the sanction imposed was, in its totality, severe and includes a significant amount of 'Community Service', which I consider to be unusual in the amateur game. Whilst I recognise the very broad discretion that a JO has, pursuant to WR Reg 18.10.1, without any detail regarding the findings of fact made by the JO, and without some further analysis of the seriousness of the offending it is not possible to properly understand how the JO arrived at her decision in respect of sanction.
25. Further still, before including 18 hours of "Community Service" in the sanction, I consider that the JO should have made some enquiry of the Player as to the impact that it might have on the Player and his family. In the same vein, I would consider it appropriate that a player should be asked to provide some details of their financial means if a JO is considering imposing a financial penalty that might have the potential to cause hardship to a player.
26. Finally, in relation to this issue, the JO's decision contains references to email correspondence with a number of referees regarding the Player's offending history that were considered by the JO and reflected in the Decision as follows: *"The response from a variety of referees appears to confirm that the Player has a history of referee abuse which has been consistent for a period of time with a number of yellow cards being issued and warnings for referee abuse."* However, these emails, which contain only vague recollections, were not shared with the Player prior to the Decision and he was not given any opportunity to respond to them.
27. Notwithstanding the above, I have considerable sympathy for the JO who provided her written decision following the Player's statement he did not wish to have a hearing and that he would accept whatever sanction the JO decided was appropriate. CRFU relies on volunteers to act as DOs, JOs and AOs, and writing detailed and reasoned decisions is a very time-consuming exercise. I have no doubt that the brevity of the Decision is a consequence of the Player's statement that he would accept whatever sanction the JO decided was appropriate. Clearly, that is not the case and it now falls to me to consider the Appeal, which, for the reasons set out above must proceed as a de novo hearing.
28. Following a full review of the available evidence including the CCTV, and having considered the written submissions and other materials provided, I have made the following findings of fact:

- a. The Player approached the Referee.
- b. The interaction between the Player and the Referee was initiated by the Player, not the Referee, and that to the extent the player thought otherwise he mistakenly attributed the comment “tough game”. that was made by one of the witnesses, Chris Jackson, to the Referee.
- c. It is clear from the Player’s animated body language that he was agitated, and I accept the Referee’s description that his manner was angry and aggressive.
- d. The witness, Shane Aquart, positioned himself between the Player and the Referee.
- e. I do not accept that the Referee was acting in a “hostile”, “ill-mannered” and “aggressive” manner.
- f. I find that the Player did say to the Referee: “I have enough of you lot, you are useless and like Joe Biden think you are elected” or words to that effect.
- g. I find that the Player did say to the Referee: “We should get the players to do it they would do a better job” or words to that effect.
- h. I accept that the Referee, who is a very experienced Referee, was stunned and taken aback by the encounter.

29. I consider the Player’s behavior was disrespectful to and disparaging about the Referee and CRFU referees generally. I consider that the words used by the Player were intended to insult the Referee and could be considered verbal abuse. I do not accept the submission contained in paragraph 8.5 of the Grounds of appeal that saying “you are useless” to someone is not insulting language and could not be considered verbal abuse. I further consider that the comments were clearly linked to and therefore critical of the Referee’s handling of the Match.

30. One statement that I found surprising in the Player’s Further Statement was that: *“Joey denies that there was any loss of control or aggression on his part”*. Having admitted that his behavior fell within the definition of Misconduct, if that behavior was not the result of a loss of control, then it must have been intentional or pre-meditated.” Notwithstanding this statement, which was perhaps not properly considered, I will proceed on the basis that the Player’s actions were the result of a temporary loss of control and were not intentional or premeditated.

31. I agree with the submission at paragraph 9.3 of the Grounds of Appeal that, whilst the sanctions for Foul Play in Appendix 1 to WR Reg 17 are not directly applicable in cases of misconduct, they are a useful reference in these circumstances. However, I disagree that if the incident had taken place during a match, it *“would, at a maximum, have constituted a “low-end” incidence of disrespecting the authority of a match official, warranting a starting point of a two-game ban (before any mitigation is applied).”*

32. I consider the following extract from Appendix 1 to WR Reg 17 to be useful for reference purposes:

“9.28 A player must not disrespect the authority of a Match Official.”

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|------------------|--------------------|-------------------|---------------|
| Low end: 2 weeks | Mid range: 4 weeks | Top end: 6+ weeks | Max: 52 weeks |
|------------------|--------------------|-------------------|---------------|

“9.28 A player must not verbally abuse a Match Official. Verbal abuse includes, but is not limited to, abuse based on: religion, colour, national or ethnic origin, sexual orientation.”

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|------------------|---------------------|--------------------|---------------|
| Low end: 6 weeks | Mid range: 12 weeks | Top end: 18+ weeks | Max: 52 weeks |
|------------------|---------------------|--------------------|---------------|

33. I also consider that the fact that this incident took place outside the CRFU clubhouse after the Match makes it potentially more serious than if it had taken place during the Match. Incidents of referee disrespect and abuse are usually the result of a temporary loss of control ‘in the heat of the moment’ in response to a specific incident that has just occurred in a Match. On this occasion the Match had finished, presumably the Players and Match Officials had shaken hands before leaving the pitch, and the Player had returned to the changing rooms with plenty of time to calm himself down. Further, the Referee was enjoying a conversation outside the Clubhouse, as every match official should feel comfortable doing without being concerned he or she might be approached by an angry disgruntled player and spoken to in a disrespectful manner.
34. The seriousness of his incident is aggravated significantly because it occurred during a season in which the issue of referee disrespect and abuse has had a very high profile within CRFU. As an addendum to a decision by a CRFU disciplinary committee in January 2021 involving referee disrespect, the committee published the following notice:

IMPORTANT NOTICE - Regulation 17.19.1 – Referees and Match Officials

The Committee is aware that there has been a marked increase in incidents of Foul Play involving abuse and disrespect directed at Referees and Match Officials in Cayman. The Committee understands that the situation was sufficiently serious to necessitate a meeting to address the issue with teams’ management and coaches at the start of the season.

It is therefore with great regret that, notwithstanding this explicit highlighting of the issue, the Committee found itself dealing with an incident involving disrespect and abuse of a Match Official.

Self-evidently Referees and Match Officials are vital to the game. They give their time for free to enable 30 or 40 other people to enjoy their game. They are deserving of our gratitude and support – not of being required to suffer disrespect and abuse at the hands of those whose sport they have facilitated.

To quote from World Rugby’s Playing Charter:

“Rugby owes much of its appeal to the fact that it is played both to the letter and within the spirit of the laws. The responsibility for ensuring that this happens lies not with one individual - it involves coaches, captains, players and referees ... Rugby has fully embraced the professional era, but has retained the ethos and traditions of the recreational game. In an age in which many traditional sporting qualities are being diluted or even challenged, rugby is rightly proud of its ability to retain high standards of sportsmanship, ethical behaviour and fair play.”

These are not just lofty ideals – they are the essence of the game. Nowhere are they more important than in Players’ interactions with the Match Officials.

Under Regulation 17.19.1(b) in deciding the appropriate sanction for Foul Play the Disciplinary Committee are required to consider:

“the need for a deterrent to combat a pattern of offending in the Game where the teams participating in the Match or Tournament have been put on notice that such a need exists”

Players, coaches and management engaged in rugby at all levels in Cayman should regard this decision as putting them on notice (in as much as they were not already) that there is a pattern of offending with

*regard to Referees which the Committee deems it necessary to deter. **If a Player (or anyone else) comes before the Disciplinary Committee in the future for an act of Foul Play involving or directed at a Referee or Match Official, they should expect to receive an additional period of suspension, above the applicable entry point, to reflect this aggravating feature and the need for deterrence.***

35. On 24 February 2021, only three days before the incident in question, a letter was sent by the President of CRFU to all players that included the following:

“Referees and officials should also be respected at all times... We remind you that our club, and world rugby, has a zero-tolerance approach to violence, contact to the head and referee abuse. We have implemented referee feedback forms, and this is the appropriate way for teams to give feedback, through their captain, to referees after a game.”

36. I consider the submission at paragraph 10.3 of the Grounds of Appeal that “...the fairness of aggravating the sanction for a post-match interaction is questionable given: (i) no warnings had been given in that regard; and (ii) no misconduct complaints had ever previously been brought or threatened in respect of post-match conversations” to be a particularly bad point as well as being factually incorrect: the Presidents letter referred to in the preceding paragraph specifically states: “Referees and officials should also be respected **at all times**”. The message contained in both notices is clear: any disrespect or abuse of Match Officials will not be tolerated.

37. In relation to the Player’s disciplinary record, I place no weight on the vague emails provided by some referees but note that, on the Player’s own admission he “accepts that he has a reputation for “back-chat” on the field (ie questioning of decisions, and speaking to the referee out of turn). He accepts that he would have been spoken to by referees on the field about this behavior (although cannot recall any specific incidents)”. In these circumstances, I consider the fact that he has been spoken to before about this sort of behavior and still persists with it to be an additional aggravating factor.

38. In terms of mitigating factors, they appear to be very limited. Although the Player did accept that his behavior amounted to Misconduct within the meaning of WR Reg 18.3, he has disputed the facts, that I have now found to be proved, throughout. His initial statement, including his allegations that it was the Referee who engaged him in a hostile, ill-mannered and aggressive manner, demonstrated very little appreciation for his own culpability and he has demonstrated very little real remorse or contrition. Even in his email to the JO, in which he admitted misconduct, the Player said: “I will say that I am extremely disappointed that this has come to a judicial process in this way. It used to be that we would have settled angry outbreaks between club members with an apology and a beer/handshake”. This suggests that he still doesn’t fully appreciate the extent to which the game has developed and the current focus on zero tolerance of disrespect towards match officials that will be backed up by the Judicial process. I hope that he has apologised to the Referee, as he said he would, and that as result of this incident, and the sanction that follows, he will take a different approach to the one that has earned him the reputation that he describes in the preceding paragraph.

39. I have read and considered the various authorities and precedent cases that have been I been referred to by Mr Sherwood, who also prepared a helpful summary table of them. However, as has been stated clearly in a number of CRFU disciplinary decisions over the past year: “Strictly speaking there is no doctrine of stare decisis in rugby.” (*In re Appeal of Kepu*, Autumn Internationals 2017, Jan 17, 2018 at p. 15 and *In re Appeal of Federatia Romana de Rugby & Federacion Espanola de Rugby*, World Cup Qualifiers 2018, at p. 51), and matters should be considered from the viewpoint of “a common-sense rugby person” (*In re Appeal of Kepu*, supra, at p. 14).

Further, such cases are illustrative only and “Each case is different. The individual circumstances of each player coming before a [Judicial Officer] need to be examined having regard to the factors that are required to be taken into consideration...” (*In re Appeal of Vaiomanu*, IRB Pacific Rugby Cup, March 21, 2014, at p. 15).

40. Ultimately, I agree with Mr Sherwood’s comment in his email accompanying the cases that: “Charges appear to typically be brought when a player / coach has spoken to the media, so it is not directly comparable to a private conversation in terms of capacity to bring game into disrepute etc. They are also of limited assistance since they tend to result in a fine rather than a suspension, and without knowing the salaries of the individuals involved it is difficult to assess the level of punishment.”

CONCLUSION

41. I have not addressed every piece of evidence and every submission in detail in this written decision, but I have carefully considered all of the materials. Having done so, and having regard to the matters set out above, I have concluded that the appropriate sanction is as follows:

- The Player shall be suspended for a total of 6 weeks.
- 4 weeks of the suspension shall be served immediately.
- The remaining 2 weeks suspension shall be suspended on condition that the Player undertakes and participates fully in the next RTC organised and offered by CRFU. For the avoidance of doubt, if the Player undertakes and participates fully in the next RTC, he will not serve the additional 2 weeks suspension, but if he does not, he will be suspended for a further two weeks commencing on the date of the next RTC.

42. For the purposes of imposing the suspension:

- only weeks in which there is a Match that satisfies the criteria set out in WR Reg. 17.21.3 shall be taken into account; and
- having due regard to guidance set out in *In re Appeal of Kepu*, Autumn Internationals 2017, Jan 17, 2018 at paragraphs 35 – 50 and Regulation 17.21.3(e), each day/weekend of the CRFU Summer Sevens Series shall, for the purposes of serving this sanction, count as one week.

43. I am informed that the Player has missed:

- 27 March 2021: Semi Final of the Ed Broking Vase (Pigs v Buccs), and
- 1 May 2021 Heineken Selects v Agave Tacos (NB originally the "North v South" game referred to in paragraph 6(i) of the Decision).

I am satisfied, on this occasion, that both of these matches satisfy the criteria set out in WR Reg 17.21.3.

44. I am also informed that the Player missed 2 of the 4 matches played in the first tournament of the CRFU Summer Sevens Series on 4 September 2021 (in accordance with the JO’s Decision).

45. Therefore, in light of my decision, the Player is suspended forthwith and will not be eligible to play in:

- the second tournament of the CRFU Summer Sevens Series on 11 September 2021; and
- the first 2 of the 4 matches to be played in the third tournament of the CRFU Summer Seven Series on 25 September 2021.

Matthew Dors
CRFU Appeals Officer
11 September 2021