

**DECISION OF THE INDEPENDENT JUDICIAL OFFICER
EPRC Challenge Cup, Season 2015/2016**

Hearing held by telephone conference call on 18 November 2015 at 10am.

In respect of:

Maritino Nemani (“the Player”)

and

The ordering off of the Player, for a breach of Law 10.4 (s) of the Laws of the Game in the Challenge Cup match between Edinburgh Rugby and Grenoble played at BT Murrayfield on the 13 November 2015.

Judicial Officer appointed to hear the case:

Jeremy Summers, England (“The Judicial Officer”)

Decision of the Judicial Officer:

- i. The Player did not dispute that the Referee had been correct to order him off and the Judicial Officer therefore proceeded to determine what sanction, if any, should be imposed upon the Player;**
- ii. The Judicial Officer considered that there was no reason not to impose a suspension on the Player, and the Player was suspended from taking part in the game of rugby until midnight on 13 December 2015. This represents a 4 week suspension commencing on 13 November 2015.**

Introduction

- a) The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the EPCR’s Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Challenge Cup 2015/2016.
- b) The Judicial Officer was appointed to consider the ordering off of the Player in the match between Edinburgh Rugby and Grenoble played at BT Murrayfield on 13 November 2015.
- c) The Player was sent off for dissent (verbal abuse of match officials) in breach of Law 10.4(s) of the Laws of the Game.

The Parties at the Hearing

1. Present at the hearing in addition to the Judicial Officer were the following persons:

The Player
M. Fabrice Landreau, Director of Rugby FC Grenoble
Mr Andrew Farley, Team Manager FC Grenoble
Mr Liam McTiernan, EPCR Disciplinary Officer
M. Vincent Gaillard, Director EPCR (observing)

Preliminary Matters and Procedures

2. At the commencement of the hearing, the Judicial Officer noted the identities of all present and narrated the contents of Red Card report reminding the Player that he had been ordered off in the contravention of Law 10.4(s).
3. The Judicial Officer reminded all parties that the EPRC Disciplinary Rules found in the Participation Agreement of the Challenge Cup 2015/2016. ("the Disciplinary Rules" and "DR" in the singular) would apply.
4. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.
5. The Judicial Officer established what evidence was placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented.
6. The evidence for consideration comprised of the following:
 - The Red Card Report
 - Notice of Hearing dated 16 November 2015
 - Written responses to the Standing Directions received from the Player
 - Written statement from FC Grenoble
 - Player's disciplinary record and upcoming playing schedule.
7. The Judicial Officer noted the terms of the Player's responses to the Standard Directions which were as follows:
 - (a) *I hereby certify I am Maritino NEMANI, the player who was shown the red card*
 - (b) *I would like to argue a preliminary matter: I sincerely apologize for my dissent with Mr Whitehouse and for disturbing Professor Lorne CRERAR and EPCR Disciplinary Panel with this hearing*
 - (c) *I accept that the Official Report is true and accurate account of the incident that resulted in the showing of the red card and the facts surrounding the incident, except on one point: I did not say "FUCK YOU'RE SHIT" but "FUCK YOU'RE ALL SHIT"*
 - (d) *I accept that I committed an act of Foul Play as set out in the Official Report: I was in disagreement with Referee decision but used inappropriate words to express my thoughts and feelings*
 - (e) *Nobody has the right to talk like I did about any Match Official, and I accept that my dissent warranted a red card*
 - (f) *I underline there is no recorded evidence of the actual words I used; neither of the assistant referees flag the incident or any others players (including FCG captain) heard what I said.*
 - (g) *I will be attending the hearing with Mr. Fabrice LANDREAU, FCG Director of Rugby and Mr. Andrew FARLEY, FCG Team Manager to discuss all the relevant points*
 - (h) *Once again, I sincerely apologize for my dissent. I will accept EPCR Disciplinary Panel decision and I hope for a lower end decision from the panel.*
8. In those circumstances, the Judicial Officer indicated to the Player that the purpose of the hearing was to determine what sanction, if any, was to be imposed upon the Player.

Evidence Supporting the Ordering Off

The Referee's Report

9. The Red Card report read as follows:

The ball was played into the Grenobles 22m and gathered by the Grenoble No14 Nemani. He was tackled and an Edinburgh was competing for the ball. I blew my Whistle and penalised Nemani for Not releasing the ball. Players slowly dispersed for the penalty to be taken. Nemani Politely questioned what the Penalty was for. I gave my explanation and Nemani was clearly in disagreement. He was in conversation with me and as he turned around he said to me "FUCK YOU'RE SHIT". I blew my whistle and summonsed the player to me.

I explained that he cannot say this to any match official. I then issued a Red Card to the player. Apart from the player debating the words that were said, he left the field without further dissent. After the game the player came up to myself and apologised for his actions.

10. The incident had occurred in the 64th minute of the match at which juncture Edinburgh were in the ascendancy leading 21-3. The fixture had been an evening kick off played in strong winds and driving rain. No previous incidents of foul play or dissent were reported by the Referee.

Video evidence

11. The Judicial Officer reviewed the available match footage which was augmented with an audio recording that recorded the incident in part.

12. The Player is seen to track back into his 22 giving chase to an attacking Edinburgh kick. He fields the ball and is brought to ground by an Edinburgh tackle. A ruck forms and the Player is penalised for not releasing.

13. The Player gets up and initially moves away towards the reforming defensive line. He then turns and comes back to within a meter or two of the Referee and is directly facing him. The words spoken by the Player are not audible on the recording but, in light of the reaction seen from the Referee on the footage, the words appear to have been uttered as the Player is moving slightly backwards and away from the Referee.

14. The Referee can then be heard explaining his decision to both the Player and the Grenoble captain. The offending words as recorded on the Red Card Report above are clearly reported to both players during these exchanges. The Player leaves the field without further issue.

Other Evidence

15. A short statement was received from the AR. This indicated that he had not heard the words as spoken by the Player but had heard the ensuing discussion as set out in the preceding paragraph.

The Player's Position

16. The Player apologised to the Judicial Officer without equivocation. Without seeking to excuse his actions, he advised that the game had been difficult not least because of the weather conditions. He had become frustrated generally and in the heat of the moment had lost his cool, which he very much regretted. He did not think that his words had been directed at the Referee but rather had been a broad expression of frustration generally. He though confirmed to the Judicial Officer that he fully appreciated why the Referee had understood the words to have been directed at him, and accepted unreservedly that the decision to send him off had been correct.

17. The Player is 24 years old and has played professional rugby in New Zealand and France for some 4 years. He is a former New Zealand schoolboy international. During his professional career the Player has been issued with two red cards and two yellow cards. Whilst these were for

foul play none were for dissent/match official abuse. The Player indicated that he had never had any problems with match officials previously, and again expressed remorse that this incident had occurred.

18. Grenoble advised that it will be taking internal disciplinary action including withholding bonus payments in accordance with its ethics policy and requiring the Player to run coaching courses for the club's youth teams. The Judicial officer would wish to commend the club for the way in which it has dealt with this matter.
19. The Judicial Officer asked if any party had any further points to raise or submissions to make, and in particular the Player was given the opportunity to make final submissions.
20. Before retiring to consider matters in private, the Judicial Officer confirmed to the Player that it was his role to assess the allegations and to follow the sanctioning process as prescribed in the DR. The Judicial Officer explained the factors he would have to consider and make findings upon. The Player confirmed that he understood the process and was content with the way in which the Judicial Officer had indicated he would approach the exercise he was required to undertake.

Decision as to Disposal

21. The Judicial Officer deliberated in private. In addressing the matter, the Judicial Officer considered the terms of the Disciplinary Rules.
22. The Judicial Officer noted that the offence of verbally abusing match officials was listed within World Rugby recommended sanctions for offences within the playing enclosure (found at Appendix 3 of the Disciplinary Rules) as follows:
 - Low end, 6 weeks.
 - Mid-range, 12 weeks.
 - Top end, 18+ weeks.
 - Maximum sanction 52 weeks.
23. The Judicial Officer made the following findings in relation to the facts of what had occurred in the incident under consideration:
 - (a) Given the positioning of the Player, on balance he had intended to be critical of the Referee and he had then spoken to the Referee in a manner which will not be tolerated by the game;
 - (b) The offending words were however brief and the most offensive (and first) of the three words used was not directed at the Referee in person;
 - (c) The words used did not impugn the Referee's integrity and were not those that might normally be viewed as wholly repugnant;
 - (d) The Player left the field immediately and apologised to the Referee after the game;
 - (e) There was no effect otherwise on the game.
24. In light of the above findings, the Judicial Officer determined that the seriousness of the Player's offending, should be assessed as being at the LOW END of the scale of seriousness.
25. The entry point for the offending was accordingly a suspension from playing of 6 weeks.
26. The Judicial Officer found that none of the aggravating factors prescribed by DR 7.8.34, were present and thus the entry point was not required to be increased.

27. In considering mitigating circumstances under DR 7.8.35, the Judicial Officer noted that:
- a) The Player has immediately acknowledged his culpability;
 - b) The Player did not have the benefit of a clean disciplinary record;
 - c) Youth and inexperience were not relevant here;
 - d) The Player conducted himself as to be expected of a professional player at the hearing;
 - e) The Player was plainly remorseful as evidenced by his apology to the Referee after the game and to the Judicial Officer;
 - f) There were no other relevant off field mitigating factors.
28. In all the circumstances, the Judicial Officer was prepared to allow a 33 % discount for these mitigating factors which, calculated by reference to the entry point, means a reduction of 2 weeks in the period of suspension.
29. As a result of the above decisions the Player is required to serve a period of suspension of 4 weeks by reference to the specific dates below, which are imposed to ensure the period of suspension is properly meaningful as required by the Disciplinary Rules.
30. The hearing was reconvened and the Judicial Officer's decisions relayed to the parties.
31. The Player is suspended for playing for a period of 4 weeks up to and including the 13 December 2015. The Player will be free to play again from 14 December 2015. The suspension will take effect over Challenge Cup games scheduled to be played on 21 November and 10 December and French Top 14 league games scheduled for 29 November and 5 December.
32. The Judicial Officer reminded the parties that the Disciplinary Rules afford them the right to appeal against his decision.
33. There being no further matters to consider, the proceedings were closed.

Jeremy Summers
Judicial Officer
18 November 2015