



NOTTINGHAMSHIRE, LINCOLNSHIRE & DERBYSHIRE
RUGBY FOOTBALL UNION

DISCIPLINARY DECISION

Professionalism • Transparency • Fairness • Integrity • Consistency

JUDGMENT OF THE PANEL

Venue: Derby Conference Centre, Derby

Date: Thursday 31st January, 2019

Player: Steven Lowe a.k.a. 'Kirk' ('the Player')

Club: Ashfield RUFC ('the Club')

Match: Ashfield RUFC 3rd XV v Mosborough 2nd XV

Match Date: Saturday 5th January, 2019

Panel: Matthew O'Grady, Chairman
Andrew Stout
Malcolm Yates

Secretary: John Downham, NLD Disciplinary Secretary

Attending: Mark Denman, Disciplinary Secretary of Ashfield RUFC
Eddie Truswell, Director of Ashfield RUFC

Observing: Timothy Bembridge
Adrian Senn

Preliminary Issues

1. There were no objections to the composition of the Panel. This was one of three charges against players from the same team for offences relating to the same Match Official in the same game. For the full context, this decision should be read alongside the short form judgments for the players Josh Payne and Gavin Payne, also of Ashfield RUFC.

Charge and Plea

2. The Player was sent off for an alleged offence under Law 9.27, “A player must not use threatening actions or words towards Match Officials.”
3. The Player admitted the charge.

Evidence and Findings

4. The Panel considered the report of the Referee, Mr. Aidan Johal. The report states as follows:

“The player called me a cunt. I awarded a red card. The player then continued to threaten me verbally and made threats of physical violence. He began to run towards me in a threatening fashion and I believe if he had been able to reach me he would have struck me. The player was held back by players from both teams until he walked away.”

5. The Player did not dispute the contents of the Referee’s report. He told us candidly that he lost his head. He felt that the game had become dangerous with foul play being committed, but going unpunished. The Player did not use the suggestion of missed foul play to minimise his actions. He told us very directly that he should have held his decorum and should not have taken his frustrations out on the Referee, regardless of his perception of the job he was doing. When asked why, he explained in clear terms to us his understanding that behaviour he admitted was not a part of rugby values and had no place in the Game.
6. We had no difficulty in finding on the balance of probabilities:
 - a) In a moment of loss of self-control because of his perceptions of the Referee’s performance the Player used gratuitously abusive language towards the Referee.
 - b) The Player was threatening in his language towards the Referee.
 - c) The Player threatened physical violence against the Referee.
 - d) In running towards the Referee whilst using abusive and threatening language, such that he had to be restrained by players of both sides, the Player was threatening in his physical actions.
 - e) The majority of the conduct followed the Player being shown the red card.

- f) The overall effect of the Player's actions was to intimidate the Referee. Whilst we accepted the Player would probably not have hit the Referee, the Referee's perception that the Player would do so was not unjustified in the circumstances.
- g) The Player was of one three players from the same club directing unacceptable behaviour at the Referee. The group element of the offending made it more serious in the Panel's view given the cumulative intimidating effect there will have been upon the Referee compared to a single act by a single individual.

Sanction

7. We undertook an assessment of the Player's conduct under Regulation 19.11.8 as follows:

- a) *Intentional / deliberate.*

The Player's actions were intentional.

- b) *Whether the offending was reckless, that is the Player knew (or should have known) there was a risk of committing an act of Foul Play.*

N/A

- c) *The gravity of the Player's actions in relation to the offending.*

The Player's actions were intimidating and threatening towards a Match Official. He was one of three players directing unacceptable behaviour at this Referee. The threat of physical violence in the context of his physically threatening behaviour (such that he had to be restrained by others) made his conduct particularly serious.

- d) *The nature of the actions, manner in which the offence was committed including part of the body used (for example, fist, elbow, knee or boot).*

There was a single abusive word, which was directed at the Referee ("cunt"). It was an obviously gratuitously offensive word to use. It would have been offensive to everyone who heard it. It was delivered in a way as to make it threatening of itself. In starting to run towards the Referee and in behaving in such a way that he had to be held back by players of both teams, the Player was obviously intimidating and threatening towards the Referee in his actions. His behaviour persisted, rather than being a single episode of misconduct. He threatened physical violence whilst being physically threatening.

- e) *The existence of provocation.*

There can have been nothing to justify the Player's actions. There is no evidence of provocation.

- f) *Whether the Player acted in retaliation and the timing of such.*

N/A

- g) *Whether the Player acted in self-defence (that is whether he used a reasonable degree of force in defending himself).*

N/A

- h) *The effect of the Player's actions on the victim (for example, extent of injury, removal of victim Player from game);*

The Player's actions caused the Referee to fear for his physical safety. The Referee perceived the Player would strike him, if able to reach him. The Player only calmed down and walked away after the intervention of players from both sides.

- i) *The effect of the Player's actions on the match.*

The incident occurred in the 78th minute. Players from both teams had to restrain the Player. The Player's actions interrupted the match.

- j) *The vulnerability of the victim Player including part of the victim's body involved/affected, position of the victim Player, and the ability to defend himself.*

The Referee had no team mates or colleagues to assist him or offer moral support. He was at the match alone. Referees are inherently more vulnerable than other participants. It was fortuitous that Players from both sides intervened to prevent possibly more serious action.

- k) *The level of participation in the offending and the level of premeditation.*

The conduct amounted to an unacceptable loss of self-control. The Player had time to choose a different course of action, but went ahead regardless. It was only by being restrained that he began to calm down.

- l) *Whether the conduct of the offending Player was completed or amounted to an attempt.*

The acts of using abusive and threatening language and threatening behaviour were complete. The Player had to be restrained from completing further acts.

- m) *Any other features of the Player's conduct in relation to or connected with the offending.*

N/A

Aggravating Features

8. We considered the aggravating factors under Regulation 19.11.10, namely:

- a) *The Player's status as an offender of the laws of the game.*

This was the Player's first red card. He has hitherto been of good character. We accepted his evidence that this was out of character for him.

- b) The need for a deterrent to combat a pattern of offending.

N/A

- c) Any other off-field aggravating factor that the Disciplinary Panel considers relevant and appropriate.

Despite being under a provisional suspension under Reg 19.5.2 and 19.5.3, the Player played on 12th January 2019 for Amber Valley RFC in Amber Valley 2nd XV v Ashfield RUFC 2nd XV.

Mitigating Features

9. We considered the mitigating factors under Regulation 19.11.11, namely:

- a) *The presence and timing of an acknowledgment of culpability/guilt by the offending Player.*

Before us the Player admitted the charge. He accepted full responsibility for his actions

- b) *The Player's disciplinary record and/or good character.*

The player was hitherto of good character.

- c) *The youth and inexperience of the Player.*

The Player is 32 years old. He has been playing the game since he was 18 years old. He should have known better.

- d) *The Player's conduct prior to and at the hearing.*

The Player's conduct at the hearing was exemplary. He had taken half a day off of work to ensure he could honour this appointment. This clearly showed the seriousness with which he treated the proceedings.

- e) *The Player having demonstrated remorse for the Player's conduct to the victim including the timing of such remorse.*

The Player sincerely apologised for his actions. He had not apologised to the Referee. That notwithstanding he showed genuine remorse and embarrassment at his actions and at having to appear before the Panel.

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

The Panel was not made aware of any further mitigation.

Decision

10. The findings of the Panel and the assessment of the Player's drove the Panel to the conclusion that the appropriate entry point was Mid-Range (24 weeks). For his good

character, which he has now lost, the entry point was reduced by 50% (12 weeks) to 12 weeks.

11. The offending in this case was aggravated by the Player's breach of his provisional suspension. Respect and Discipline are two of the Game's core values. In disregarding his provisional suspension, the Player failed to honour these core values. The Player's naivety ensured we limited the value of the aggravation. The aggravation amounts to 2 weeks
12. **Accordingly, the total period of suspension is 14 weeks.**

Return to Play

13. The period of suspension must be meaningful. The Player played on 12th January, 2019 and therefore we discount that date in the assessment of the period of suspension. **The Player is free to resume playing from Sunday 21st April, 2019.**
14. The Panel is aware that the Player has a record of moving between clubs on a regular basis. Were the Player to move to another club and play during the suspension imposed by this Panel the Player can expect the sanction imposed today to be revisited and/or a further charge to be brought against him. We direct the Disciplinary Secretary to send this judgment to the disciplinary secretaries of all clubs within the Constituent Body.
15. Finally, the Panel commends the Club for the seriousness with which it treated this piece of offending and the offending by the other players of its Club. We understand a whole Club meeting was held earlier this week in relation to the Club's disciplinary record and it is now inevitable, given this is the seventh red card received this season, that we will see the officers of the Club in the near future under a 5.12 charge.

Costs

16. The Player/Club shall pay costs to NLD RFU of £30.

Appeal

17. There is a right to appeal against this decision. Any such appeal must be made within 14 days of this judgment being received.

Comment

18. It would be remiss, in the very sorry context of this Panel hearing charges relating to abusive conduct by three players of this Club towards the same match official, for this Panel not to make observations regarding the impact behaviour of this kind has on the Game and the consequences for players and clubs who engage in it.
19. The core values of our Game are: **Teamwork, Respect, Enjoyment, Discipline and Sportsmanship**. As is set out in widely available literature and which is also on the website of the Rugby Football Union, they are what make the game special for those who enjoy the environment and culture they create. Respect is said to be one of mutual respect which forms the basis of the sport. The RFU website states:

“We hold in high esteem our sport, its values and traditions and earn the respect of others in the way we behave. We respect our match officials and accept their decisions. We respect opposition players and supporters. We value our coaches and those who run our clubs and treat clubhouses with consideration.”

20. The World Rugby Playing Charter states:

“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.”

21. Referees are vital to the Game. Without them there would be no matches. Particularly at the community level of the Game, where referees give of their time for free, as for players, participation is based on passion. Like players and coaches, referees will make mistakes or cause frustration. Yet it is how players and coaches manage those frustrations that sets Rugby Union apart from other sports. Abusive and threatening behaviour towards match officials is obviously contrary to Rugby’s core values and its consequence is to undermine the willingness of volunteers to facilitate games and thus threaten the games taking place at all. It is one of the reasons why the Entry points for offences towards match officials are set so high.
22. Persistent and/or serious offenders, or Clubs with players with a pattern of offending of this kind, should not be surprised if serious consequences follow from persistent or serious offending to ensure the values of the Game, which are cherished by its participants, and the Game itself are appropriately safeguarded. Clubs are reminded, in particular, of the Bad Disciplinary Record provisions in Reg 19.3, which may result in the club be charged with misconduct under rule 5.12.
23. It appears that the level of offending against Match Officials in this area is disproportionately high relative to other areas. The Disciplinary Secretary will be required to consider whether there is a case for making a submission to the RFU Head of Discipline for offences against Match Officials to be automatically aggravated in order to deter this type of behaviour. This judgment should be sent to the local referees’ society as well.

Matthew O’Grady
Chairman, for and on behalf of the Panel

Friday 1st February, 2019