

RUGBY FOOTBALL UNION
RFU COMPETITIONS APPEAL
FILTON HOLIDAY INN, BRISTOL

26 November 2009

Club: Torquay Athletic RFC
Match: Torquay Athletic RFC v Cullompton RFC
Date: 26 September 2009
Venue: Torquay

To consider:

The decision of the South West Competitions Committee to uphold the League Secretary's decision not to order the above fixture to be replayed following the ordering of uncontested scrums for the remainder of the match played between the two sides on 26 September 2009.

Panel: Christopher Quinlan (Chairman), John Doubleday & Nigel Gillingham

In attendance Brian Flanders, South West Division Competitions Committee

Mike Curling

Liam McTiernan - *secretary to the Panel*

Torquay: Matthew Wales, Counsel
Richard Harris, Vice-Chairman
Dave Thompson, Discipline Secretary
Mike McDonald, Director of Rugby
Paul Edwards, Fixture Secretary
Jon Woodhead

Introduction

1. No objection was raised to the composition of the Panel.

The Facts

2. The match in question was a South West 1 League game played between Torquay Athletic RFC (TARFC) v Cullompton RFC on 26 September 2009. The referee was Andy Rawson on exchange from Manchester and District Referee Society.
3. In his email dated 9 October, 20.46 the referee states that he *“called over the starting front rows and all available front rows...I explained that the replacement front row could be substituted on but then if a front row got injured then the substituted front row could not return and the team would have to go down to 14 and uncontested scrums would follow.”* He said the pre-match briefing occurred in the presence of both captains and “coaches”. He comments (1) this was “accepted without demur” and (2) it represented his understanding of the pre-season changes.
4. TARFC did not accept the accuracy of the referee’s recollection on this point. We heard from Jon Woodhead, a prop who played in the said match. TARFC also pointed to the submission from Cullompton RFC in the letter from its Vice-Chairman VR Pring (dated 7 October). In that letter he states their head coach and playing chairman were approached by the referee prior to the game and informed that if a front row player was substituted then that player could not be used to replace a further front row player. He “assumes” that TARFC were briefed in identical terms. That recollection is inconsistent with the referee’s account.

5. We were told and accept that the half-time score was 10 v 3, TARFC having scored 2 unconverted tries. Early in the second half TARFC substituted prop Jon Woodhead. Thomas Edmonds replaced him. It was a tactical substitution rather than for blood or injury.
6. After 62 minutes of the match, the TARFC front row player Thomas Edmonds was injured such that he could not continue in the match. Jon Woodhead was not injured and so available, if permitted, to return to the field of play. Mr Rawson refused to allow TARFC to bring him on. That decision was entirely consistent with the briefing he gave before the match started and with his apparent understanding of the Laws of the Game. The TARFC Director of Rugby appealed to the referee adviser who (we were told) confirmed the referee was in error.
7. Mr Wales told us that according to the best recollection of those from TARFC present at the game, the club was either 3 points up or down when Mr Edmonds was injured. At that point, TARFC had one player in the 'sin-bin'. TARFC played the remainder of the match, with uncontested scrums and initially 13 and then 14 players. TARFC lost 17 v 23.

Decision Appealed Against

8. In an email dated and timed 30 September 2009, 19.35, the League Secretary NJ 'Bert' Barber refused TARFC's appeal. In doing so he reviewed IRB Law 3.12 ('Law 3.12') and concluded that *"it would appear that the referee was wrong in not allowing Torquay Athletic to replace an injured front row player with a substituted front row player."*

9. However, he then referred to Game Regulation ('GR') 8.3. and concluded that *"I do not believe I have the power to set aside his [the referee's] interpretation"*. Accordingly, he dismissed the appeal.
10. TARFC appealed to the South West Division Competitions Committee ('SWDCC') who by letter dated 2 November 2010 [sic] dismissed the appeal. By way of reasoning the Committee stated: *"It is their opinion that the decision made by the League Secretary, that the game should not be replayed and the result should stand, was correct"*

TARFC's Appeal

11. In advance of the hearing we read the Skeleton Argument provided by Mr Wales. He developed those submissions before us, supplemented by evidence from various representatives of TARFC. We were taken on a (necessary) journey from GR 1.2, Law 3.12 to GR 8.3. We shall set out the material parts thereof.
12. Game Regulation 1.2.1 provides:
"All matches played under the jurisdiction of the RFU and/or in RFU Competitions or any other competition or merit table must be played in accordance with iRB laws and Regulations, RFU Rules and Regulations (including Game Regulations 1-10), and any applicable Age Grade Variations..."
13. Law 3.12:
"Substituted Players Rejoining the Match
If a player is substituted, that player must not return and play in that match even to replace an injured player.
Exception 1: a substituted player may replace a player with a bleeding or open wound.

Exception2: a substituted player may replace a front row player when injured, temporarily suspended or sent off."

14. We interpolate that we also considered a Revised Important Notice issued by the RFU dated 25 August 2009 headed "Change to Published Game Regulations with Immediate Effect" which Notice revises GR 7.2 (number of replacements and substitutes) and GR 7.3 (front row). There is an attached table summarising the effect and operation of the revised regulations and what is described as a "front row logic tree": a flow diagram designed to illustrate the operation of the regulations applicable to the front row. That Revised Notice does not seek to vary Law 3.12 nor does it state that the Law shall not apply. Of note, the permitted number of replacements at this level, is three.

15. Game Regulation 8.3:

"In all matches, any decision taken by the appointed Match Officials or their replacements shall be final and binding insofar as the Laws of the Game are concerned."

16. It is necessary also to mention an IRB Law Ruling, dated 10 August 2009, relating to the operation of Law 3.12.

17. Mr Wales submitted that in the circumstances prevailing at the 62nd minute TARFC were entitled to replace the injured front row player. The referee was wrong in refusing to permit Jon Woodhead to return. He submitted that applying or not applying the IRB laws of the Game was not a matter for the referee's function or "wide margin of discretion" under GR 8.3. In refusing to permit Mr Woodhead to return, he submitted that the referee was not applying or purporting to apply the relevant IRB Laws of the Game (Law 3.12).

18. Mr Wales sought to draw a distinction “in principle” between a decision of the referee in interpreting the Laws of the Game but getting the decision wrong or arguably wrong (e.g. missing a foot in touch or a forward pass) and a failure to apply the relevant Laws of the Game (for which there is no interpretation, such as number of points for a try). The former category is covered by GR 8.3; the latter (into which this case, he argued, falls) would not (he submitted) be within GR 8.3.
19. Mr Wales sought to bring the point to life with some topical examples. The notorious Thierry Henry handball in the France v Ireland FIFA World Cup qualifying game would fall within the first category. When I raised with him the alleged forward pass in the move which led to the winning try scored by France in the RWC 2007 quarter final with New Zealand, that too he opined, would fall into the former category. To be provocative Mr Wales posited the (ludicrous) example of a referee choosing to apply in a match played today, the Laws of the Game applicable in 1935: that would fall into the second category and so not be caught (according to his argument) by GR 8.3.
20. Mr Wales further submitted that the referee’s refusal had a material effect on the outcome of the match. At that point, the scores were close. TARFC played the remainder of the match with a numerical disadvantage and with uncontested scrums. By way of remedy, TARFC submitted that the game should be replayed.

SWDCC’S Submissions

21. We are grateful for the attendance and assistance we derived from Brian Flanders and Mike Curling. Both are well known to the members of the Appeal Panel and their combined experience in Competition matters is

vast. That they did not agree is some insight into the difficulty of our task.

22. Mr Flanders, articulated the position of the SWDCC in this way. The decision made by the referee was wrong. However, it was a decision which related to and concerned a Law of the Game (3.12) and so was caught squarely by Regulation 8.3. I asked him to deal with the 'Wales 1935 example' and whether the logical extension of his argument would mean that in such a case, the Competitions Committee would have no jurisdiction to intervene and the result would stand. He agreed that must be so; in such a case, he said GR 8.3 would operate so as to prevent intervention.

23. I asked Mr Curling to attend (effectively) as an *amicus*. He took a different but equally robust view. In short, he agreed that the referee had made an error in his application of Law 3.12. His view was that the error was material and potentially affected the outcome of the match.

Cullompton RFC

24. Cullompton RFC did not attend in person before us. That is not nor is it intended nor should it be read to be in any way a criticism. We read and considered with care the 7 October letter from VR Pring, which set out in detail its position. The club "took on trust" the referee's interpretation of the Laws and played the match accordingly. He asserts that Cullompton were "well on top in the match" at the point Mr Edmonds left and "were worthy winners". He comments that Cullompton "would be very disappointed to be asked to replay a game that we won fairly".

Decision

25. Game Regulation 10.2.10 provides for an appeal from a review by an Organising Committee to a RFU Appeal Panel. The approach, powers and discretion of the Appeal Panel are set out in Disciplinary Regulation 12.3. Disciplinary Regulation ('DR') 12.3.2 states:

"In any appeal, the Appeal Panel shall have discretion only in exceptional circumstances to act in any manner it sees fit provided that it is of the opinion that the application of these Game Regulations has resulted in or would result in a perverse and/or unfair outcome. In all cases where the Appeal Panel exercises that discretion, the Disciplinary Officer (or the President where the Disciplinary Officer chaired the Appeal Panel) must review the decision within 96 hours of receipt of the written judgment to affirm the view of the Appeal Panel. If the Disciplinary Officer (or the President as the case may be) is of the opinion that the case is not exceptional and the original decision was not perverse and/or unfair he may substitute the original decision for that of the Appeal Panel..."

26. We reserved our decision to consider further the evidence and issues and also to seek further material, if such were available, regarding the number of replacements TARFC used during the match.

27. The facts. In large measure the material facts were not in dispute. During the hearing an issue arose as to the number of replacements used by TARFC *before* the front row player was injured in the 62nd minute. When we asked, we were told by Mr MacDonald initially that 1 was used, then 2 and finally the settled answer was that all 3 had been used. Later in the hearing, and as we debated with the parties the potential materiality of the number of replacements used, TARFC appeared less certain about the number used and the position became less clear.

28. In the days after the hearing, Mr McTiernan obtained for us the referee's match card. I asked Mr McTiernan to see if the League Secretary or referee could assist with interpreting the markings on the match card and with the question of the number of replacements used. He has informed us that having spoken to both the League Secretary and the referee, neither can help with that question, from the match card or in the case of the referee, from his recollection. We have also been informed that the referee does not have any written note of the replacements.

29. In further submissions received from Mr Wales on 2 December, he submitted that TARFC's case was that at the 62nd minute the club had not used all three replacements. He said that their third replacement (Phillip Maddick) was brought on with 5 minutes remaining. Further, he asserted that photographs he supplied supported this. There is no evidence to the contrary, still less to rebut it. We accept it and, insofar as it is material to our decision (and I am not satisfied that it is) we approach the decision upon the basis that as at the 62nd minute TARFC had not used their permitted 3 replacements.

30. Referee's decision. We agree with the opinion of the League Secretary, Mr Flanders and Mr Curling, which accord with our own understanding of the Laws: the referee was wrong. In the correct application of Law 3.12, he should have permitted TARFC to replace Thomas Edmonds with Jon Woodhead. Put another way, he should have permitted TARFC to replace the injured front row player with the previously substituted front row player.

31. The IRB Law Ruling, 10 August 2009 is confined to its facts, which are different from this case. Not least, it addresses a situation where all permitted replacements have been used. That is not, following our factual findings, this case.

32. The nature of the pre-match briefing is, in our judgment, immaterial to the decision we have to make. If the referee got the law wrong, as he did, it is immaterial that he told one or other or both or neither side before the match started. What the briefing does confirm is that he was not applying properly Law 3.12.
33. In finding the referee fell into error, we find only that he made a genuine and honest mistake. It is the lot of those charged with the task of making decisions sometimes to make an error. The revision to GR 7.2 had been recently issued, just before the start of the season. In our opinion, it would have been helpful if the RFU had referred to Law 3.12 within this revised GR.
34. GR 8.3: was the referee's decision one concerning the Laws of the Game and if so is that decision final? His decision was one relating to the Laws of the Game. He was purporting to apply the Laws of Game as he understood them. We accept that was his genuine understanding of the meaning and effect of the Laws and Regulations.
35. DR 12.3.2: The drafting is not altogether easy to follow. Reading the regulation *in toto*, it seems to us necessary first to consider whether the case is exceptional when judged against the ordinary run of cases and appeals of this kind.
36. We take the view that this is an exceptional case. It is an exceptional case because the referee can be shown to have been wrong in his understanding and so purported application of the Laws of the Game and the relevant Regulations. Properly understood, this decision does not open the gates to a flood of appeals based upon disputed refereeing decisions. Participants in games who claim the referee missed a forward pass, knock-on or claim the winger's foot did not go

into touch in the act of scoring what would otherwise be the winning try (in for example a RWC final) will get no comfort from this decision.

37. Why? Decisions such as those are within the judgment of the referee and other match officials; they relate to his/her (and/or their) interpretation of what they see and hear and in their application of the correct Laws. In that, they are (rightly) the final arbitrators. But that is not this case. Here, the referee got the Law wrong; he did not apply correctly the relevant Law (Law 3.12) and that is what makes this case exceptional.

38. Next, we consider whether application of the Game Regulations has resulted in an outcome which is perverse or unfair. If GR 8.3 prevents the Appeal Panel from intervening in what we judge to be an exceptional case, would that result in unfairness or an otherwise perverse outcome?

39. In our judgment it would and for this reason. We accept the scores were close when the injured front row player left the field. TARFC played the remainder of the game with a numerical disadvantage. We accept Cullompton believe genuinely that they were on top and would have won the game. So, understandably given the score at the 62nd minute and at the final whistle, do TARFC. In those circumstances, how can we (with anything approaching certainty) predict what the outcome would have been had Jon Woodhead returned to play in that match? We cannot and neither can either side. We cannot say that it did not have a material effect on the outcome of the game and that in our judgment is the unfairness if the result stands.

40. In our judgment, the only approach fair to both sides and *to the other sides in the league* is to quash the decision of the League Secretary and

the SWDCC and order the game to be replayed. We accept that Cullompton RFC have not done anything wrong but that is not the test we have to apply.

41. Review by DO: As is clear from the terms of DR 12.3.2 our decision is subject to review by the Disciplinary Officer, HHJ Blackett.

42. For the reasons given above, pursuant to Disciplinary Regulation 12. We

- 1) Quash the decisions of the League Secretary and SWDCC
- 2) Order the fixture to be replayed before the 24 May 2010 (the end of the season, *per* GR 6.1) on a date to be determined by the League Secretary
- 3) Order the prescribed payments made by TARFC in the course of the appeal process to be repaid

43. Although the Chairman has drafted the majority of this document and signed it, all members of the Appeal Panel have contributed to it and it is the unanimous decision of all us.



Christopher Quinlan

Chairman

6 December 2009