

JUDICIAL OFFICER'S HEARING REPORT

DATE OF HEARING: 8 June 2013

TOURNAMENT: Pacific Nations Cup - 2013

GAME: Canada v. Tonga - June 8, 2013

PLAYER'S NAME: David Halaifonua

MATCH VENUE: Richardson Stadium, Kingston, Ontario

PLACE OF HEARING: Cabinet Boardroom, Holiday Inn, Kingston, Ontario

JUDICIAL OFFICER: Alan Hudson

IN ATTENDANCE: David Halaifonua ("the Player"), Ma ma Otai ("Tonga Head Coach"), Vila Ami ("Tonga Manager"), Steven Chessum ("Match Commissioner"), Trevor Arnold ("Recording Secretary"), Nathan Abdelnour ("Video Operator")

1. INTRODUCTION

- 1.1 This hearing was convened before me to consider the citing of the Tonga Player, David Halaifonua ("the Player") following the match played between Canada and Tonga on June 8, 2013 at Richardson Stadium, Kingston, Ontario during the Pacific Nations Cup 2013.
- 1.2 The Player was cited by David Pelton, Citing Commissioner for a dangerous tackle at the 16 minute mark of the second half in contravention of law 10.4(e). The Citing Report reads:

"Canada #11 running toward Tongan try line (Tongan 10 meter line about 10 meters from near touch line). Tonga #23 crouches as Canada #11 approaches then jumps into Canada #11 after he passes the ball. Tonga #23 hits Canada #11 in the head with his shoulder. No attempt to wrap by Tonga #23."
- 1.3 The Tonga Coach advised that because of difficulty with the English language, the Coach would speak at the Hearing for the Player. The Player confirmed that he wished to speak through his Coach as his representative.
- 1.4 The incident in question was the subject of a Temporary Suspension/Yellow Card Report issued by the Referee, J.P. Doyle (RFU). The Yellow Card Report reads as follows:

"Late and dangerous tackle on Tonga 10 meter line."
- 1.5 The match doctor, Dr. Michael O'Connor submitted a brief email report on the injury suffered by the tackled Canada #11.

- 1.6 After being read the Citing Commissioners Report, and the email from the match doctor and after having had an opportunity to review the match video evidence, the Player advised that he wished to contest the allegation that an act of Foul Play had been committed.

2. EVIDENCE

- 2.1 There are two camera angles of the incident, one from the near side and the other from an in goal camera behind Canada #11. Both show the incident but the clearest angle of the moment of contact is from in goal camera. The video was watched several times in both regular time and in slow motion. The video shows the Player crouching in preparation to make a tackle as Canada #11 approached him. Canada #11 then looked to his right and passed the ball inside to his right to a supporting Canadian player. At almost this moment the Player moved forward and upward into the tackle and contact was made with the right shoulder of the player hitting the lower left side of Canada #11's head. It is difficult to see the exact point of contact but it is clearly above the line of Canada #11's shoulders and appears to be at or about Canada #11's jawline. Canada #11 was looking to his right at the moment of contact and his head is seen to snap backward.
- 2.2 On the video, the Player's right arm is visible on or above the left shoulder Canada #11 at the moment of contact but there is no apparent attempt to grasp Canada #11 as part of the tackle.
- 2.3 Canada #11 fell to the ground and it is apparent that he was injured. He was treated on the field by medical personnel and after the next stoppage in play, he was removed from the field on a stretcher.
- 2.4 At this point, the Player received a Yellow Card/Temporary Suspension from the Referee.
- 2.5 The video evidence confirms that the tackle is above the line of the shoulders. It further confirms that the Player made no attempt to wrap his arms around Canada #11 or grasp him during the tackle. It does appear that the Player was committed to the tackle and had begun to move into the tackle just as Canada #11 passed the ball. In this respect the tackle is not late.
- 2.6 The match doctor's email report reads as follows:
- “Canadian player was tackled and sustained a period of unconsciousness and left the game on a stretcher. Ultimately recovered to the point where he was able to rejoin the bench. This injury would be considered a concussion and follow-up over the next few days will determine whether he is required to miss play due to the injury.”
- 2.7 The position of the Player at the Hearing is as follows:
- a) Canada #11 put himself at risk by waiting to the last moment to pass the ball.

- b) The Player did attempt to grasp Canada #11 but Canada #11 was in a position that made this difficult as he was in a backward position as a result of the contact and his body position was more in the nature of being “horizontal”.
- c) There was no contact by the Player with Canada #11’s head. The contact was in the nature of a “jolt” to the body of Canada #11 which caused his head to snap back rather than a direct blow to the head.
- d) The fact that Canada #11 was able to return to the bench shortly after the incident indicates that Canada #11 did not sustain a blow to the head as if that had occurred, he would have been much more injured.

2.8 The Player indicated through his representatives that he did not dispute the report of the match doctor. Nonetheless, the Player’s position is that there was inconclusive evidence of any direct contact between the Player’s shoulder and Canada #11’s head and that while this incident was an unfortunate one, it does happen in rugby and there was nothing deliberate or intentional on the part of the Player. The Tonga Coach did indicate that while it is important for the game to be safe, this tackle by the Player was, from a coaching point of view, a good tackle.

3. FINDINGS OF FACT

- 3.1 Pursuant to Tournament Disciplinary Program (TDP) para 11.9.4 (wording virtually identical to Regulation 17.17.4(a)), the citing complaint shall not be upheld unless I am satisfied on a balance of probabilities that the player committed the act of Foul Play that is the subject of the citing complaint. I am satisfied that the requisite standard of proof has been met in this case and that an act of Foul Play, namely a dangerous tackle by the Player has occurred in breach of law 10.4(e). In reaching this decision I have concluded:
- a) As demonstrated by the video evidence, contact is made by the right shoulder of the Player to the lower left side of Canada #11’s head. It is difficult to be more precise as to the exact point of contact but it is clearly above the line of the shoulders and appears to be at or near the jaw line.
 - b) Canada #11’s head did snap back as a result of the contact which is clearly quite violent in the circumstances.
 - c) There is no attempt by the Player to grasp Canada #11 at the moment of the tackle which is a requirement pursuant to Law 10.4(g).
 - d) The violent contact to Canada #11’s head did cause a head injury in this situation. This is demonstrated by the match doctor’s report of a loss of consciousness and a concussion. Any such injury must be regarded as significant.
 - e) A player carrying the ball is entitled to expect that opposing tackling players will conform to the laws of the game, and there is nothing in the actions of Canada #11 that can be said to have put himself at risk.

- f) This was in no way “a good tackle” as suggested on behalf of the player. It was clearly dangerous and illegal

4. SANCTION

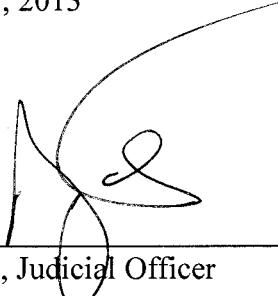
- 4.1 In undertaking an assessment of the seriousness of the conduct in this case, in order to identify the appropriate entry point pursuant to TDP Appendix 19, I have referred to the features set out in TDP para 11.11.2 (virtually identical to IRB Regulation 17 Appendix 1 and para 17.19.2). I have concluded:
- a) The offending in this situation was reckless rather than a premeditated action. The Player knew or ought to have known that there was a significant risk of his committing an act of Foul Play in the circumstances.
 - b) In assessing the gravity of the Player’s actions, the dangerous tackle in this situation did carry with it the high potential of serious injury.
 - c) There was no issue of provocation or retaliation in this case.
 - d) Canada #11 was in a vulnerable position having just passed the ball to his right and he was looking to his right at the moment of impact by the Player and hence was vulnerable in the circumstances.
 - e) The impact itself was a violent one as can be clearly seen on the video where Canada #11’s head is seen to snap back as a result of the blow.
 - f) Canada #11 was injured and that injury could not be described as trivial but rather as significant. He did suffer a loss of consciousness for a period and while he was able to return to the team bench during the game, he has, according to the match doctor, sustained a concussion.
 - g) The actions of the Player did not have any immediate significant effect on the Match.
- 4.2 Any head injury suffered in the game of rugby must be regarded as significant. Here a clear head injury has been sustained as a result of Foul Play on the part of the Player. I am cognizant of a Memorandum from the IRB dated January 21, 2011 on the subject of Dangerous Tackles (High Tackles). This Memorandum notes that tackles above the line of the shoulders have the potential to cause serious injury and noted that a trend had emerged whereby players responsible for such tackles were not being suitably sanctioned. The Memorandum states with respect to high dangerous tackles:
- “The purpose of this Memorandum is to emphasize that as with tip tackles, they must be dealt with severely by Referee’s and all those involved in the off-field disciplinary process.”
- 4.3 In my view, given the violent blow to the head of Canada #11 and the resulting injury which resulted in Canada #11 being removed from the field on a stretcher the appropriate entry point is the top end of the scale of seriousness for this

offence. In TDP Appendix 19, the top end entry point for an offence under law 10.4(e) is 10+ weeks suspension.

- 4.4 I must then next consider whether there are any relevant off-field aggravating factors pursuant to TDP para 11.11.4 that apply so as to increase the period of suspension. I find that in the circumstances there are none.
- 4.5 I must next consider whether there are any mitigating factors pursuant to TDP para 11.11.5 which provide grounds for reducing the period of suspension. In this regard I note:
- a) The Player has played for the Tonga 7's National Team since 2009.
 - b) The Player has played on two occasions for the Tonga National Men's 15 Team since 2009.
 - c) The Player is 25 years old and is married with 2 children. He is not a professional rugby player but lives in Tonga where he is a farmer.
 - d) His Coach describes the Player as a quiet man who says very little.
 - e) While the Player said very little at the Hearing, his conduct was most adequate and his demeanour did show remorse on his part.
 - f) Despite a lengthy and, I am told, outstanding career, on the Tonga 7's National Team, the Player has a good disciplinary record with no red cards or citing offences in the past.

The last of these factors is of particular consequence and in the result, it is my conclusion that the period of suspension shall be reduced to 6 weeks.

- 4.6 The Player is scheduled to play two games in the next two weeks for the Tonga National Men's 15 Team v. USA and Fiji. It is uncertain whether or not he will be selected to play for Tonga in the IRB Seven's Rugby World Cup in Moscow. In any event, he will return to his club to play rugby in Tonga each weekend throughout June and July, 2013. The Player is therefore suspended from all rugby for the period of suspension of 6 weeks through to and including Saturday, July 20, 2013. He may play again commencing July 21, 2013
- 4.7 The Player was advised of his right of Appeal.



Alan Hudson, Judicial Officer