

RWC 2019 DISCIPLINARY DECISION



Match	Tonga vs USA		
Player's Union	Tonga	Competition	Rugby World Cup Japan 2019
Date of match	23 October 2019	Match venue	Hanazono
Rules to apply	World Rugby Regulations 17 and 18 and RWC 2019 Tournament Disciplinary Programme		

PARTICULARS OF OFFENCE			
Player's surname	Ngauamo	Date of birth	19 February 1990
Forename(s)	Paula		
Referee Name	Nigel Owens	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	Law 9.12 - kicking	SELECT:	Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other <input type="checkbox"/> If "Other" selected, please specify:
Summary of Sanction	Mid-Range Entry Point of 8 weeks reduced to 7 weeks as a result of mitigation		

HEARING DETAILS			
Hearing date	15 October 2019	Hearing venue	RWC Disciplinary Hearing Room, Atsumi & Sakai, Tokyo
Chairman/JO	Alan Hudson (Canada)		
Other Members of Disciplinary Committee	Stefan Terblanche (South Africa; former international player) Valeriu Toma (Romania; former international assistant referee)		
Appearance Player	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	Appearance Union	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Player's Representative(s)	Aaron Lloyd, Player's Counsel	Disciplinary Officer and/or other attendees	Ben Rutherford (DDO RWCL) Alistair Maclean (General Counsel, World Rugby)
List of documents/materials provided to Player in advance of hearing	Citing Commissioner's Report; Notice of Disciplinary Hearing; Video Evidence; Video Timings Index; Match Summary Sheet; Statement of Nick Civetta (USA 5) including a photo of the player's face; Statement of Dr. Sam Akhavan, USA Team Doctor (the Medical Report); Statements of the Match Officials – Referee, and 2 Assistant Referees; Directions Issued by the Judicial Panel and Responses on behalf of the Player and the DDO; Tournament Disciplinary Programme (Regulation 17) and Appendix 1, Regulation 18 Record Of Communication, 15 October 2019		

The Citing Commissioner's Report states:

"A ruck forms close to the right hand side touch line between the halfway and the 10 metre line on the Tongan half. Players contest the ball and Player 5 USA cleans out Player 2 Tonga and both of them fall to the ground landing on their backs.

Player 2 Tonga strikes out with his left foot and his boot catches Player 5 USA on the face. The offending player is seen to look at Player 5 USA even as he strikes out with his foot. The strike is with sufficient force to cause an injury that immediately bleeds on the bridge of the nose of Player 5 USA. Player 5 USA stays on the ground and as Player 2 Tonga gets to his feet, he stands over Player 5 USA and utters some words to him.

Player 5 USA is attended by medical staff who treat the wound and returns to play.

Neither the referee and the ARs appear to have detected the act of foul play.

The actions of Tonga 2 go contrary to Law 9.12 that states in part that "a player must not physically or verbally abuse anyone. Physical abuse includes but is not limited to ... stamping, trampling, tripping or kicking"

In my opinion the action is an act of foul play and puts 5 USA in danger of serious injury to the head and face as it is unexpected and further he is in a prone position and cannot protect himself. I will therefore cite Player 2 Tonga for an act of foul play contrary to Law 9.12

Video evidence is available and a statement from Player 5 USA and a photograph showing injury on the bridge of the nose have been obtained from Team USA.

The Statements from the Match Officials state that none of them saw the incident in question and were unaware of it during the game.

The video clips capture the incident with clarity. In particular, the 4 NL Handheld Camera Angle has a camera position a few metres from the incident just beyond the touch line providing a close-up unobstructed view of the incident. The video shows:

- USA is on attack with possession of the ball near midfield close to the 15 metre restraining line.
- The ball is re-cycled after a ruck through USA 9 and is passed to USA 19 on the open side who attacks the Tonga defensive line.
- The Player is part of a 2 man tackle on USA 19, and USA 19, after the tackle, moves the ball back on the ground to USA 9 who quickly passes off.
- After making the tackle on USA 19, the Player immediately gets to his feet and attempts to pursue the ball and USA 9 as he plays it.
- No ruck has been formed and the Player is onside.
- The Player is obstructed by USA 5 who arrives late at the tackle and from the Player's left side and essentially tackles the Player who does not have possession of the ball with the result that they both go to ground, the player on his side rolling on to his back toward the touch line, and USA 5 closer to the touch line on his back. At this point they are not in contact with each other.
- While lying on his back the Player kicks out his left foot towards the head of USA 5 making contact with his left boot to the face of USA 5.
- The contact of the Player's boot to the face of USA 5 is of moderate force.

- At the moment of contact, the Player is on his back and although he is in close proximity to USA 5, it is difficult to determine if he is actually looking at him although his angle of vision would seem to make that difficult.
- The Player continues to look towards USA 5 as he gets to his feet whereupon he stands over USA 5 and can be seen saying something before moving off across the field.
- As a result of the contact by the Player's boot, USA 5 rolls on to his side holding his face.
- USA 5 then can be seen on the ground receiving medical attention to the area of his nose.

ESSENTIAL ELEMENTS OF OTHER EVIDENCE (e.g. medical reports)

The Statement of USA 5 reads:

"I was lying on the ground. I could not see the Tonga player. His boot struck my face. I could not tell if it was intentional. After, he stood over me and said something indiscernible"

The Medical Report states:

"Nick Civetta was treated by myself (Sam Akhavan, team doctor) for a cut over the bridge of his nose. The nature of the cut made it so it could not be sutured so we stopped the bleeding and let him continue playing.

At the conclusion of the match, he was found to have swelling, no evidence of a broken nose but an abrasion measuring about 1 x 0.5 cm over the bridge of his nose."

A photograph of USA 5 taken post-game shows a small laceration, as the Medical report describes, on the right side of the bridge of USA 5's nose.

SUMMARY OF PLAYER'S EVIDENCE

NON-ATTENDANCE BY THE PLAYER

The Player did not attend the hearing and no representative of the Player's Union attended. Mr Lloyd, counsel for the Player, did attend but was unable to offer any reasonable explanation for the Player's absence. It was not contested that proper and adequate notice had been given to the Player with respect to the hearing. Further, World Rugby put in evidence a "Record of Communication" which details efforts made on the morning of the hearing to locate the Player and determine his intentions regarding the hearing, all of which efforts were unsuccessful.

Mr Lloyd confirmed that he is retained to represent the Player in this matter, has had discussions regarding the matters in issue in these proceedings with both the Tonga Team Manager and the Player, and has received instructions from the Player with respect to the position the Player wished to take at the hearing (namely admitting the act of foul play alleged and that it reached the red card threshold) and also the Player's position with respect to the incident in question. Mr Lloyd prepared lengthy written submissions as a result which were of considerable assistance to the Judicial Panel. Mr Lloyd advised, quite correctly in the view of the Judicial Panel, that an application for an adjournment was inappropriate as he had no reasonable explanation as to the failure of the Player to attend the hearing, could not ensure that the Player would attend at any future time, and he agreed with World Rugby that such would set a dangerous precedent with respect to the timely administration of disciplinary proceedings (see the hearing transcript pages 3 and 9). Mr Lloyd was of the view that the hearing should proceed forthwith in the Player's absence.

Mr Rutherford confirmed that the Player had received proper notice of the Hearing and was fully represented by experienced and well-informed counsel. He further submitted that paragraph 1.8 of Appendix 1 of Regulation 18 which reads: *“The non-attendance of a party at a hearing and/or preliminary hearing in respect of which that party has received notice shall not prevent the matter being dealt with in their absence.”* is directly on point and he was of the view that in the circumstances, it was imperative that the matter proceed. The Judicial Panel also noted para 2.3 of Appendix 1 to Regulation 18 which provides that a hearing may proceed in the absence of a Player and/or Union if those parties have been given the opportunity to attend the hearing but have declined the opportunity without reasonable excuse.

The Judicial Panel determined that in these circumstances where the Player has been given adequate notice of the hearing and given an opportunity to attend, but without any reasonable excuse has chosen to decline that opportunity, and where there is agreement between both his counsel Mr Lloyd and World Rugby that the hearing ought to go ahead forthwith, the hearing will proceed as scheduled.

SUBMISSIONS ON BEHALF OF THE PLAYER

The thrust of Mr Lloyd’s able submissions on behalf of the Player regarding sanction was that this was a reckless action by the Player but not an intentional act. He stated that the Player was in one continuous motion from when he landed on the ground beside USA 5 and rolled toward that player and as part of that motion he did kick out his left foot and that did make contact with the nose of USA 5. He acknowledged that the Player told him he did kick out in frustration as he had been obstructed by USA 5 and that it was an instinctive action. In Mr Lloyd’s submission, the kicking action of the Player may have been intentional but where he kicked, and contact with USA 5, was not intentional but rather was reckless. He said the Player had advised him that he was not targeting USA 5 but accepted that his actions were utterly reckless. He submitted that the Player was not in fact looking at USA 5 as he kicked out because, given that he was lying on his back he could not have seen the position of USA 5 clearly when he lashed out in frustration. He also noted that the incident was really of minor consequence as none of the match officials saw it, and there was no player reaction from anyone on the field. In his submission this is of some considerable note as if there had been a deliberate action, there would have been a reaction and a response. Mr Lloyd also submitted that the Player told him that he didn’t even realize at the time that he had kicked USA 5 in the face.

FINDINGS OF FACT

On behalf of the Player, the act of foul play alleged by the Citing Commissioner was admitted and that it reached the red card threshold. The Judicial Panel concludes that on the basis of the evidence, particularly the video evidence, the Citing Commissioners Report must be upheld. There was a clear kicking action by the Player and his boot did make significant contact with the nose of USA 5.

DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/>	Not proven <input type="checkbox"/>	Other disposal (please state) <input type="checkbox"/>
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SANCTIONING PROCESS

ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 17.19.2(a)-(b) (or equivalent Tournament rule)	
Intentional/deliberate <input type="checkbox"/>	Reckless <input checked="" type="checkbox"/>
State Reasons	
The Panel accepted that the Player did not kick towards USA 5 with the specific intention of making contact with USA 5's head. The Player's actions appear to be as a result of frustration and a lashing out as a result of being wrongfully obstructed. He knew or ought to have known that his kicking action towards USA 5 could have resulted in a dangerous blow to USA 5's head.	
Gravity of player's actions – R 17.19.2(c) (or equivalent Tournament rule)	
A kicking action towards another player, particularly one who is on the ground, carries with it a high degree of risk of a significant injury occurring. In this case, a relatively minor injury resulted to the face of USA 5 but it is the gravity of the risk that is of considerable concern.	
Nature of actions – R 17.19.2(d) (or equivalent Tournament rule)	
See above	
Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule)	
There was provocation by USA 5 in his actions to significantly obstruct the Player and essentially tackle him to prevent him gaining any access to USA 9 and the ball.	
Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule)	
As a result of the above-noted provocation, the Player did react with frustration and kicked out toward USA 5 with his left boot.	
Self-defence – R 17.19.2(g) (or equivalent Tournament rule)	
Not applicable	
Effect on victim – R 17.19.2(h) (or equivalent Tournament rule)	
USA 5 did need some brief medical treatment to stop the bleeding from the laceration to the bridge of his nose but he was able to continue playing in the match,	
Effect on match – R 17.19.2(i) (or equivalent Tournament rule)	
There was no discernible effect on the match	
Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule)	
A player lying on the ground on his back is vulnerable to being kicked because he could not see the kick coming and could not protect himself.	
Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule)	
The player participated fully in the kick but the Judicial Panel accepted there was no premeditation.	
Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule)	
This was not an attempted kick but rather a completed action	
Other features of player's conduct – R 17.19.2(m) (or equivalent Tournament rule)	
None	

ASSESSMENT OF SERIOUSNESS CONTINUED

Entry point					
<u>Top end*</u>	<u>Weeks</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Low-end</u>	<u>Weeks</u>
<input type="checkbox"/>		<input checked="" type="checkbox"/>	8	<input type="checkbox"/>	

*If Top End, the JO or Panel should identify, if appropriate, an entry point between the Top End and the maximum sanction and provide the reasons for selecting this entry point, below.

In making this assessment, the JO/Committee should consider World Rugby Regulations 17.19.2(a), 17.19.2(h), and 17.19.2(i) or the equivalent provisions within the Tournament Rules referred to above.

Reasons for selecting Entry Point above Top End

ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

Player’s status as an offender of the Laws of the Game – R 17.19.4(a) (or equivalent Tournament rule)
Not applicable
Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule)
Not applicable
Any other off-field aggravating factors – R 17.19.4(c) (or equivalent Tournament rule)
Not applicable

Number of additional weeks:

RELEVANT OFF-FIELD MITIGATING FACTORS

Acknowledgement of guilt and timing – R 17.19.5(a) (or equivalent Tournament rule)	Player’s disciplinary record/good character – R 17.19.5(b) (or equivalent Tournament rule)
The player made an early admission of foul play that reached the red card threshold.	The Player has a recent disciplinary record. He was suspended for 3 games in RWC 2015 for a dangerous tackle and again for an undetermined period (Mr Lloyd suggests it was “short”) in 2017 for punching. He recently, in the 2018 Pacific Nations Cup received a Yellow card for a dangerous tackle. There is now the subject admitted foul play. These incidents are all in the last 4 years involving an experienced player. There was no evidence presented by the Player as to his good character and given his absence from the hearing, no assessment of this was possible by the Judicial Panel.
Youth and inexperience of player – R 17.19.5(c) (or equivalent Tournament rule)	Conduct prior to and at hearing – R 17.19.5(d) (or equivalent Tournament rule)
The Player is neither young nor inexperienced. He is 29 years of age and has been playing professionally in France for a number of years. He has played for the Tongan National Team since 2014.	This is an area of considerable concern. The Player was afforded the opportunity to attend the hearing but chose to decline that opportunity. The conduct of the Player as noted at pages 3 and 9 of the hearing transcript is not that which is expected of a player of his stature.
Remorse and timing of remorse – R 17.19.5(e) (or equivalent Tournament rule)	Other off-field mitigation – R 17.19.5(f) (or equivalent Tournament rule)
Mr Lloyd has submitted that the Player is remorseful but as he did not attend the hearing, it is difficult to measure this.	None

Number of weeks deducted:

Summary of reason for number of weeks deducted:
 The Player is entitled to some mitigation for his early admission of foul play. As an experienced player, his failure to attend the hearing without a reasonable explanation in particular, as well as his recent disciplinary record in the last 4 years of his career, are problematic on the issue of mitigation.

SANCTION

NOTE: PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 17.14.5(f) (or equivalent Tournament rule)

Total sanction	7 weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	immediately	
Sanction concludes	This is to be determined. No evidence was available at the hearing as to the Player’s playing schedule. The Player is therefore suspended from all rugby and may not play the Game in any form or be involved in any on-field activities anywhere until such time as he provides evidence of his playing schedule such that a determination by the Judicial Panel can be made as to the list of matches to be included in the period of suspension, and a conclusion date for the period of sanction can be determined.	
Matches/tournaments included in sanction	To be determined	

Costs	Not applicable
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Signature (JO or Chairman)	Alan Hudson - Chair	Date	16 October 2019
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NOTE: YOU HAVE **48 HOURS** FROM NOTIFICATION OF THE DECISION OF THE CHAIRMAN/JO TO LODGE AN APPEAL WITH THE TOURNAMENT DIRECTOR – R 17.22.2(a) (or equivalent Tournament rule)