

RWC 2019 DISCIPLINARY DECISION



Match	Wales v France		
Player's Union	France	Competition	RWC 2019
Date of match	20 th October 2019	Match venue	Oita Stadium, Japan
Rules to apply	Regulation 17 World Rugby and RWC 2019 Tournament Disciplinary Programme		

PARTICULARS OF OFFENCE

Player's surname	Vahaamahina	Date of birth	21 st October 1991
Forename(s)	Sebastien		
Referee Name	Jaco Peyper (South Africa)	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	Striking with an elbow contrary to Law 9.12	SELECT:	Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other
Summary of Sanction	6 weeks. The Player is suspended until midnight on 15 th December. The Player is free to play again on 16 th December 2019.		

HEARING DETAILS

Hearing date	24 th October 2019	Hearing venue	Atsumi Sakai Janssen Foreign Law, 2 Chome-2, Uchisaiwaicho, Tokyo, Japan
Chairman/JO	Mike Hamlin (England)		
Other Members of Disciplinary Committee	Leon Lloyd (England – Former International Player) David Croft (Australia – Former International Player)		
Appearance Player	YES <input checked="" type="checkbox"/> Via Skype	Appearance Union	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Player's Representative(s)	Louis Weston- Counsel; James Eighteen- Northridge Law LLP; Edward Reay-Jones Responsable Juridique, FFR; Florent Lajat (Lawyer, FFR); Eric de Cromieres (Chairman, Clermont Auvergne); Charles Fribourg (Pole Avocats, lawyer for Clermont Auvergne); Interpreter -Tony Hartley in Japan Interpreters in France – Paul Boulter and Poonam Borzon, both in France – The above all appeared via Skype from France. Serge Simon – The Vice President of FFR (France) Present at the hearing in Japan.	Disciplinary Officer and/or other attendees	Ben Rutherford – World Rugby Stenographer – Lisa Stefan Terblanche (Observer-South Africa)
List of documents/materials provided to Player in advance of hearing	<ol style="list-style-type: none"> 1. Notice of Hearing 2. Referee's Report 3. Statement of No 6 Wales -Aaron Wainwright 4. Medical Certificate from Dr Mark Davies (Wales) 		

	<ol style="list-style-type: none"> 5. Statement of AR Paul Williams (NZ) 6. DVD and clips of Incident and Guide Timings for Video Evidence and Camera angles. 7. Statement of TMO. 8. Submissions (x2) by Player’s Counsel, Louis Weston, dated 22nd and 23rd October. 9. Submissions by World Rugby DDO, Ben Rutherford 10. Various emails between DDO, Joyce Hayes and The Players legal representatives. 11. Testimonials from Morgan Parra; Franck Azema, Head Coach of Clermont Auvergne; Etienne Falgoux, player for Clermont Auvergne; Aurelien Rougerie, former player for Clermont Auvergne 12. World Rugby’s statistics for the match between Wales and France. 13. Copy emails between The Player and Wales No6, Aaron Wainwright.
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SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE’S REPORT/FOOTAGE

The Referee’s report (Jaco Peyper-South Africa) dated 20th October 2019 stated as follows:

“France formed a maul to drive towards Wales goal line. Then France No 5 was striking with elbow on Wales players face intentionally with strong force. Then Referee gave him Red Card and sent him off.”

Wales No 6 Aaron Wainwright in a written statement dated 20th October 2019 stated as follows:

“In a maul I tried to swim through to get to the ball carrier. The Blue 5 was trying to stop me with an arm around my neck, I tried to make the referee aware, he carried on pulling my neck and then as he released his arm he swung back with his elbow which struck me in the jaw”.

AR No 2, Paul Williams (NZ) report stated as follows:

“France formed a maul to drive towards Wales goal line. Then, France 5 was striking with elbow on Wales player’s face intentionally and with strong force. Therefore the Referee gave France 5 a red card for sent off. The Referee asked Assistant Referee to give his opinion but Assistant Referee didn’t see anything on this incident (Live). Agreed with Referee’s decision.”

The TMO stated that “at the time as per Jaco’s report I saw F5 grabbing a Welsh player around the neck in a dangerous manner. A second dangerous action by F5 then followed when he struck W6 in the face with his elbow. I brought this to the attention of Jaco and F5 was given a Red Card.”

The camera footage was viewed from numerous angles. The Player did not challenge the reports of the officials and confirmed the footage accurately portrayed the incident. A summary of all the footage from various angles showed the Player catching the ball from a lineout approximately 5 metres from the Welsh try line. A maul forms. The Player is leading the French maul. The French slowly start to drive the maul forward towards the Welsh try line. The Player is trying to anchor the maul. Wales No6 can be seen trying to disrupt the maul and get between F6 and the Player. The Player tries to hold him back, as does F6. The Player then grabs W6 round the neck and then releases his arm from around W6’s neck. The player then brings forward his right arm and in a backward motion strikes W6 with his right elbow in the jaw of W6. The head of W6 can be seen to move backwards and sideways as a result of the contact by the Player’s elbow with his head/jaw. The referee blows his whistle and initially awards a penalty to Wales for dangerous play by the Player for grabbing the neck of W6. The kick is taken by Wales and then the incident is reviewed by the Referee with the TMO and the Player is subsequently dismissed from the field of play.

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

Dr Mark Williams (Welsh Doctor, provided a short statement confirming that in respect of Aaron Wainright “There are no visible signs of the blow and no injury was sustained by Wales No 6.

SUMMARY OF PLAYER’S EVIDENCE

In response to the Directions issued by the Chair, the Player, through his counsel, Mr Weston admitted that he was the player shown the red card, would not seek to argue any preliminary matters and accepted the Match Official Reports were accurate. He accepted that he struck Wales No 6 intentionally and with force to the face, more particularly the jaw – as described by Wales 6 and as seen in the video clips. He did not contend that the imposition of the Red Card was wrong.

In the written submissions, addressing Regulation 19.9.2 the Player accepted the strike was intentional and not reckless. He accepted that a strike to the face of force carries a serious risk of injury but no injury was sustained. The incident was an elbow swung to behind the line of sight of the Player at Wales 6 and a single blow. Provocation, retaliation and self defence are not relevant. Wales 6 was uninjured and had no visible signs of the blow and there was no effect on the victim player who played the full match. The Red Card (properly imposed) was the substantial cause of the French team losing the match and had no negative effect on the Welsh team. Wales 6 was vulnerable in the sense that he was unable to avoid the blow and not able to defend himself. The blow landed on his jaw. The offending was deliberate and intentional. The circumstances were a loss of self-control in the heat of the moment and was not a pre-meditated act. Mr Weston conceded that at least a mid-range sanction is mandated because of contact with the head. A mid-range entry point is 6 weeks and a top-end 10 weeks to 52 weeks. Mr Weston in his written submission submitted:

“a. Against the admitted summary of the factual position, particularly the degree of force and the intentional action, the foul play is of sufficient gravity to justify an assessment above the entry point of Mid-range.

b. However, those factors are tempered by the absence of injury, it being a single blow and the absence of any impact on the Welsh team in the match.

c. A fair balance, it is submitted, is a starting point for seriousness towards the top of the Mid-range of 8 weeks and/or at the cusp of the Top-end i.e., no more than 10 weeks.

d. An entry point of 8-10 weeks is submitted to be fair and justified.”

The Player, prior to the hearing provided a helpful and comprehensive written statement which can be summarised as follows:

“He had played rugby for 13 years. He was 28 years of age. This was his first knockout game for France in any World Cup. He had 46 caps for France. He had already decided to retire from international rugby after this World Cup. He was heavily motivated to play well and was emotional as it was or could be his last game for France. He spoke of the pressure on the French team for the last 7 years. He wanted to play really well. Reference the incident, he caught the ball and is in the centre of the maul. Wales 6 is trying to get between Lauret and myself. I am tall and I try to stop W6 by putting my right arm around his neck. I

realise this and release him. I tried to find a more effective grip to make the maul go forward. I was taken away by the aggressive dimension that usually goes with this phase of the game and struck W6 in the head losing control in the heat of the moment. He acknowledged that he was aware of the fact that he would be striking the player in the head or neck, but had absolutely no intention to injure him. It was an instant reaction on my part. It was not premeditated. I wanted a 4th try. It was a bad day for me and France. I apologised to Aaron and emailed him later. I strongly regret my actions and apologise again. He has a three year old son and he will not be proud of what he had done. The disappointment is terrible.”

The Player at the hearing confirmed the contents of his statement. He said in evidence that he held W6 around the neck and as W6 continued to try to swim through the maul, he lost it and hit W6 with his elbow, something I don't normally do. It was not the good image of rugby which he wanted to show or project and he fully regretted his actions. He was very sorry and had immediately apologised to Aaron. He was asked by a member of the Committee at which point he lost control as he appeared to look calm and be in control of his actions. He replied by stating that others have said the same to him, but he can sometimes lose control but his facial expression remains the same. He also confirmed that it was not his intention to harm or injure W6, he acknowledged he could have injured him by his actions. He was very apologetic at the hearing and quietly repeated his apology several times.

There were numerous glowing written testimonials from various French and former French Internationals who spoke highly of his attitude, his general shyness and human qualities. Eric de Cromieres, the Chairman of Clermont Auvergne, spoke highly of him and the fact that he was a role model, his loyalty, his respectful manner and his giving nature to younger players. He referred to some issues the Player had faced in expressing himself which he had and was in the process of addressing. Serge Simon, the Vice-President of FFR (France) attended the hearing in Tokyo to support the Player who had until now represented France 46 times with pride and honour. He had made a full apology to his team mates and the French management. He was very aware of the significant impact his conduct had on his team's failure to beat Wales which would be a heavy burden and given his character very difficult for him to live with.

In response to Mr Weston's initial written submissions on behalf of the Player dated 22nd October 2019, Mr Ben Rutherford, Counsel for Rugby World Cup/World Rugby, made a written submission in reply in which he took no issue with Mr Weston's contention that the Player stated to his credit "that he struck Wales No6 in the head....and that this card is correct." However, in respect of sanction that the Player submits that this incident warrants an entry point "towards the top of the midrange of 8 weeks and/or the cusp of the Top-end i.e. no more than 10 weeks [and] an entry point of 8-10 weeks is submitted to be fair and justified." Mr Rutherford does take issue with that submission. He submits that the Committee will have to select an entry point (i.e. either Mid-Range or Top-End) based on an analysis of the factors set out in Regulation 17.19.2. If it opts for Mid-Range the entry point must be 6 weeks mandatorily under the Sanctions Table in Appendix 1 to Regulation 17. If the Committee opts for Top End the entry point can be set anywhere between 10 and 52 weeks based on its assessment of the seriousness of the conduct against those factors in Regulation 17.19.2

In a further written submission dated 23rd October by Mr Weston (in response to Mr Rutherford's submission), he submits as follows:

1. There is discretion in Regulation 17 to take a starting point between 6 and 10 weeks. If there is no such discretion, then the Committee must for any case where the seriousness falls between Mid-Range and Top-end, take as a starting point the Mid-Range of 6 weeks.
2. For these reasons:
 - a) Regulation 17 mandates that the Committee shall apply Appendix 1 in accordance with Regulation 19.19 (see Regulation 17.9.1).
 - b) By Regulation 17.19.2 the Committee is mandated to make an assessment of the seriousness of conduct and 'categorise that conduct as being at the lower end, mid-range or top end of the scale of seriousness in order to identify the appropriate entry point'. It is submitted that the words mid-range or top end of the scale indicate a range and scale and not fixed points -if they were fixed points that language would have been used. Range and scale suggest balance, discretion and quantum points.
3. Mr Weston further submitted that once the entry point has been determined or categorised then the Committee should assess the appropriate entry point within each band at this stage of the analysis. By 17.19.3 the Committee must in top end cases adopt a point from the top end to the maximum and the footnote makes that explicit. It is submitted that the clear purpose of 17.19.3 is to make plain that the "top end" is not a maxima, but a starting point towards the maximum sanction for each type of breach. Appendix 1 itself highlights that there is flexibility as to where the entry point should be, for these reasons: (i) The note to Appendix 1: Any act of foul play which results in contact with the head and/or the neck shall result in at least a mid-range sanction. The use of "at least" suggests the indicated entry point for mid-range can be increased. Had the intention been that it was necessary to jump from Mid-range to Top end, this note would have said so explicitly. (ii) The sanctions for breaches of Laws 9.28 and 9.29 have very substantial jumps between the Mid-range to Top-end of approximately half a year and a year respectively. It would be perverse that a case on assessment of seriousness could not fall between those two positions.
4. If contrary to that analysis the DDO's submission is correct the consequence it is submitted must be this:
 - (i) The Player's submission that seriousness would take his case between Mid-range and Top-end must be considered; and
 - (ii) Because fairness requires any disciplinary sanction to be the least severe available, the Committee must impose a Mid-range starting point and should not round up to the Top-end. The top-end is reserved for those cases and only those cases that their facts mandate a Top-end consideration of sanction.

Despite Mr Weston's erudite and imaginative submission relating to an entry point of between mid-range and top end, the Committee had prior to the hearing considered his submissions carefully, and with due respect to Mr Weston, reject his submission that the Committee can properly categorise the Player's

offending between 6 and 10 weeks. The Regulations and Appendix 1 do not provide for such an approach. The categorisation of offending and the seriousness of the offending must be determined in accordance with Regulation 17.19.2. The application of the factors under this provision to determine the seriousness of the offending is accurately set out in the regulations and does not permit the discretion Mr Weston invited the Committee to consider. The sole issue for the Committee was sanction and whether this offending justified a top end entry point or mid-range. The conduct involved a strike to the head and therefore the entry point has to be at least mid-range.

Mr Rutherford limited his submissions to commenting upon the commendable manner in which the Player had approached the disciplinary process, admitting culpability and not seeking to minimise his conduct. This, Mr Rutherford stated was to his credit and should be recognised by the Committee. As to entry point, he made no specific submissions. He did however indicate that from a World Rugby’s perspective, a sanction, subject to entry point of 4 to 7 weeks would probably be appropriate.

FINDINGS OF FACT

The Committee made the following findings of fact:

1. By the Player’s own admission, the strike with the elbow to the jaw of Wales No 6 was intentional and deliberate. The description by the match officials was accepted. The footage description set out above was also accepted by the Player. The Player initially grabbed W6 around the neck, in itself unlawful which justified a penalty for dangerous play. The Player then struck W6 with his right elbow in the head/jaw with force which causes W6’s head to move sideways and backwards upon contact.

2. W6 suffered no injury, played to the end of the match and was awarded man of the match.

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 checked="" type="checkbox"/> Reckless <input type="checkbox"/>
State Reasons
By the Player’s own admission it was a deliberate and intentional act in the heat of the game. This is corroborated by the evidence of the Referee and the footage of the incident.
Gravity of player’s actions – R 17.19.2(c) (or equivalent Tournament rule)
A serious act of foul play, committed intentionally with the Player’s right elbow striking and making contact with the left hand side of Wales 6’s lower jaw. The strike was delivered with force causing the victim player’s head to jolt sideways/backwards.

Nature of actions – R 17.19.2(d) (or equivalent Tournament rule)
The Player’s right elbow made contact with the jaw of Wales 6 with force.
Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule)
None
Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule)
None
Self-defence – R 17.19.2(g) (or equivalent Tournament rule)
None
Effect on victim – R 17.19.2(h) (or equivalent Tournament rule)
No injury sustained.
Effect on match – R 17.19.2(i) (or equivalent Tournament rule)
None, save that the Player’s dismissal probably contributed significantly to France losing this quarter final World Cup match.
Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule)
Wales 6 was vulnerable. His head was exposed and unprotected. The strike would have been unexpected, nor anticipated and he was unable to defend or protect himself. He would not have been able to see the blow coming as it came from his left-hand side. The act was a gratuitous act of foul play and was unnecessary.
Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule)
No evidence of premeditation.
Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule)
Completed
Other features of player’s conduct – R 17.19.2(m) (or equivalent Tournament rule)
There was an initial grabbing round the neck of W6, immediately prior to this strike which in itself merited the award of a penalty.

ASSESSMENT OF SERIOUSNESS CONTINUED

Entry point					
<u>Top end*</u>	<u>Weeks 10</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Low-end</u>	<u>Weeks</u>
<input checked="" type="checkbox"/>		<input type="checkbox"/>		<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
This was an admitted intentional act of striking with significant force, using the elbow. It was a gratuitous act of foul play, with Wales 6 vulnerable, his head exposed and unable to protect himself. This conduct and actions in itself in the Committee’s unanimous view required a top end entry point. There was a significant risk of serious injury. Fortunately, Wales 6 sustained no injury and was able to play on. Had Wales 6 sustained injury then the entry point may have been significantly in excess of 10 weeks depending upon the injury sustained. However, in the circumstances of this incident, absent any injury a top end entry point of 10 weeks is considered appropriate taking into account all the 17.9.2 factors, particularly our findings relating to factors (a to d) and (h) and (j).

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)
None
Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule)
None
Any other off-field aggravating factors – R 17.19.4(c) (or equivalent Tournament rule)
None

Number of additional weeks:

0

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 accepted his Red Card without demur. He admitted a Red Card was appropriate. Such admission was inevitable given the nature of the foul play and the evidence.	The Player, had one disciplinary transgression for foul play - Striking another player with his hand/fist in the French Top 14 Club Competition in 2017/18 for which he received a suspension of 3 weeks.
Youth and inexperience of player – R 17.19.5(c) (or equivalent Tournament rule)	Conduct prior to and at hearing—R17.19.5(d) (or Equivalent Tournament rule)
The Player is 28 years of age, an experienced professional player, having played 46 times for France.	The Player's conduct before and during the hearing was exemplary. He was honest, candid and did not prevaricate at all relating to his offending.
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)
He apologised for his conduct directly to Wales 6 immediately after the match shook hands and then apologised by email which was graciously accepted by Wales 6.	Following the Player's suspension in 2017/18 he sought assistance from a sophrologist and undertook some training to assist with personal pressure situations within the French team and generally. Furthermore, he was going to have to live with the fact that he had been sent off in a World Cup Quarter final which probably contributed significantly to France losing the match and not qualifying for the semi-final, given the one-point win by Wales. He will be forever remembered as the French Player who probably cost France victory, a burden which the former International players on the Committee considered more significant than contributing to the loss of, say a 6 Nations Wales v France match.

Number of weeks deducted:

4

Summary of reason for number of weeks deducted: The Player was not entitled to full mitigation due to his suspension in season 2017/18 for 3 weeks and his age and experience. All other mitigating factors were present including the one set out in (f) above. Accordingly, the Committee determined that taking into account all the factors under Regulation 17.19.5 he was entitled to a 4-week deduction from the entry point of 10 weeks.

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	6 weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	20 th October 2019	
Sanction concludes	15 th December 2019. The Player is free to play again on 16 th December 2019.	
Matches/tournaments included in sanction	None	

Costs	None
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Signature (JO or Chairman)	Mike Hamlin	Date	25 th 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)