

DISCIPLINARY DECISION



Match	ENGLAND v TONGA		
Player's union	TONGA	Competition	2021 Autumn Nations Series
Date of match	6 November 2021	Match venue	Twickenham
Applicable rules	World Rugby's regulations (WRR) 17, 18 and 20, as supplemented by the 2021 Autumn Nations Series Disciplinary Rules (DR)		

PARTICULARS OF OFFENCE

Player's surname	FINE	Player's forename(s)	VILIAMI
Player's union	Tonga	Player's date of birth	12 January 1997
Referee's name	CRAIG EVANS	Citing Commissioner's name (if applicable)	N/A
Foul play	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted	Red card warranted	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	Striking contrary to Law 9.12	SELECT: Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other <input type="checkbox"/> If "Other" selected, please specify:	
Summary of sanction	THREE weeks/matches		

HEARING DETAILS

Hearing date	10 November 2021	Hearing venue	Zoom call
Chairman/JO	ROGER MORRIS (Wales)		
Other Members of Disciplinary Committee	DONAL COURTNEY (Ireland) LAWRENCE SEPHAKA (South Africa)		
Appearance Player	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	Appearance union	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Player's representative(s)	AARON LLOYD – Counsel PETER HARDING – Tonga CEO	Disciplinary Officer and/or other attendees	BELINDA ARMSTRONG
List of documents/materials provided to Player in advance of hearing	Red Card Report TMO Report AR1 Report AR2 Report Letter convening Hearing Email from England medical representative Email from England player, E22 Video footage of the relevant passage of play Player's responses to standing directions – see Appendix Written submissions from Mr Lloyd – see Appendix		

SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT

The parties confirmed there were no preliminary issues they wished to raise.

Before considering the various items of evidence the Chair outlined the Player's responses to the standing directions and confirmed with the Player that his position remained the same. In the light of that, the parties agreed that the purpose of the Hearing was to consider what, if any, sanction should be imposed upon the Player to reflect the gravity of his offence.

The **Referee**, Craig Evans confirmed in his report that the incident had been brought to his attention by the TMO. His description of the incident was:

"Post tackle, Tonga No 23 hit the English player on the ground with his elbow which was direct to the head. Red Card."

The **TMO**, Ben Whitehouse, confirmed he had alerted the Referee to the Player's offending and that it was decided it warranted the issue of a Red Card.

Both **AR1** and **AR2** said they did not see the incident.

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

Marcus Smith, E22, in his email, wrote:

I was aware of the incident being referred to, however nothing seemed unusual and I was simply aware of the collision. I feel good now."

England's team doctor, Richard Tingay, reported the following morning:

"I can confirm that Marcus did not require any treatment at the time of the incident. Post-game he reported no issues relating to this incident and this morning also has no injuries in relation to this incident.

He also required no treatment at any point in relation to this incident."

VIDEO EVIDENCE AND SUMMARY OF PLAYER'S EVIDENCE

The video footage showed E14 carrying the ball close to his left hand touchline where he was tackled by the Player who released E14 and stood away from the ensuing ruck. E22 joined the ruck and was cleared away from the ball by the Player. As a result, both the Player and E22 fell to the ground with the Player above his opponent. In that prone position the Player aimed a swinging arm at E22 striking him on the face with the upper part of his arm just above the elbow joint.

The Player, with assistance from Mr Lloyd, commenting on his actions, explained that his first intention was to tackle E23. He achieved that. He stood away from the ruck. As E22 joined the ruck, the Player cleared him out and did so successfully. His next intention was to delay E22's return to the game. Unfortunately, he achieved that by stupidly swinging his arm. He accepted that he had committed a foul, that it deserved a Red Card and that the referee was correct in ordering him from the field of play.

Mr Lloyd then made his submissions on behalf of the Player following the written submissions he had submitted prior to the Hearing and which are reproduced in the Appendix attached.

Mr Lloyd emphasised the following:

- What appeared to be a high tackle at the start of the incident was not relevant and was not a factor in the Player's offending.
- The clear out on E22 was performed perfectly and with no danger to E22 as he was brought to the ground.
- What then went wrong was, as the Player had accepted, a stupid implementation of a desire to delay E22 from getting back into the game.
- Mr Lloyd particularly emphasised that the strike with the arm was just that. It was not the elbow as described by the referee but the softer part of the upper arm above the elbow. It was important to emphasise that this was nothing like a strike with the point of the elbow.

Mr Lloyd then went through the factors set out in World Rugby's Regulation 17.18.1. He accepted that the contact with E22's head made it necessary that the mid-point of sanctions was the minimum starting point. He urged that mid-point was the correct starting point to reflect the seriousness of this offending.

He went on to suggest that all mitigating features were present emphasising the Player's clean record and his apology to E22. In the light of all mitigating features being present, Mr Lloyd urged that the sanction imposed be reduced by 50%.

FINDINGS OF FACT

In considering the evidence in private, the Committee reminded themselves that the test for determining factual matters is the balance of probability.

The Committee concluded that the Player committed the alleged foul on the spur of the moment. His actions, although opportunistic, were deliberate. In the Committee's view, he aimed to strike

E22 to the face with his elbow but in the event he struck him with his upper arm, just above the elbow. The strike did not carry significant force but it was clearly to the head of E22.

The Committee noted the report from Dr Tingay and the statement from E22 which between them confirmed that E22 suffered no pain or injury.

The Committee further noted that the contact with E22's head prevented them from considering the Low End starting point for sanction but they also considered that a deliberate strike in the nature of this foul should in any event warrant a sanction starting at least at the Mid-range. The absence of injury to E22 allowed the Committee not to consider the Top End of the range of sanctions available.

DECISION

Foul play	Admitted <input checked="" type="checkbox"/> (please state) <input type="checkbox"/>	Determined <input type="checkbox"/>	Not determined <input type="checkbox"/>	Other disposal
Red card warranted	Admitted <input checked="" type="checkbox"/> (please state) <input type="checkbox"/>	Determined <input type="checkbox"/>	Not determined <input type="checkbox"/>	Other disposal

SANCTIONING PROCESS

ASSESSMENT OF SERIOUSNESS

Assessment of intent – WRR 17.18.1(a)-(b)
Intentional/deliberate <input checked="" type="checkbox"/> reckless <input type="checkbox"/>
State reasons
Evident from the video footage and the Player's own testimony
Nature of actions – WRR 17.18.1(c)
A strike with the outside of the right upper arm slightly above the elbow
Existence of provocation – WRR 17.18.1(d)
None
Whether Player retaliated – WRR 17.18.1(e)
No retaliation
Self-defence – WRR 17.18.1(f)
N/A
Effect on victim – WRR 17.18.1(g)

None
Effect on match – WRR 17.18.1(h)
None apart from Tonga being reduced to 14 men
Vulnerability of victim – WRR 17.18.1(i)
Completely vulnerable to the strike executed by the Player
Level of participation/premeditation – WRR 17.18.1(j)
Full although opportunistic rather than premeditated
Conduct completed/attempted – WRR 17.18.1(k)
Completed
Other features of Player’s conduct – WRR 17.18.1(l)
None

ASSESSMENT OF SERIOUSNESS CONTINUED

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

*If top end, the JO or Disciplinary Committee must identify, based on his/her/its assessment of the seriousness of the conduct, an entry point between the top end and the maximum sanction and provide the reasons for selecting this entry point, below (WRR 17.18.2).

Reasons for selecting entry point above top end
N/A

RELEVANT OFF-FIELD MITIGATING FACTORS

Acknowledgement of guilt and timing – WRR 17.19.1(a)	Player’s disciplinary record/good character – WRR 17.19.1(b)
Complete and as prompt as it could be	Completely clean
Youth and inexperience of player – WRR 17.19.1(c)	Conduct prior to and at hearing – WRR 17.19.1(d)
23 years of age but keenly trying to progress in the game.	Exemplary

Remorse and timing of remorse – WRR 17.19.1(e)	Other off-field mitigation – WRR 17.19.1(f)
Apologised to E22 after the match and exchanged jerseys indicative of acceptance by E22	N/A

Number of weeks/matches deducted:

Summary of reason for number of weeks/matches deducted:

All mitigating features amply present to justify full (50%) mitigation being awarded.

RELEVANT OFF-FIELD AGGRAVATING FACTORS

Player's status generally as an offender of the Laws of the Game – WRR 17.20.1(a)
N/A
Need for deterrence – WRR 17.20.1(b)
N/A
Any other off-field aggravating factors – WRR 17.20.1(c)
None

Number of additional weeks/matches:

SANCTION

NOTE: PLAYERS ORDERED OFF OR CITED ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – WRR 17.12.5(f) and 17.13.7.

Total sanction	Three weeks' suspension	Sending off sufficient <input type="checkbox"/>
Sanction commences	Immediately	
Sanction concludes	To be confirmed when full playing schedule is available	

Matches/tournaments included in sanction	Remainder of Tonga's Autumn Tour plus one other match
--	--

Costs	N/A
-------	------------

Signature (JO or Chairman)	Roger W.A. Morris _____	Date	10 November 2021 _____
----------------------------	-----------------------------------	------	----------------------------------

NOTE: THE PLAYER WILL HAVE 48 HOURS FROM THE DATE OF RECEIPT OF THE WRITTEN DECISION TO FILE AN APPEAL WITH THE ADMINISTRATOR – DR 6.2(a). TO BE EMAILED TO disciplinary@6nations.net.

APPENDIX – PLAYER’S SUBMISSIONS

Written Submissions

Judicial Hearing – Viliami Fine

World Rugby Internationals – England v Tonga

Twickenham Stadium, London, Saturday 6 November

Red Card, Law 9.12 (Striking)

Submitted by Aaron Lloyd, Counsel for Player

aaron.lloyd@minterellison.co.nz

Introduction

These submissions are filed on behalf of Tongan international, Viliami Fine (the Player), who received a Red Card in the World Rugby International between England and Tonga, held at Twickenham Stadium in London, on Saturday 6 November 2021.

The Player accepts that the Referee was correct to order him from the field. He accepts that his actions warranted a Red Card, and asks the Committee to hear from him (through Counsel) in respect of sanction.

In summary, the Player asks the Committee to find that:

- (a) the Player has accepted, at the earliest opportunity, a breach of Law 9.12, acknowledging that the Referee was correct to issue him with a Red Card;
- (b) whilst his action in ‘striking’ the England player was deliberate, it was done in an attempt to prevent the England player getting to his feet rather than in an attempt to ‘strike’ him to cause harm;
- (c) that the strike was not with the point of the elbow, but rather was with the softer part of his upper arm above the elbow joint;
- (d) that the ‘strike’ did not cause any injury, and carried a low to medium level of danger, not a high degree of danger;
- (e) that the England 22, who the Player ‘struck’, was not injured;
- (f) that aside from the Card, and its negative consequences for the Player and his team, there was no material effect on the Match;
- (g) that whilst there was contact with the head, thereby mandating a minimum entry point for sanction of mid-range, the offence does not require an entry point above that mark (being an entry point of 6 weeks suspension);
- (h) that off-field mitigating factors, including the Player’s clean disciplinary record, early plea, remorse and conduct, warrant a discount from that starting point of 50%, resulting in a suspension of 3 weeks/games up to and including a date to be confirmed, which will capture the following matches:
 - a. French Barbarians v Tonga, Saturday November 13 2021;
 - b. Romania v Tonga, Saturday November 2021; and

- c. one further Match (likely to be a pre-season Super Rugby Pacific match, but to discussed and confirmed with the Judicial Committee).

We set out below the Player's response to *Standard Directions*, and detailed submissions in support of the above position.

Response to Standard Directions

Through Counsel ,the Player responds to World Rugby's *Standard Directions* as follows:

- a. whether you are the player who was shown the red card;

YES

- b. whether you will argue any preliminary matters, and if so what they are (in summary);

NO

- c. whether you accept that the match official report(s) is/are a true and accurate account(s) of the incident that resulted in the showing of the red card and the facts surrounding the incident;

MOSTLY – In general terms the Player accepts the Referee and other Match Officials describe the incident accurately. The only point of contention is the suggestion by the Referee that the Player hit the England player “with his elbow”. The Player says it was the softer part of his upper arm above the elbow, and that this is more accurately recorded in the TMO report who says he saw the Player “throw his right arm towards” the England player’s head area. This makes no difference as to whether the Red Card threshold is met (it is accepted it is), but does go to the nature of the strike, which is much less serious that a traditional elbow strike, with the point of the elbow, would have been.

- d. whether you accept that you committed an act or acts of Foul Play (as defined in the Regulations) as set out in the match official report(s);

YES

- e. whether you accept that that act/those acts warranted a red card;

YES

- f. whether you will try to show that the referee’s decision to show you a red card was wrong;

NO

g. if so, why you say the referee's decision was wrong (in summary), and what evidence (and/or authorities) you will rely on to support your position (any written evidence and/or authorities must be attached to the written statement when sent by you, and the names of any witnesses to be called must be set out in the statement); and

NOT APPLICABLE

h. who will be attending the hearing and in what capacity.

Aaron Lloyd (Legal Counsel) and Peter Harding (Tongan Rugby Union CEO).

Relevant Player Information for the Judicial Officer

Date of Birth (Age): 1 December 1997 (23 years)

Playing Record

1. Otago Rugby Union (2021 -)
2. Tongan 7s Team (2020 -)
3. Tongan Rugby Team (VXs, 'Ikale Tahi) (2021 -)

Player's Judicial Record

The Player has not received any previous Red Cards or suspensions.

Upcoming Match Schedule

1. French Barbarians v Tonga, Saturday November 13 2021;
2. Romania v Tonga, Saturday November 2021.
3. *

*Note: The Player is in discussions to play in the *Super Rugby Pacific* competition, in 2022. The match schedule likely relevant to the Player has not yet been confirmed, but is expected to consist of 2 or more pre-season matches, followed by competition matches set by SANZAAR. The Player understands that until the details of his schedule can be confirmed, it may not be possible for the Judicial Committee to set an end date for his suspension, and commits to provide the Committee with those details as soon as they are available.

Analysis of What Happened

1. England were breaking down field, with England 14 (E14) in possession of the ball. The Player ran back, and came across the front of E14, in an attempt to make a tackle. He acknowledges that although initial contact was on the shoulder, he made contact high on E14 (in part because E14 drops in height). We note that the Referee played advantage for this infringement (there is no suggestion this tackle warranted more than a PK).



2. After tackling E14, the Player retreated to behind the ruck which then formed, and prepared to enter the ruck to clean out another England player.



3. The Player then cleaned out England 22 (E22), who had positioned himself over the ruck. The clean out was legal, effective, and completed with the Player wrapped around E22 once he had brought him to ground.



4. Before releasing E22, the Player promoted the upper part of his right arm into the face of E22. This delayed E22 from getting up or from pushing against the Player in an attempt to get up.



5. The Player's upper right arm makes contact with E10's face, pushing him backwards, and delaying him getting up/attempting to get up.



6. The incident is observed, and flagged, by the Assistant Referee, and then dealt with by the Match Officials, including by way of TMO review.

What the Player Says

Counsel requested the Player to explain what happened, and why he acted as he did, and the Player describes the incident as follows:

High Tackle: The English player stepped inside and stopped. I attempted to “chest up” and wrap both arms to bear hug him, wrap the ball and hold him up. As he was smaller than me I believed I could hold him and potentially take him into touch. I wasn’t successful and he went to the ground.

After the tackle: I cleaned out number 22, and attempted to delay his re-entry to the field by shouldering him to the ground after the clean-out. There was no intention to use an elbow. It was purely an effort to keep him on the ground to delay his return.

Submissions on behalf of the Player

This was not a traditional strike, in the sense of the use of an elbow, or forearm, or fist, in an attempt to hurt the opposing player. Rather, it was an opportunistic use of the upper body and upper arm to try and push the opposing player back onto the ground in an attempt to delay him from re-entering play.

It was cynical. It was deliberate (albeit opportunistic). It was clumsy. It was ill-judged. It was wrong. It was a clear breach of Law 9.12 and given the head contact, the Player accepts his conduct was totally unacceptable, and that it warranted a red card.

However, the Player was not seeking to hurt the English player, he was not striking him in the traditional sense, lashing out to cause harm. He let the emotion and his heightened sense of arousal get the better of him, and made a stupid and unacceptable decision to try and muscle E22 back onto the ground.

The nature of the incident, whilst warranting a red card, does not, in counsel’s submission, warrant an entry point above the World Rugby mandated mid-range entry point (due to contact with the head area). That entry point is 6 weeks.

We say this entry point is appropriate and justified when considering those factors identified under Regulation 17.18.1 as follows:

<i>Sub-paragraphs</i>	<i>Consideration</i>	<i>Situation in this Case</i>	<i>Comment</i>

(a) & (b)	Intentional/reckless	Intentional, albeit opportunistic	This was deliberate offending, but not pre-meditated in the sense the Player took an opportunistic opportunity to try and keep E22 from a quick RTP.
(c)	Nature of actions	Upper arm	This wasn't an elbow strike, as alleged by the Referee, but was a strike/push with the upper arm.
(d) & (e)	Provocation/retaliation	No material provocation	Whilst there was niggles in the game, this action was not in response to a specific action targeted at the Player, nor anything done by E22.
(f)	Self-defence	His was not done in self-defence	This was not done in self-defence, but rather was a cynical attempt to muscle E22 and slow down his RTP.
(g)	Effect on victim	None	There was no effect on the victim.
(h)	Effect on match	None	Apart from the negative effect for the Player and his team, no impact on the Match.
(i)	Vulnerability	Yes, E22 was vulnerable.	E22 was vulnerable to this action on him, but we note the action in and of itself was unlikely to cause injury given the pushing nature of the 'strike' and the use of the upper arm.
(j)	Level of participation and premeditation	Only person involved; opportunistic.	The Player had executed a legal and skilfully executed clean-out, but then took an opportunistic shot at E22. He was the only participant, but it was not premeditated offending, albeit it was deliberate.
(k)	Attempt or completed	Completed	He completed the action.
(l)	Any other features	None of significance	This did follow the earlier high tackle, but that in and of itself was not significant, and he also executed a skilful and legal clean out, meaning the offence ought to stand on its own.

The offending did not involve features we would submit would take it into the high end range. It was not a deliberate attempt to hurt E22, there was no injury caused or a high degree of danger given the intention was to muscle E22 back onto the ground to delay RTP. It was one movement only (not multiple blows). It was opportunistic not premeditated, and is not aggravated in any way because it created a brawl, or other negative effect. It is, in our submission, a textbook mid-range entry point case.

In terms of off-field mitigation (per Regulation 17.19.1) we say a discount of 50% is appropriate for the following reasons:

- a. The Player has, at the earliest stage, accepted full responsibility for his actions;
- b. His disciplinary record is exemplary;
- c. The Player is relatively young and inexperienced, and suffered from that in the way in which he allowed the passion of the circumstances to cloud his judgement in trying to delay E22's RTP in the way he did;
- d. The Player's conduct at all times has been exemplary; and
- e. I am instructed that the player apologised for his actions after the game, and is remorseful for what he did (as noted by his immediate and complete acceptance of responsibility).

Outcome

It is submitted that from an entry point of 6 weeks, applying a 50% discount for mitigation, the Player should be suspended for a period of 3 weeks/Matches.

This should cover the two remaining games for Tonga on their Autumn Tour (French Barbarians and Romania), and extend to the next Match which the Player would otherwise play. At this stage this is expected to be the first pre-season game to be played ahead of the Super Rugby Pacific competition, but the Player is presently in negotiations to play in that competition.

In the circumstances, we submit the Committee should leave the final end date of the suspension open, until such time as that fixture's details can be confirmed. There is precedent for this approach which Counsel is happy to talk to if required (for example, the case of *Paulo Ngauamo* at the 2019 Rugby World Cup in Tokyo, where the player was not in attendance at the hearing, and the Judicial Committee set the length of suspension, but confirmed that the games it covered would not be finalised until more information was available, with the player suspended from playing in the meantime).

Aaron Lloyd for Viliami Fine

10 November 2021