

## **DECISION OF SANZAR JUDICIAL OFFICER ON CITING OF TEWIS DE BRUYN**

**Judicial Officer:** J Lubbe SC

**In attendance:** Tewis de Bruyn (Player)  
Gerrie Swart (Legal representative of the Player from Irish Inc.)  
Colleen Schutte (PA of Mr Swart)  
Schubel O'Reilly (Presenter)

**Date of hearing:** 12 May 2009

**Place of hearing:** Vodacom Park, Bloemfontein

### **Introduction**

This hearing was convened following the match played between the Bulls and the Cheetahs at Loftus Versfeld, Pretoria, on Saturday 9 May 2009.

The Player was cited for breach of Law 10.4(e) in that he performed a dangerous tackle on the No 14 player of the Bulls.

### **Pre-Hearing**

The hearing was scheduled for Monday 11 May 2009 at 17h00. I convened a pre-hearing meeting with the legal representative of the Player, Mr Swart, for 16h00 on Monday because I was informed that the video evidence of the incident as well as the reports by the referee and his assistant were not yet available notwithstanding the fact that I personally requested these early on Sunday morning after being informed at 21h19 on Saturday 9 May 2009 of the citing. Mr Swart informed me that the citing report was received in time and that he had an opportunity to view the incident on video from a video made available by the Cheetahs technical staff. After being given the assurance that the video evidence and reports would be available at 08h30 on Tuesday morning, it was agreed that the hearing would proceed on Tuesday 12 May 2009 at 09h00 and that the only issue would be that of sanction as the Player admitted that he performed a dangerous tackle on his opponent.

### **Hearing**

The hearing proceeded with the viewing of video evidence on which the Citing Commissioner based his decision to cite without sound. Mr Swart then requested me to allow him to play a video clip with other angles including a so-called "eagle eye" view and a further video clip with sound so that we could listen to the exchange between the referee and his assistant before the referee took his decision to issue a penalty and a yellow card. The request was granted and the additional angles of the incident were viewed and I also listened to the exchange between the two match officials.

The incident occurred immediately after the Bulls No 14 caught the ball in the air after a high kick by his team. He ran straight into the Player who then executed the tackle for which he was cited. The assistant referee, Mr Kaplan, described the incident as follows in his report:

*“From my position on the touch line, and in my role as an AR, I reported foul play to the referee of the day, S Dickinson, in the match played on Saturday between the Bulls and the Cheetahs played at Loftus Versfeld in Pta. The incident concerned T de Bruyn of the Cheetahs, who lifted, twisted and then dropped the Bulls player (Ndungane) during a passage of general play. I was in close proximity to the incident and I recommended a yellow card on the basis that whilst the tackle was certainly dangerous, the foul play did not include a driving motion into the ground. The content of our conversation can be reviewed as we agree from both sides of the tackle that a yellow card seemed appropriate.”*

The referee mentioned in his report that he had players in front of him that partly obstructed his view but basically confirmed what Mr Kaplan saw. In their audible exchange on the field of play Dickinson mentions to Kaplan that he saw the incident and that he intends to issue a yellow card with which Kaplan then agrees on the basis that the tackler did not drive his opponent into the ground. Both match officials were well placed to make their observations with Kaplan in the better position. Mr Swart did not dispute the accuracy of Kaplan’s observations as recorded in his report.

Mr Jacob Danie Peyper was also called to give evidence. He is a Super 14 referee and also on the IRB Sevens Panel of referees. The purpose of his testimony was to inform me of the training and guidelines received by referees to deal with this type of incident. According to him when a tackled player is lifted, twisted and then driven into the ground a red card should be the option, without the drive, a yellow card and a penalty if there is only a lift.

Mr Swart called the Player to give evidence. He testified that the incident happened very quickly and that he was surprised after the incident that he was able to lift his opponent with such ease. He attributed this to the fact that he was stationary, smaller than his opponent as well as the direction and force with which his opponent ran into him. He further stated that he had no intention to “spear tackle” his opponent and when he realised his opponent was in the air, he immediately let go of him. He confirmed that he was coached not to perform this type of tackle on an opponent and was also aware of the inherent dangers of tackling a player in this manner. He immediately apologised to the player and after the match again apologised. According to the Player Ndungane accepted his apology and they parted company in a good spirit. The Player made a good impression on me and I accept his evidence.

The head and assistant coach of the Cheetahs gave character evidence on behalf of the Player. They spoke highly of him as a player and person and emphasised that he has a clean record as player in more than 112 first division games and 23 S14 matches.

Mr Swart in a well presented and helpful argument submitted that, on the evidence, I cannot be satisfied on a balance of probabilities that the referee was wrong in his decision to award a penalty and yellow card. He emphasised the experience of the referee and his assistant, who were both well positioned to view the incident and

come to a decision. He emphasised that Mr Kaplan is the most capped international referee in world rugby and Mr Dickinson the second most capped and that between them they have refereed 92 test matches.

## **Decision**

In terms of Regulation 17.11.4 (a) I can only interfere with a decision of a referee (or assistant referee) in respect of an incident where the referee has made a decision on the field of play if I am satisfied, on a balance of probabilities, that the referee's reasons for his decision are wrong.

I find myself in the difficult position that two of the most experienced referees in world rugby saw the incident, deliberated with each other and came to a decision. The Citing Commissioner does not share their view based on the different angles of the incident viewed by him.

Having viewed the different angles of the incident, taking into account Ruling 5.2005 of the IRB, the evidence presented and the submissions by Mr Swart, I have no hesitation to disagree with the reasons of the referee and his assistant to issue a yellow card. In coming to this conclusion I had the luxury and benefit of viewing different angles of the incident at my leisure. The video evidence, confirmed by Kaplan, is clear that the Player lifted and twisted the Bulls player before dropping him to the ground. This action was dangerous and exposed the Bulls player to serious injury whilst in an extreme vulnerable position. The main reason of the match officials not to issue a red card was the fact that the tackler did not drive his opponent into the ground. They however failed to take proper and/or sufficient account of the dangerous manner in which the tackle was executed and the exposure of the Bulls player to serious injury. I hasten to emphasise the fact that the match officials made their decision on the spot without the benefit of reviewing different angles of the incident.

I can also not agree with the submission by Mr Swart that the lifting of the Bulls player was a direct result of Ndungane's own action in the tackle situation although I accept that the manner in which Ndungane went into the tackle made it easier for the tackler to lift him.

Although I accept in favour of the Player that he did not drive his opponent into the ground, he failed to take any action to bring his opponent safely to the ground after lifting him. I further cannot accept the submission that the offending was rather careless and not reckless. The tackle was clearly reckless. No 14 of the Bulls was not seriously injured and could resume play after treatment on the field. In fact he scored a try after the incident. The execution of the tackle was however dangerous as mentioned and the Bulls player was indeed fortunate to escape without serious injury. Mr Swart submitted that the low entry level should apply. I disagree and could in the circumstances find no convincing reason why the incident should not be categorised at a mid range entry level which carries a sanction of a six weeks suspension.

In terms of Regulation 17.14.3 I am required to identify and consider all relevant aggravating factors and determine what additional period of suspension, if any, should apply. I found no such aggravating factors. There is however relevant mitigating factors that I must also consider in terms of Regulation 17.14.4. These are the age of

the Player, his excellent record and character as a player, the fact that he admitted the transgression and showed genuine remorse. He also apologised to his opponent after the incident.

Mr Swart submitted that I should consider a caution as an appropriate sanction. I disagree and would be failing in my duty if I impose a sanction of less than three weeks.

In the circumstances the Player is suspended from all rugby for a period of three weeks calculated from 9 May 2009 until and including 30 May 2009.

The Player is advised of his right to appeal.

J Lubbe SC  
Bloemfontein  
12 May 2009