

**CUMBRIA RUGBY FOOTBALL UNION****DISCIPLINE COMMITTEE****DISCIPLINARY HEARING JUDGEMENT**

10/05/2018

VENUE: Carlisle Rugby Club

DATE: 09/05/2018

JUDGMENT

PLAYER / PERSON:

CLUB: ASPATRIA RUFC

MATCH / INCIDENT: During September 2017

MATCH / INCIDENT DATE: Various

VENUE: N/A

PANEL COMPOSITION: M. Neal (chairman), N.Rimmer & M. Shields.

SECRETARY: D.D. Morton

ATTENDING: D. MacInnes presenting 5.12 on behalf CB / Workington; M. Hanley & T. Borthwick (representing Aspatria RUFC); J. Crighton & C. Boyd (Workington).

OBSERVING: N/A

Decision

The Panel found: The case was proved.

The Player / Person / Club pleaded NOT GUILTY for the offence of: Conduct prejudicial to the interests of the Game by failing to comply with the requirements of the Cumbria RFU Player Movement Policy Contrary to Law / Regulation: Rule 5.12 of the Rules of the RFU.

The Panel determined that the Player should be suspended for a period of [Click here to enter text](#). weeks from [Click here to enter text](#).

Preliminary Matters

The secretary acknowledged that there has a delay in these proceedings being brought to hearing but, cited the fact that he had taken protracted advice from legal counsel at the RFU discipline department over a period time. CB disciplinary secretaries had delegated powers that included a duty to pursue an investigation into a valid complaint made, including such enquiries as necessary, including the collection of evidence from those who, for the most part have no experience of such processes or quasi judicial proceedings.. Such investigation and enquiries are a pre-requisite to authorising proceedings that he / she is delegated to institute on behalf of the RFU.

In fairness to all parties involved in this case, the secretary consulted with the RFU before deciding that there was a case to answer.

It was pointed out as a matter of fact, that the disciplinary secretary had received other complaints from several clubs about alleged player “poaching” by various clubs. There was an expectation by “aggrieved” clubs that something would be done about it. The case currently under review was the only one that had resulted in proceedings because Workington have been the only club that were prepared to substantiate their concerns by a putting their complaint in writing.

Concern was expressed regarding the content of a letter that had been received by others (and not the panel secretary) inferring that he was biased towards the complaining club to the detriment of Aspatria, against whom the complaint had been made.

Charge & Plea

During September 2017, by approaching player's from another club (Workington), with a view to them (Boyd & Flavell) playing for Aspatria, the club (Aspatria) was guilty of conduct prejudicial to the interests of the Game by failing to comply with the Cumbria Player Movement Policy (2015); such conduct being prejudicial to the interests of the Game.

Contrary to Rule 5.12 of the Rules of the Rugby Football Union.

Aspatria, through Mr Hanley, pleaded not guilty.

The Citing or Rule 5.12 Complaint

As presented by D. MacInnes.

"One of the factors of the progress of rules, regulations and laws is that at some time they will inevitably be examined by a judiciary panel to establish if they are fit for purpose. These occasions often result in re-drafting and amendment. Therefore we must not be afraid of examining the Cumbria player movement policies at this hearing.

"In this case there is some evidence to show that the two players were considered by Aspatria as likely candidates for their player base. One because he turned up at an open training session, Flavell, and Boyd who Aspatria suspected had not been playing for a while. Both players were registered with Workington.

"May I ask Aspatria is a reasonable synopsis and true?

"The panel will have to decide if it was reasonable for Aspatria not to follow the Cumbria RFU regulation on the movement of players between clubs in either or both cases.

"It has been suggested that the Cumbria regulation conflicted with the RFU regulation, but I have failed to see any such conflict. It would seem to be an adjunct related entirely to how clubs should behave towards each other when one club wished to gain the services of a player in another club and applies one of the core values of England Rugby, and that is respect. In this case it is the respect for a club which holds the existing registration of the players concerned. I do however, accept Aspatria's claim that where the

regulation uses the word “should” there is no compunction to take action and subsequent disregard cannot result in disciplinary sanction. However, within the regulation there is sufficient mandatory requirements to indicate that the drafters (of the regulation) expected club officials to talk to each other, if one of them wished to take a player from another. May I point you to para 2 the 6th pica dot which states: ‘Prior to a club approaching a player from another club they must first notify that club of their intention’.

“This is quite clear and leaves no wriggle room.

“Aspatria claim Flavell had attended an open training session and it was clear that he wanted to become an Aspatria player. They also tell us that they informed him that he should inform Workington of his intentions. He failed to take such action. I do not agree that the 7 day appeal period allowed in the (RFU) transfer regulations, negates the need for one club to advise another of its intentions. Surely it would not have taken much effort to ask Workington if they would have any objections to the transfer of the player, letting them know he had turned up for training. They might have had something useful to say about the player. It also shows that Aspatria failed to understand their duty and respect for a club from a lower league.

“Incidentally I feel that the part of the regulation which puts the onus on the player to take action, for something he might not wish to face up to; is wrong. However, I do feel that a losing club should have the opportunity to invite him to explain why he wants to move; it might provide an indication of something on which the administration could take action on to improve player retention: which might have been an initiative behind the drafting of the regulation.

“In the case of Boyd, the player claims, in writing, that he an unsolicited approach, it is up to the panel to establish if this was indeed the case. If they consider that is so then the Cumbria regulation must have been overlooked by Aspatria, on possibly three occasions.

“May I now turn to the timescale of of the reporting of the incidents? The evidence I have is that on or about 16th September, which is when Boyd informed his club that he was approached preseason and earlier in September culminating in a request to play for their (Aspatria) 2nd XV on 16/09/2018, all this without any approach being made to the Workington committee. Therefore, both players were in Aspatria’s sights on the 16th. On

27/09/2018 the minutes of the Workington committee, 11 days later, shows: 'a complaint HAS been made to the discipline committee in respect of unsolicited approach by Aspatria to two players'.

"I believe that (a) the notification was by email; (b) the written confirmation followed later when Boyd on 21/10/2018 submitted in writing his confirmation of the verbal report of 16/09/2018. Again it is up to the panel to decide what is likely to be correct.

"I see nothing malicious in the action brought by Workington. It would appear that it all happened as recorded. However, I feel saddened that one Cumbria club has so little respect for another that they could not just let the junior club know they had a couple of their players in their sights.

"I also emphasise that the RFU Code of Conduct of our Game is Teamwork – Respect = Enjoyment – Discipline & Sportsmanship. In this case the second of these codes has been woefully ignored."

Messrs Crichton and Boyd gave evidence on their own behalf and despite questions from Mr Hanley maintained their recollection of events, and in the case of Mr Boyd he confirmed the content of his signed statement.

The Player's / Person's / Club's Case

Mr Hanley represented Aspatria and gave evidence on his own behalf. Understandably, he denied the version of events advanced by, and on behalf of Workington by Messrs Crichton and Boyd. He largely supported the version advanced by Aspatria in their written submission.

Mr Hanley strenuously denied having contacted Mr Boyd on the morning of 16/09/2017 and submitted available telephone call records for that date for his mobile 'phone. He was in Manchester on that date and the only use of his telephone that date indicated numerous test messages to various numbers, none of which were to the 'phone used by Mr Boyd. He did however agree that he had regularly had conversations with Mr Boyd and that from time to time rugby would be discussed.

In relation to the Workington player, Philip Flavell, he intimated that the player had appeared at an open training session at Aspatria on 19/09/2017 and it was reasonable to assume that he, the player, had an interest in playing for Aspatria. After discussions with Mr (Tom) Borthwick, Flavell signed registration forms for Aspatria and was duly registered.

Mr Hanley emphasised that he had asked Flavell to ensure that he told Workington of his playing intentions prior to any transfer to Aspatria.

At no time prior to 19.09/2017 had he spoken to Flavell about his possible transfer to Aspatria.

He pointed out that the Cumbria Player transfer policy may be subject to misinterpretation but that at no time did he believe that he had done anything that was wrong or incorrect in procedure.

Mr Hanley gave an explanation how, as the club player registrar, he went about documenting player registrations with the help of the RFU registration officer.

At no time did he believe he had done anything wrong, or that he was in breach of the Cumbria policy requirements.

Sanction

Judgement delivery by chairman:

“First, the charge involving the player Philip Flavell. The player was told by Aspatria to inform his club that he was moving to Aspatria, he did not do so – but by telling him to let his club know the officials at Aspatria were clearly aware of the requirements of the Cumbria Player Movement Policy and were in breach of that policy in that they as a club did not also inform Workington that the player had expressed a wish to join Aspatria.

“The second charge involving the player Chris Boyd. In his evidence Chris Boyd was adamant that he had received a number of text and phone call approaches from Mr Hanley over a period of time. Mr Boyd had known Mr Hanley for many years and was confident that the information he had given the panel was correct. Mr Hanley acknowledged that he had indeed contacted Mr Boyd although not on the specific date of 16th September. On each occasion Mr Boyd had indicated that he was not interested in moving from the Workington club to Aspatria. At no time during this period did any official from Aspatria contact the Workington club as required by the Player Movement Policy.

“The Cumbria Player Movement Policy clearly has a need to be better phrased and needs re-wording. However, it is the view of the Panel that the intention of the policy is clear and that it has been breached by the Aspatria club in these two instances.

“The spirit of the game asks and expects that Rugby Union Football Clubs respect each other and their players.

“We as a panel cannot accept that the Aspatria club handled the approach and movement of these players in the correct manner and that some action needs to be taken.

“ We find that the Aspatria Club are guilty of breaching the Cumbria Player Movement Policy and in this instance are imposing a fine of £200 and costs (+ VAT) for the hearing of £125”.

The Chairman thanked all those present for conducting themselves in a polite and orderly manner and the meeting concluded at 8.50pm.

Note: The Discipline Committee will be writing to Cumbria RFU with recommendations regarding their views on how the policy can be rephrased for the betterment of the Game.

** In respect of a sanction for a playing offence, the Panel undertook an assessment in accordance with the regulation of his / her conduct.

- a) Intentional/deliberate;
- b) Whether the offending was reckless, that is the Player knew (or should have known) there was a risk of committing an act of Foul Play;
- c) The gravity of the Player’s actions in relation to the offending;
- d) The nature of the actions, manner in which the offence was committed including part of the body used (for example, fist, elbow, knee or boot);
- e) The existence of provocation;
- f) Whether the Player acted in retaliation and the timing of such;
- g) Whether the Player acted in self-defence;
- h) The effect of the Player’s actions on the victim (for example, extent of injury, removal of victim Player from game);
- i) The effect of the Player’s actions on the match;
- (j) The vulnerability of the victim Player including part of the victim’s body involved/affected, position of the victim Player, and the ability to defend himself;
- (k) The level of participation in the offending and the level of premeditation;
- (l) Whether the conduct of the offending Player was completed or amounted to an attempt; and
- (m) Any other features of the Player’s conduct in relation to or connected with the offending.

Aggravating Features**

**Playing offences only.

We considered the aggravating factors according to the regulations: [Click here to enter text.](#)

Mitigating Factors**

**Playing offences only.

We considered mitigating factors as follows: [Click here to enter text.](#)

Decision

Fined £200.

Costs

£125 plus VAT @ 20% = £150

Right of Appeal

There is a right of appeal against this decision. Any such appeal must be lodged with the RFU Head of Discipline by 25/05/2018

(Signed)

Secretary