



DECISION FORM - APPEAL

Thibault De Freitas (Portugal)

PARTICULARS OF THE OFFENCE			
Player's Name	Thibault De Freitas POR #8		
Player's Union	Portugal Rugby Union (FPR)		
Match	Spain v Portugal		
Competition	2020 Rugby Europe Men XV Championship		
Date of match	February 7 th 2021 – KO 12:45 pm		
Match Venue	Estadio National Complutense Madrid		
Rules to apply	Rugby Europe Disciplinary Regulations and World Rugby Regulations		
Referee Name	Chris Busby (Ireland)	Plea	<input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/> Admitted
Offence	Dangerous play in a ruck or maul. "A player must not charge into a ruck or maul"	<input type="checkbox"/> Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other	
PARTICULARS OF THE FIRST INSTANCE PROCEDURE			
Date of issuance of the Disciplinary Notice	February 10 th , 2021		
Members of the Panel	Michiel van Dijk (Netherlands) Chris Morgan (Wales) Dany Roelands (Belgium)		
Date of the First Instance Hearing	February 19 th , 2021		
Date of issuance of the Decision Form	February 22 nd , 2021		
PARTICULARS OF THE FIRST INSTANCE SANCTION			
Total sanction	5 weeks suspension	<input type="checkbox"/> Sending off sufficient	
Sanction commences	February 19 th , 2021		
Sanction concludes	July 19 th , 2021		
Matches/tournaments included in sanction	For the avoidance of doubt please note that the sanction must be understood as 5 weeks where at least one meaningful match was to be played by the player. Based on the current context and as of today, it means that the player is suspended for the following matches: 06/03/2021 Portugal v Georgia 13/03/2021 Portugal v Romania 28/03/2021 Portugal v Spain 10/07/2021 Belgium or Netherlands v Portugal 18/07/2021 Russia v Portugal Upon request from the union, that list could be subject to changes if the Player was to play other meaningful matches.		
Costs	None		
Date of the Decision	February 22 nd , 2021		

PARTICULARS OF THE APPEAL PROCEDURE			
Date of receipt of the Appeal Form	February 24 th , 2021		
Members of the Appeal Panel	- Chairperson: Antony Davies (England) - Wing: Jennifer Donovan (Ireland) - Wing: Richard McGhee (Scotland)		
Date of the Appeal Meeting	March 3 rd , 2021		
Organization of a Hearing	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Hearing date	March 3 rd 2021	Hearing venue	Remote via Microsoft Teams
Appearance Player	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Appearance Union	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Player's Representative(s)	See below	Other attendees	See below
Summary of the Appeal Hearing:			
<p><u>Attendees</u></p> <p>Player's representative: José Carlos Augusto – Lawyer of the Portuguese Rugby Union Nuno Salvador – Manager Portugal National Team Patrice Lagisquet – Coach Portugal National Team Maxime Cotis – Hearings Manager Observing, though taking no part in the process – David Baird-Smith and Palemia Fields (both Rugby Europe)</p> <p><u>Documents Considered</u></p> <ul style="list-style-type: none"> • Disciplinary hearing written decision dated February 22nd 2021 (“DPD”) • Appeal form (foul play) dated February 24th 2021 • Rugby Europe Disciplinary Regulations • Video Clip 1 • Video Clip 2 • Rugby Europe 7s Tournaments Team Administration Certificate (x 3) • Appellant's calendar of games February 18th 2021 to July 2021 • World Rugby Decision Making Framework <p>The Appellant had no objection to the composition of the Panel.</p> <p>It was explained to the Appellant that this was not to be a de novo hearing but that it was incumbent upon the Appellant to satisfy the Panel on the balance of probabilities that one or more of the appeal grounds was made out.</p>			

SUMMARY OF THE GROUNDS FOR APPEAL

The Player's position had remained consistent throughout the process, commencing with his statement in advance of the Disciplinary Panel ("DP"), his evidence to the DP and the written grounds of appeal in relation to the first three grounds. Ground 4 was a matter not aired before the earlier Panel on February 19th 2021. It appeared for the first time in the grounds of appeal dated February 24th 2021.

The Appellant's position can conveniently be summarised as follows:

Ground 1. The Player did not charge into the ruck. He made contact by binding his arms onto another player in a legal manner. As a consequence, the incident did not pass the foul play test and should have been dismissed. It was not foul play.

Ground 2. The Player did not deliberately intend to make contact with the head of the opponent. His intention was to execute a fair and safe clearout of a player who had intentionally fallen on the wrong side of a ruck, blocking the ball and preventing Portugal competing for it. The Player executed a safe and fair clearout but regrettably during the process his right shoulder did make contact with the back of Spain 7 and then slip to the head of S7, resulting in minor contact only. As the head contact was indirect and minor, the red card threshold was not met and the sanction should have been a yellow card at most, or no sanction at all.

Ground 3. The DP made an error of law in characterising the appropriate entry point as mid-range. The contact was accidental and any head contact indirect resulting in no injury. It should therefore have been characterised as low -end offending.

Ground 4. The DP made an error of law in finding that there were relevant off-field aggravating factors (the Player's previous record) and aggravating the sanction by one match. This resulted in a sanction which would result in the Player being suspended from all rugby for a total period of six months, which was a harsh and unwarranted sanction.

Ground 5 (this was a new ground not previously raised until the appeal). That the Player had been suspended since February 10th 2021 (notification of the citing) and that in addition to the declared games for Portugal, he was supposed to play for Portugal in the Madrid 7s Tournament to take place on February 20th and 21st 2021 in which he would have played four meaningful matches but could not do so because of his suspension. Had those four meaningful games been taken into consideration, the Player would only have to serve the suspension ordered for March 6th 2021 Portugal v Georgia

APPEAL DECISION

Appeal is accepted Appeal is partially accepted Appeal is rejected

In considering the appeal, the Appeal Panel reminded itself that any question of fact arising on appeal was to be heard and determined based on the record of the decision and the evidence received and considered by the Disciplinary Panel.

Ground 1

1. We viewed the match footage which was from two separate angles and what we saw appeared entirely consistent with the DP assessment contained within the DPD. The DP was quite right to characterise it as foul play and it passes the red card test by some margin. It is exactly the sort of dangerous charging into a ruck that World Rugby seeks to remove from the game in the interests of player welfare. The DP was therefore quite right to uphold the citing. What we saw depicted in the match footage was Spain 7 on the wrong side of a ruck but bound into the ruck from his waist downwards. His body is facing back towards his own tryline and he is sitting up, his back and head exposed on the Portugal side of the ruck. The Player drives into the back of S7 but with no effect. The Player then steps backwards a few metres and charges into the ruck, making contact with the head and nape area of S7, who is on the floor in a vulnerable position with his upper body exposed. He is looking away from where the contact is originating and can take no action to avoid or mitigate the contact. The contact itself is between the shoulder and forehead of the Player and the back of the head and nape of the neck of S7. It is with considerable force and rocks S7's head backwards and forwards. S7 immediately puts his hand to his head. What we saw depicted seemed to have no rugby purpose to it whatsoever. It was a targeted attack on a vulnerable player. The DP was quite right to reject the contentions of the Player that the contact was with the back and was followed by some incidental minor and accidental contact with the back of the head.

2. Given the Player's stated position to the DP, the DP was quite right to make the findings that it did. We therefore dismiss this ground.

Ground 2

3. The DP was quite right, in our view, to consider the match footage and conclude that this was not a safe and fair clearout, with some regrettable incidental sliding up towards minor head contact. The DP quite rightly pointed out that there was no realistic chance of the Player winning the ball or a turnover by carrying out his actions. He also entered the ruck illegally by not binding correctly. For these reasons, and the reasons set out in paragraph 1 above, we dismiss this ground of appeal.

4. We note at this point that, following questioning of the Player during the appeal, the Player finally conceded that he was frustrated, too aggressive and out of control. He accepted that it was foul play which warranted a red card.

Ground 3

5. Whether the head contact was accidental or deliberate was not the issue. We referred the Player to the Rugby Europe Disciplinary Regulations Edition 2020 Appendix 1 – Table of recommended sanctions for offences within the playing enclosure. This Appendix is an extract of World Rugby Regulation 17 Appendix 1 and is prefaced with the following :

*“Note: Any act of foul play which results in contact with the head and/or neck **shall** (our emphasis) result in at least a mid-range sanction”.*

If the DP found as a matter of fact that there was contact with the head, it was mandated to impose a minimum mid-range entry point. It had no discretion to do anything else. Accordingly, it made no error of law and quite properly applied the Regulations it was required to apply.

6. We therefore dismiss this ground.

Ground 4

7. We asked the Player to clarify and expand upon the circumstances of the offending detailed in his records supplied by FFR.

- In 2018/19 he received one week’s suspension for a dangerous tackle
- In 2018/19 he received one week’s suspension for three yellow cards for not releasing, illegal entry at a ruck and pulling down the maul
- Season 2020/21 (the current season) he received two weeks’ suspension for “brutalités” which he described as getting involved in a fight, being punched and knocked to the floor and then being wrongly chosen by the Referee to be red carded along with an opponent for striking with the fist. He denied striking, but did not appeal the sanction.
- In the last three seasons he has accumulated three red cards or equivalent, and three yellow cards resulting in the accumulation of yellow cards.

8. The Player was described as having a relatively good disciplinary record until the last three years. He was said to be a hard player who played on the limits, but frequently got himself to the attention of the Referee. We had no doubt from what we saw depicted in the match footage that he is a hard player, but that was not the question we had to answer in dealing with this ground of appeal. The question is whether the DP was right to characterise the Player as an offender of the laws of the game and to add one extra week to the entry point sanction. In our view, Disciplinary Panels are to be afforded a margin of appreciation when it comes to finding of facts and the exercise of their discretion. We believe that the conclusion drawn to add one week was well within an acceptable range of suitable outcomes and we therefore dismiss this ground of appeal.

Ground 5

9. In order to establish this ground, the burden rests on the Player to prove that he was scheduled to play in games that his pre-hearing suspension precluded.

10. We were told that the Player was due to play for Portugal 7s in the Madrid 7s Tournament played on February 20th and 21st 2021. We were told that there is some link between the Portugal 7s and 15s teams who do occasionally train together. The 7s Coaches have in the past expressed interest in players, however the Player was not able to provide any supporting corroboration of his statement that he was “supposed to play for Portugal 7s”. We had little difficulty in dismissing this ground of appeal for the following reasons:

- Although the Player said he had played some 7s for his regional side in France, he has never played 7s for Portugal in the past. This was corroborated by our examination of the last three seasons declared Portugal 7s players.
- The Player had not been asked to make himself available to play. When questioned, he said that there was just a vague possibility that he might be asked. He had no explanation when questioned about why he did not raise this before the DP. It was common ground that it was not mentioned during the earlier hearing. The Player accepted that he confirmed his calendar of games between February 10th 2021 and July 2021 and that there was no mention on that calendar of any 7s rugby.
- It seems to us inconceivable that he would have presented that calendar and not mentioned that he should have been playing 7s rugby the day of the hearing or the day preceding the hearing. We were quite incredulous that the issue of playing for Portugal 7s was only raised for the very first time on February 24th 2021 in the grounds of appeal and not before the DP.
- The Player did not seem aware that the Madrid 7s was a competition held over two weeks. He was claiming only to have missed the equivalent of four matches on February 20th/21st. He had failed to appreciate that if he was successful in his argument, he could have used the games missed on February 27th/28th (the second weekend of the Tournament) to completely escape any suspension at all.
- Finally, when pressed by the Panel members for some discernible proof of the ground and that he would have played, he was only able to confirm that he would have been available if he had been asked.

11. Accordingly, all grounds of the appeal are dismissed and the original sanction imposed by the DP stands.

12. In accordance with Rugby Europe Disciplinary Regulation 4.6.9, we are required to confirm that the Player is suspended for the following matches:

06/03/21 Portugal v Georgia

13/03/21 Portugal v Romania

28/03/21 Portugal v Spain

10/07/21 Belgium or Netherlands v Portugal

18/07/21 Russia v Portugal.

13. We also re-state, as appears in the DPD, that should the Player's playing schedule change to the extent that other meaningful matches are to be played, his Union may request Rugby Europe to consider a variation of the implementation of the sanction. In our view, that would properly be dealt with by Mr. Van Dijk's Panel.

14. Finally, as the appeal has not been successful, the appeal fee of €100 is ordered to be forfeit.

Antony Davies
Jennifer Donovan
Richard McGhee

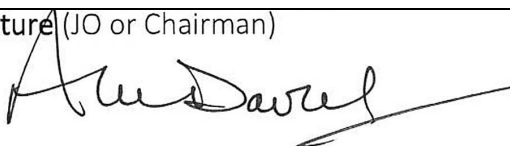
APPEAL SANCTION

THE APPEAL SANCTION

[Insert here the details about the Appeal Sanction]

SUMMARY OF THE APPEAL SANCTION

Total sanction	5 matches	<input type="checkbox"/> Sending off sufficient
Sanction commences	February 10 th 2021	
Sanction concludes	July 19 th 2021	
Matches/tournaments included in sanction	See above	
Costs	€100	

Date	March 3 rd 2021
Signature (JO or Chairman)	 <i>Antony M. Davies</i>

NOTE: The decision of an Appeal Panel shall be final and binding upon the parties, and there shall be no further right of appeal from it.