

DECISION FORM

To be sent to discipline@rugbyeurope.eu.



Particulars of offence	
Player's Name: Mika Tyumenev	
Player's number: 2	
Player's union: Germany	
Competition: Rugby Europe Men Championship	
Host Team (T1): Netherlands	Visiting Team (T2): Germany
Venue: Stade Jean -Bouin	
Date of match: 17/03/2024	
Rules to apply: Regulation 17 World Rugby Handbook; or Tournament Disciplinary Program; or Other	
Referee Name: Paulo Duarte (POR)	
Plea: <input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted	
Offence: <input type="checkbox"/> Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other <i>If "Other" selected, please specify:</i>	
Hearing details	
Chairperson / JO: Samantha Hillas KC	
Other Members of the Disciplinary Panel: - Chris Morgan - Rose Alice Murphy	
Hearing date: 10/04/2024	
Hearing venue: Remote via MS 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): Manuel Wilhelm, CEO of the German Union	
Other attendees: David Baird-Smith, Rugby Europe	
List of documents/ materials considered by the Panel: 1. Game sheet 2. Citing Commissioner report 3. Video clips of the incident x3 4. Notice of Hearing 5. Statement from the union + text message from the victim player 6. Medical report from Dutch medics	
Summary of essential elements of citing / Referee's report / Incident footage	
Taken from the Citing Commissioner's report: <i>"After a scrum, Dutch team was attaching on the opponent's 5 meters line inside the 22 area near the right post. There were two rucks. In the second German player number 2 (Tyumenev Mika) charged with his left shoulder the head of the opponent number 3 (Besuijen Gabor). The impact was with a high degree of force and also very dangerous (very clear in the replay/cam 3). There was a concussion for the Dutch player number 3. After an assistance on the ground the Dutch player number 3 was unable to resume the game and he had to be replaced. Clear foul play. For the reasons above I cite the German player."</i>	

The Panel also viewed the video footage. There were three clips: two showing the incident from the same angle (side on); and one which showed the Player face on. The video clips reflect the content of the Citing Commissioner's report. There was a ruck in play. The Player was crouched at the back of the ruck in a typical position, poised to counter ruck. He gets down low to clear out the victim player but the victim player is also crouched down low and the Player's shoulder collides with the victim player's head.

Essential elements of other evidence (e.g. medical reports)

The medical report forwarded by Kristof Vanhout (Rugby Nederland's Technical Director) says that (in summary):

- The victim player was removed from the game for an HIA which showed an abnormal score. He did not resume play
- An HIA 2 was undertaken immediately after the game which also showed an abnormal score
- The day after the game the victim player reported the following symptoms: headache, pressure in the head, neck pain and sensitivity to light
- An HIA 3 was undertaken on 20th March (3 days after the game). This showed normal findings but the victim player was still reporting symptoms as above (headache etc)
- The victim player is following the concussion protocol set by World Rugby

Following an email from the Player to the victim player, the victim player responded to confirm that he did not think it was the Player's intention to cause the injury. He says in that email that his recovery has been good. He was out of work for one week and out of rugby for two weeks and is looking to get himself back into action that weekend (the email is not dated).

Summary of player's evidence

The Player's evidence was as follows (in summary) :

- He has played professionally since 2009. This is first red card (citing) before or since
- During the game, he was maybe too fixed on the ball rather than that was happening in the ruck. He was fixed on defending or winning the ball as they were on the 5m line
- It was never his intention to injure anyone in the game – it was a mistake
- His shoulder hit the victim player's head/neck, but he did not realise at the time and did not realise the victim player had gone down
- He was shocked when he received notification of the citing. He asked a team mate who plays for Netherlands for the contact details for the victim player. Once he was given them a few days later, he emailed the victim player to apologise
- When questioned by the Panel about the risk of him committing an illegal clear out, the Player said he did not consider it – he was trying to counter ruck to slow the game down so his defence had time to readjust
- When questioned by the Panel about him weighing up the risk that he would collide with the victim's player's head, he said that he was in a very low body position as he usually is. He thought he was lower than the victim player. It all happened very quickly

The Panel also heard from Manuel Wilhelm who spoke on the Player's behalf as follows (in summary):

- This is definitely an act of foul play
- He (Manu) was commentating for German TV during the game and said, live, that this was an act of foul play

- He has played with the Player as well as with the Player's father, so he has known the Player for many years and he can attest to the fact that whilst he is an intimidating-looking player, he plays hard but fair and he has never had a red card
- The Player has received no red cards whilst playing for Germany and he has checked his previous record including when playing in France and he had no red cards there either – he has had 3 yellow cards in his whole career
- He does not believe it was an intentional act. The Player did not realise what had happened – his eyes were on the ball. He watched the video clips with the Player and, upon seeing the incident the Player was shocked and said “*shit, that is looking bad*”

Manu also submitted that the Player was coming to the end of his contract and it would look bad for him if a suspension carried over beyond the end of the season. The Panel did not consider this submission was relevant to any decisions it had to make and did not take this into account in any of its deliberations.

Findings of fact

The act of foul play was admitted.

The Panel found that the Player had engaged in dangerous play in the ruck. He was too focussed on the ball and, whilst he was in a very low position in the ruck and might have thought he was lower than the victim player, he had acted recklessly by not ensuring he *was* lower than the victim player in order to avoid any risk of head contact. The incident happened in a split second. The Player was not aware that he had injured the victim player until after the event.

After deliberating the matter and reviewing the footage, the Panel did not consider, on balance, that this ought to be classified as an act of foul play contrary to Law 9.20(a) (charging into a ruck) as cited, but that the Player's actions were more consistent with an offence contrary to Law 9.20(b) (making contact with the opponent above the line of the shoulders). The Player was stationery before he cleaned out the victim player. There is no question that it was a forceful clear out: the Player launched forward to engage in a dynamic and effective clear out. However, whilst the Panel acknowledges that a player does not necessarily have to run into a ruck from distance or at speed for it to be considered a 'charge', this was nonetheless not a typical 'charge into a ruck' and that the appropriate and fair classification for his act of foul play would be that it was contrary to Law 9.20(b).

Note 1:

This incident took place on 17th March 2024. The Panel were informed that the reason for the delay between the date of the incident and the date of this disciplinary hearing is that the Player had already been dealt with and sanctioned following a disciplinary hearing. The Panel was informed that an Appeal Panel overturned the original Disciplinary Panel's decision due to procedural unfairness and had determined that the matter should be heard *de novo*. For the avoidance of any doubt, the Panel hearing the matter *de novo* had little information (other than the Appeal Panel's decision) about what occurred at the first disciplinary hearing and did not take any matters relating to that into account when reaching its decisions.

Note 2:

At the conclusion of the hearing the Panel gave the Player a firm warning (and asked Manu to reinforce this to the Player taking into account the fact that the hearing was conduct in English, English is not the Player's first

language and it was clear he struggled at times to understand what was being said) that his reckless act of foul play resulted in an injury to the victim player which was both avoidable and regrettable. He is a large, powerful man who plays in the front row. He must take every precaution to ensure that contact with any player's head/neck is avoided at all times. Another Panel may have taken a different view both as to the reclassification of the offence to one contrary Law 9.20(b) or that a mid-range entry point was appropriate and he should not be complacent about the outcome of this hearing. The Panel considered that the Player's contrition and his full and clear acknowledgment that he was in the wrong and would take steps to avoid a recurrence were genuine.

Decision

Proven Not proven Other disposal (please state)

SANCTIONING PROCESS

Assessment of seriousness	
<i>As per Article 4.5 of Rugby Europe Disciplinary Regulations and Regulations 17 of World Rugby</i>	
Assessment of intent:	
<input type="checkbox"/> Intentional/deliberate <input checked="" type="checkbox"/> Reckless	
Reasons for finding as to intend:	
The Panel determined the Player's actions were reckless and that he did not intend to make contact with the victim player's head because:	
<ol style="list-style-type: none"> 1. The Player was at all times in a typical ruck position, poised to clear out or win the ball. He was focussed on the ball 2. The Player was crouched very low 3. The Player believed he was in a lower position than the victim player 4. The Panel accepted the Player's evidence that he did not realise anything had happened until later on 	
Nature of actions	
A forceful clear out in a ruck. The Player's shoulder collided with the victim player's head	
Existence of provocation:	
N/A	
Whether player retaliated:	
N/A	
Self-defence:	
N/A	
Effect on victim:	
The victim player was removed from the field of play. The scores from his first two HIAs were abnormal. His score was normal in the third HIA but he clearly suffered from concussion and is following the WR concussion protocol	
Effect on match:	
None. The Player was not red carded for the incident. He was cited after the game.	
Vulnerability of victim:	
The victim player was not in a particularly vulnerable position. He, like the Player, was poised in a low crouching position at the back of the ruck ready to counter ruck	
Level of participation / premeditation:	
No premeditation / Full participation	
Conduct completed / attempted:	
Completed	
Other features of player's conduct:	
N/A	

Entry point					
Low-end	Weeks	Mid-range	Weeks	Top end	Weeks
<input type="checkbox"/>	[]	<input checked="" type="checkbox"/>	[4]	<input type="checkbox"/>	[]
Reasons for selecting entry point:					
The Player made contact with the head of the victim player. As such and as required by the WR Appendix 1 Sanction table, the Panel ruled out a low end entry point and took as its starting point a mid-range entry point.					

The Panel deliberated whether the Player’s actions merited the mid-range starting point or whether this should be elevated to top end. Taking into account the Panel’s findings that the act of foul play was reckless rather than intentional (although acknowledging that a reckless act can still result in a top end entry point in some circumstances), notwithstanding the injury to the victim player, the Panel took the view that in all the circumstances, a mid-range entry appropriately reflected the gravity of the incident.

Relevant off-field mitigating factors	
<i>As per Article 4.5 of Rugby Europe Disciplinary Regulations and Regulations 17 of World Rugby</i>	
Acknowledgement of guilt and timing:	Player’s disciplinary record / good character:
The Player admitted the act of foul play	The Player has a clean record
Youth and inexperience of player:	Conduct prior to and at hearing:
The Player is experienced, having played professional rugby since 2009	Very good
Remorse and timing of Remorse	Other off-field mitigation:
The Player apologised to the victim player when he had located his contact details	N/A

Number of weeks deducted: 2
Summary of reason for number of weeks deducted:
Whilst acknowledging that this would result in a sanction which saw the Player suspended for less time than the victim player would be out of the game (3 weeks in accordance with the WR concussion protocol) the Player nevertheless ticked all the boxes in terms of mitigation. He is a front row player who has played 100s of games at a professional level and has never had a red card. The Panel considered in all the circumstances that the full 50% mitigation that is available should be awarded.

Additional relevant off-field aggravating factors

As per Article 4.5 of Rugby Europe Disciplinary Regulations and Regulations 17 of World Rugby

Player's status as an offender of the Laws of the Game:

The Player has a clean record

Need for deterrence:

N/A save that the sanctioning process for any act of foul play should act as a deterrent for both the offending player and other players

Any other off-field aggravating factors:

N/A

Number of additional weeks: 0**Summary of reason for number of weeks added:**

N/A

SANCTION

NOTE: Players ordered off or cited by a citing commissioner are provisionally suspended pending the hearing of their case, such suspension should be taken into consideration when sanctioning – RE Discipline Regulations 4.1.4 / 4.4 (or equivalent Tournament rule)

Total sanction: 2 weeks	<input type="checkbox"/> Sending off sufficient
Sanction commences: 17 th March 2024	
Sanction concludes: 10 th April 2024 (the Player is now free to play again)	
Matches/ tournaments included in sanction: The Player has already missed two matches on 30 th March against Narbonne and on 4 th April against Bressane due to his interim suspension whilst this matter was being heard.	
Costs:	
N/A	

Signature
Name of the JO or Chairman: SAMANTHA HILLAS KC
Date: 10 th APRIL 2024
Signature (JO or Chairman): <i>SAMANTHA HILLAS KC</i> (signed electronically)

NOTE: You have 48 hours from notification of the decision of the chairman/jo to lodge an appeal with the tournament director – RE Discipline Regulations 4.6.2 (or equivalent Tournament rule)