



DECISION FORM (APPEAL)

PARTICULARS OF OFFENCE			
Player's Name	Merab SHARIKADZE		
Player's Union	Black Lion		
Match	Black Lion v Tel-Aviv Heat		
Competition	Rugby Europe Super Cup		
Date of match	17/12/2022		
Match Venue	Avchala Stadium, Tbilisi		
Rules to apply	Regulation 17 World Rugby Handbook; or Rugby Europe Disciplinary Regulations		
Referee Name	Paulo Duarte	Plea	<input type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	Law 9.12 - Physical abuse (striking with head)	<input type="checkbox"/> Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other If "Other" selected, please specify:	

PARTICULARS OF THE FIRST INSTANCE PROCEDURE	
Date of issuance of the Disciplinary Notice	19 December 2022
Members of the Panel	Gert-Mark Smelt / Chris Morgan / Mark Curran
Date of the Hearing	20 December 2022
Date of issuance of the Decision Form	21 December 2022

PARTICULARS OF THE APPEAL PROCEDURE			
Date of receipt of the Appeal Form	22 December 2022		
Members of the Appeal Panel	Chair: Antony Davies Wing: Michiel van Dijk Wing: Jennifer Donovan		
Date of the Appeal Meeting	Not applicable		
Organization of a Hearing	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Hearing date	11 January 2023	Hearing venue	On remote
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)	Merab Sharikadze - Player Ana Gvasalia - Member of GRU Appeals Panel Vasil Abashidze - Black Lion Manager	Other attendees	David Baird-Smith

	Mirian Tavzarashvili - GRU Head of Discipline Eduard Nachkebia - GRU Lawyer		(Rugby Europe)
Summary of the Hearing:			
<p>The appeal was conducted in accordance with Rugby Europe Disciplinary Regulation 4.7, there having been no request for a de novo hearing. The appeal was conducted on the record of the decision and evidence received and considered by the First Instance Panel (FIP).</p> <p>We considered all the evidence and documentation available to the FIP, including the following :</p> <ul style="list-style-type: none"> • The detailed written decision of the FIP dated 21st December 2022. • Grounds of appeal dated 22nd December 2022. • Additional submissions from the Appellant by way of letter dated 11th January 2023 expanding Ground 4 by reference to the recent RFU case of Marler. • The match footage. <p>The burden of proof was on the Appellant to establish on the balance of probabilities that the decision contained an error of fact or law, that the interests of justice required it to be overturned, the sanction was wrong in principle or was manifestly excessive.</p>			

SUMMARY OF THE GROUNDS FOR APPEAL
[Insert]

APPEAL DECISION
<input type="checkbox"/> Appeal is accepted <input type="checkbox"/> Appeal is partially accepted <input checked="" type="checkbox"/> Appeal is rejected
<p>We set out below each of the five specific grounds of appeal, together with our decision in respect thereof :</p> <p><u>Ground 1</u></p> <p>“Immediately after the incident, opponent player’s condition was assessed by his own club physiotherapist instead of match day doctor. That makes the assessment challengeable at least with reason of possible conflict of interests and disciplinary panel had an opportunity to dismiss it as valid evidence on account of absence of significant injury as a result.”</p> <p><u>Our finding in respect of Ground 1</u></p> <p>We could see no reason why the FIP should have been sceptical as to the cogency of the evidence of injury received from the physiotherapist and the victim player. We noted contact by the head to the face/nose of the opponent with force, which knocked him to the ground where he remained. The physiotherapist reported finding the player holding his nose in pain, the nose being very red, the player being overwhelmed with pain and teary, consistent with forceable contact to the nose. There was no evidence of a broken nose or concussion. The victim player, Jordan Chait, had stated that the player had approached him and headbutted him onto the nose with force, causing his eyes to water and making</p>

him feel lightheaded. He also stated that his lip had been bleeding and he felt intense pain in his nose. We reviewed the match footage, which in our view corroborated the evidence of the physiotherapist and the victim player. The function of the on field physiotherapist was to examine the player and make a finding as to the nature and extent of the injury and treat accordingly. We could find no evidence whatsoever of a conflict of interest as alleged, nor that the evidence had anticipated the disciplinary process which followed. The FIP was, in our view, quite right to consider the physiotherapist and victim player evidence at face value.

Ground 2

“Assessment of Intent as an **intentional/deliberate** is overvalued. Mr. Sharikadze acted after being heavily abused verbally several times before his reckless act.

According to decision – Level of participation/premeditation determined as – **Spur of the moment reaction. No premeditation** that is contrary (in our opinion) to Assessment of Intent as an **intentional/deliberate** in the same decision.

Physical contact made by Mr. Sharikadze was a consequence of extreme indignation in a state of affect after he was heavily abused verbally several times, and that can constitute a *reckless*, rather than an *intentional/deliberate* action.

Mr. Sharikadze followed the opponent not for the physical confrontation, but to request an explanation and ask to stop insulting him; at this time Mr. Sharikadze got another heavy verbal abuse from the opponent. Chronology is clearly visible in video footage (clip 1).”

Our finding in respect of Ground 2

It was the player’s case throughout the appeal that the strike with the head had been reckless rather than intentional/deliberate as the FIP found. We rejected this contention in view of all we saw and the player’s submission that he did not put his head back before striking, but struck forwards only. It was not in dispute that the player had reacted to being insulted, but acting on the spur of the moment with no premeditation does not preclude the strike being deliberate. They are not mutually exclusive concepts. A strike, such as the one depicted in the match footage, is an act of specific intent.

Ground 3

“Disagree with determination of Mr. Sharikadze’s conduct as act of aggression against retreating opponent. Mr. Sharikadze was retreating too at that moment, and after being touched (that indicates direction of insult) and heavily abused verbally by the opponent, he quickly changed his direction.

In the same clause of decision, the Disciplinary Panel determines physical contact as direct and deliberate. We agree with determination of physical contact as direct but, as mentioned above, it was not deliberate.”

Our finding in respect of Ground 3

We rejected this Ground. The incident was off the ball, carried out in an aggressive manner against a retreating opponent whom the player went after following the verbal abuse.

There was direct and deliberate contact to the head.

Ground 4

“Disciplinary Panel assessed the provocation as unpleasant remark and constitutes it as a mere minor provocation.

Actual words (citation – son of a bitch and ...motherfucker) used by opponent player was not just Mr. Sharikadze’s abuse personally it was his family’s abuse as well and cannot be determined as unpleasant remark and constituted as a mere minor provocation; we think it should be assessed as a heavy breach of Code of Conduct.”

Our finding in respect of Ground 4

It was clear there was provocation from T-AH10 which was sustained. However, that provocation was verbal and not physical. The player said his intention when following T-AH10 and putting his face close to his face was to ask for an explanation as to why he was being abusive and to ask him to stop. We asked the player why in that case he went on to strike with the head and he said that was in direct response to further verbal abuse. We went on to consider the submissions in respect of the Marler case and found that these were not helpful, nor could they be sustained. That, we found, was a case where the player had been charged with bringing the game into disrepute for verbal abuse. It was not, as is the case here, in relation to an act of foul play contrary to Law 9.12, striking with the head. In any event, to strike with the head forcefully in the manner we saw depicted could not, in our view, be justified as a proportionate response to verbal abuse only.

Ground 5

“Proceeding from above mentioned we think that mid-range (10 weeks) entry point (9.12 striking with head) is too strict. As mentioned in disciplinary panel’s decision – “while head contact in general automatically results in a Mid-range sanction, for some offences head contact is already taken into account. ‘9.12 striking with the head’ is one of those offences”, we ask you to change the original mid-range entry point to low-end offence (6 weeks) considering the same off-field mitigating factors used by Disciplinary Panel in its decision.”

Our finding in respect of Ground 5

In our view, the FIP correctly disapplied the mandatory mid-range entry point requirement for head contact pursuant to Note 2 to Appendix 2 of the Rugby Europe Disciplinary Regulations. That left it open to the Panel to select whichever entry point it felt appropriate. In this regard, it had an unfettered discretion. The FIP written decision recorded the following findings:

- The act was intentional/deliberate.
- It was off the ball.
- It was against a retreating opponent whom the player followed.
- The headbutt was from a standing position.

- There was direct and deliberate contact with the head.
- The provocation was verbal and not physical.
- The victim was vulnerable.
- The foul play was completed.
- Significant pain and discomfort was caused to the victim player.

Given those findings, we could find no error of fact or law in the FIP decision to categorise the offending as warranting a mid-range entry point. It was not, in our view, in the interests of justice to require it to be overturned. The sanction was not wrong in principle, nor was it manifestly excessive.

The finding that the matter warranted a mid-range entry point was, in our view, an entirely consistent with the evidence before the FIP and well within the “margin of appreciation” to be afforded to First Instance Panels.

It was no part of the grounds of appeal that the FIP had wrongly applied off-field mitigation resulting in a 40% reduction in the entry point, nor were we asked to consider this at the appeal hearing. Accordingly, the sanction set out in the FIP decision is not to be interfered with.

APPEAL SANCTION

PARTICULARS OF THE FIRST INSTANCE SANCTION		
Total sanction	6 weeks	<input type="checkbox"/> Sending off sufficient
Sanction commences	25 December 2022	
Sanction concludes	19 February 2023	
Matches/tournaments included in sanction	25/12/2022 – Gori v Junkers 20-22/01/23 – Kochebi v Junkers 27-29/01/23 – Borjami v Junkers 05/02/23 – Georgia v Germany 12/02/23 – the Netherlands v Georgia 19/02/23 – Spain v Georgia	
Costs	0	
Date of the Decision	20 December 2022	

THE APPEAL SANCTION
For the reasons stated above, we do not interfere with the FIP imposed sanction.

SUMMARY OF THE APPEAL SANCTION		
Total sanction	[insert]	<input type="checkbox"/> Sending off sufficient
Sanction commences		
Sanction concludes		
Matches/tournaments included in sanction		
Costs	100 EUR	

Date	12 th January 2023
Signature (JO or Chairperson)	<i>Antony 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.