

IN THE MATTER OF AN APPEAL BROUGHT BY FEDERACIÓN ESPAÑOLA DE RUGBY
against THE DECISION OF THE JUDICIAL COMMITTEE DATED 5 MAY 2022
for BREACHES OF WORLD RUGBY REGULATION 8 AND THE WORLD RUGBY CODE OF
CONDUCT and THE RUGBY WORLD CUP 2023 QUALIFICATION PROCESS TERMS OF
PARTICIPATION

Date of Oral Hearing Thursday, 16 June 2022 (Remote), 0900 BST

Appeal Committee Wang Shao-Ing (Chair)
Adam Casselden SC
John Langford, former Australian, Brumbies and Munster Player

Appellant **Federación Española De Rugby (“FER”)**
Jose María Epalza, Vice-President
Eric Jara, Assistant Secretary General FER

Appellant’s Legal Counsel
Daniel Khoo, Lead Counsel
Alfredo Garzón
Patricia Galán
Daniel Serna
María Nasarre

Respondent **World Rugby (“WR”)**
Yvonne Nolan, Deputy General Counsel, Lead Counsel
Alistair Maclean, General Counsel
Brian Hammond, Legal Counsel
David Carrigy, Chief International Relations and Participation

Secretariat Joyce Hayes

DECISION OF THE APPEAL COMMITTEE

A. INTRODUCTION

1. These proceedings concern the eligibility of Mr Gavin Van Den Berg (“the Player”), to represent the National Senior Representative Team of FER during two matches in the Rugby World Cup 2023 Qualification Process (“RWCQ”) on 18 December 2021 and 5 February 2022.
2. FER and the Player were charged by WR for breaching World Rugby Regulation 8 and/or the WR Code of Conduct and/or the RWCQ Terms of Participation.
3. All parties were heard by an independent Judicial Committee (“JC”) on 28 April 2022 during which an oral decision was delivered on the question of liability and sanctions. The full written decision of the JC was issued on 5 May 2022 (“Decision”).

4. In summary, the JC determined that the Player was not eligible to represent Spain under Regulation 8. Consequently, both FER and the Player had breached Regulation 8. On FER, the JC imposed the minimum fixed fine under Regulation 8.5 (£25,000 sterling) and a deduction of the maximum 5 competition points (the maximum points available to be won by a team) for each of the two matches (10 points in total). No sanctions were imposed by the JC on the Player.
5. FER intimated its desire to file an appeal on 11 May 2022 and this Appeal Committee (“AC”) was appointed by the Independent Judicial Panel Chairman in accordance with the WR Regulations.
6. The AC granted FER’s request for an extension of time to file the appeal. FER’s Notice of Appeal was served on 26 May 2022 and WR’s response was received on 9 June 2022. FER replied on 14 June 2022.
7. An oral hearing was held on 16 June 2022. Due to the introduction of new evidence by FER in its Notice of Appeal, the AC heard the parties first on the admissibility of the evidence as a preliminary issue. The AC delivered a brief oral decision determining that the new evidence was inadmissible, with full reasons to follow in the written decision. Following oral submissions on the substantive appeal, the AC reserved its decision.
8. This is the AC’s reasoned decision in writing.

B. APPLICABLE REGULATIONS

The Eligibility Rules - Regulation 8

9. The regulation at the centre of this appeal is Regulation 8 on player eligibility to represent WR Member Unions’ national teams.
10. Under Regulation 8.1, a player may be eligible by the “sporting-naturalisation” process in subparagraphs (c) or (d):

“ ... a Player may only play for the senior fifteen-a-side National Representative Team... of the Union of the country with which the Player has a genuine, close, credible and established national link in which:

- (a) *the country in which the Player was born; or*
- (b) *the country in which one parent or grandparent of the Player was born; or*
- (c) *the Player has completed sixty¹ consecutive months of Residence immediately preceding the time of playing; or*
- (d) *the Player has completed ten years of cumulative Residence preceding the time of playing.*

11. The current iteration of Regulation 8.1(c) requiring sixty months of consecutive residence came into effect on 1 January 2022. The residency requirement which applied to the Player in December 2021 is *“thirty-six consecutive months of Residence immediately preceding the time of playing”*.

12. Twenty-five Explanatory Guidelines (“Guidelines”) are set out to assist in the implementation of Regulation 8. The AC has summarised the relevant Guidelines as follows:

- a. **Regulations Committee** - Guideline 10 acknowledges the complexities of applying the eligibility rules in the modern age and provides that where there is any uncertainty or the need for clarification, the Regulations Committee may make a ruling on a player’s eligibility;
- b. **When to assess eligibility** - Guideline 11 states that if a Union has any doubt over a player’s eligibility status it must take all steps necessary to clarify the position before selecting the player to play;
- c. **Definition of Residence** - Guideline 14 defines Residence as *“the place or location in which the Player has their primary and permanent home”*. It further provides that if the geographical commitment/presence test in 8.1(c) and (d) is satisfied, the Player is deemed to have acquired a credible, close and established national link with a country or Union. Guideline 14 also goes on to state *“Based on the overriding rationale of the eligibility Regulations, in cases where a Player’s eligibility is uncertain the Regulations Committee will consider that Player’s eligibility by reference to the particular facts and circumstances of their case to establish if the Residency test, in the context of the overall rationale of the eligibility Regulations, has been satisfied.”*;

¹ *The sixty-month residency requirement comes into effect after the cut-off date of December 31, 2021.*

- d. **Burden of Proof** - Guideline 15 provides that the burden of proof is on the player and the Union to demonstrate eligibility. Where a player has moved from one country to another, “... then they must also be able to demonstrate that they are clearly no longer resident in the country in which they lived previously and that they no longer treat that country as their home. For the avoidance of any doubt, a Player cannot nominate a country as their home without demonstrating that they have satisfied the geographical commitment/presence test enshrined in Regulation 8.1(c) and Regulation 8.1(d).”;
- e. **Breaks in Residency** - Guideline 16 provides that, save in “exceptional circumstances”, in order to establish Residence, a minimum requirement of at least 10 months actual physical presence of the player in the country concerned throughout any qualifying year is required;
- f. **When residency must be achieved** - Guideline 17 provides that, save in exceptional circumstances, 8.1(c) Residence is expected to have been completed consecutively and be achieved immediately before the Player represents a Union. The Guideline further provides that “this factor will be particularly significant if a Player has moved to make a “new” country their Residence having been Resident in another country previously. In essence, in such circumstances, the Player, as well as demonstrating their commitment to a new country, must also be (and seen to be) relinquishing their ties with the country in which they lived previously.”;

Regulations on Sanctions for breach of the Eligibility Rules

- 13. Regulation 8.5 sets out the sanctions for a breach of Regulation 8, a strict liability offence:

“ 8.5.1 Unions

Regulation 8 is a strict liability offence and shall be construed in accordance with the principles of strict liability under English law. It is not, therefore, necessary that fault or intent on the part of a Union be shown in order for a breach of Regulation 8 to be established. Nor is lack of fault or intent on the part of a Union a defence to a breach of Regulation 8. For the avoidance of any doubt ... Unions are responsible and accountable for the conduct of their Players and all Persons under its jurisdiction in relation to compliance with the provisions of Regulation 8 and any breach of Regulation 8 by such Player(s) or Person(s) shall be deemed to be a breach of Regulation 8 by the Union concerned.... The minimum fixed fines for each breach of Regulation 8 are as follows:

- (a) *For a Union that is represented on the Council £100,000 sterling;*
- (b) *For all other World Rugby Member Unions £25,000 sterling.*

Based on the facts and circumstances of any breach of Regulation 8 the applicable minimum fixed fine as set out above may be increased. In addition, other penalties as set out in Regulation 19.4 may also be imposed on the Union concerned.

8.5.2 In exceptional circumstances, a Union in breach of Regulation 8 may make submissions ... as to why the Union should not be subject to the applicable minimum fixed fine. For the avoidance of any doubt, however, the relevant disciplinary body shall only be entitled to reduce the applicable minimum fixed fine set out in this Regulation where the Union is able to provide clear and indisputable evidence that truly exceptional circumstances exist and that the Union concerned had taken all necessary steps to comply with Regulation 8.

14. Regulation 19.4.1 (referred to in Regulation 8.5.1), gives Judicial Committees discretion to issue further penalties such as:

“...

- (a) a caution, warning as to future conduct, reprimand and/or a fine;*
- (b) a suspension for a specified number of Matches and/or a specified period; a requirement that a Match or Matches be played with the exclusion of the public; the cancellation of a Match result and, where appropriate, the replaying of a Match; the forfeiture of a Match or matches and/or tie(s); the deduction or cancellation of points; the immediate or future expulsion or suspension from a tournament(s) or competition(s); or any such similar sanctions;...*

...

- (d) a recommendation to the Council that a Union or Association be expelled or suspended from Membership of World Rugby. Subject to the provisions of Bye-Law 6(f), only the Council shall be competent to expel or suspend a Union or Association and any such expulsion or suspension shall only have effect if approved by a two-thirds majority of the votes cast at a properly convened and quorate Council meeting;*
- (e) an order that any Union, Association, Rugby Body, Club or Person pay compensation and/or restitution;*
- (f) the withdrawal of other benefits or membership of World Rugby, including, but not limited to, the right to apply to host International Tournaments; and*
- (g) any combination of the penalties set out in 19.4.1(a) to (f) above.”*

C. BACKGROUND TO THE APPEAL

15. The following facts before the JC relating to the Player were undisputed:
- a. the Player was selected and played for FER's National Senior Representative Team in two matches in the 2021 and 2022 Rugby Europe Championship, which were part of the RWCQ;
 - b. the Player, a South African by birth, could only be eligible under the residency-based criteria set out under Regulation 8.1(c) (i.e., that the Player had a genuine, close, credible and established national link in which the Player had completed thirty-six (36) consecutive months² of Residence immediately preceding the time of playing);
 - c. the thirty-six (36) consecutive months of Residence in question for the Player commenced on 18 December 2018 and ended on 18 December 2021 (the date of the first RWCQ match);
 - d. the Player was not physically present in Spain for the minimum 10 months required in the first qualifying year. (It was initially accepted by FER before the JC hearing that the Player was outside of Spain for 101 days. The Player admitted at the JC hearing that he was, in fact, not physically present in Spain for 127 days in the qualifying year).
16. FER had been sanctioned in 2018 and had also been issued a warning in 2020 on the requirements under Regulation 8. These two "*transgressions*" (as the JC termed them), were referred to extensively by the parties in the charges and pleadings and by the JC:
- a. in 2018, together with the member unions from Romania and Belgium, FER were found in breach of Regulation 8 for fielding ineligible players during the Rugby World Cup Qualifier tournament for the Rugby World Cup 2019. The Judicial Committee imposed a 5-point deduction for each occasion that an ineligible player played, and a suspended financial penalty imposed on each of the member unions. The appeal to the Judicial Committee's decision was dismissed ("RWCQ 19 Case"). As a result, FER failed to qualify for the Rugby World Cup 2019;

² The current iteration of Regulation 8.1(c) is sixty months

- b. in May 2020, FER was formally warned by the Regulations Committee when it sought a retrospective Eligibility Ruling on a South African born player which FER had selected and played (*J W Bell*). The Regulations Committee expressed its concerns “*in the strongest possible terms*” that (i) Mr Bell did not appear to be aware of the eligibility requirements, (ii) FER did not have an appropriate process in place to review the movement of players; (iii) FER had not sought confirmation of the Eligibility Committee in advance of selecting Mr Bell. Following the warning in the *Bell* case, FER communicated to WR the measures it had put in place, including the establishment of an FER Eligibility Commission.

Issues before the JC

17. The JC identified two factual issues for its determination in relation to the eligibility breach:
 - a. whether the Player had a genuine, close, credible and established national link with Spain in which the Player was seen as a Resident under Regulation 8.1(c) (“Residency”); and
 - b. whether there was a break in Residency, and whether that break constituted exceptional circumstances as permitted by the Regulation 8 Guidelines (“Exceptional Circumstances”).
18. If the JC determined that there was an eligibility breach, it would therefore also need to decide on a sanction against FER and the Player under Regulation 8.5.
19. At the hearing, the members of the JC, FER’s counsel and World Rugby counsel were able to hear and direct questions to the following persons who gave testimony:
 - a. the Player, who was a party to the proceedings;
 - b. Mr Eric Jara, Assistant Secretary General of FER and a full-time member of FER Eligibility Commission, a witness for FER.

The JC Decision

20. The JC determined that FER had not discharged its burden of proof on the two factual issues:

- a. on Residency, the JC found that the Player did not have a genuine, close, credible and established link to Spain so as to be seen as Resident over the thirty-six months under Regulation 8.1(c);
- b. notwithstanding that the decision on Residency was determinative of the Regulation 8 breach, the JC also determined that the breaks in Residency did not constitute Exceptional Circumstances.

21. Consequently, the JC determined that:

- a. FER was in breach of Regulation 8. As a strict liability offence, no fault or intent on the part of FER needed to be proved.
- b. the Player knew, or ought reasonably to have known, that he was not eligible to play and was also in breach of Regulation 8.

22. The JC imposed on FER:

- a. the minimum fixed fine under Regulation 8.5.1 of £25,000 sterling. The JC determined that based on the facts, there was no basis on which the applicable minimum fixed fine could, or should be reduced; and
- b. the deduction of the maximum 5 competition points (the maximum points available to be won by a team) for each of the two matches the Player was fielded (10 points in total), taking guidance from the RWCQ 2019 Case.

23. The JC determined that no sanctions should be imposed on the Player.

FER's Appeal

24. FER appealed against the JC's Decision finding a breach of Regulation 8 (eligibility) and on the sanction:

- a. on eligibility breach, FER's grounds of appeal are that the JC erred in its application of the law and on the finding of facts. In the alternative, FER relied on the same arguments for the JC Decision to be overturned in the interests of justice;

- b. on the sanctions, FER appealed on the basis that the JC had applied the wrong principles, the sanctions were manifestly excessive and/or the decision of the JC should be overturned in the interests of justice.

D. PRELIMINARY MATTERS ON APPEAL

Appeal Regulations

- 25. The parties agreed that WR Regulation 20 should apply to these proceedings. The appeal was not heard *de novo*. As such, it was a review of the JC's Decision.
- 26. In respect of the standard of review under Regulation 20.8.5, FER needed to demonstrate that the JC's decision:
 - a. was in error (either as to central factual findings or in law); or
 - b. in the interests of justice should be overturned; and/or
 - c. the sanction imposed was manifestly excessive or wrong in principle.
- 27. Regulation 20.8.6 further provides what is also known as the "appeal threshold" which states that the evidential assessment or decision involving an exercise of discretion or judgment of or by a Judicial Committee shall not be overturned unless:
 - a. relevant findings made by the Judicial Committee are manifestly wrong; and/or
 - b. the Judicial Committee applied wrong principles in the exercise of its/his discretion which has resulted in an erroneous decision being made.

Preliminary Applications

- 28. In advance of the hearing, two preliminary matters arose for the AC's consideration:
 - a. **interested party application** - the Romanian Rugby Federation ("FRR") applied to the AC on 17 May 2022 to be joined as an interested party to this appeal. The AC dismissed this application on the grounds that FRR's interest in the outcome of this

appeal (i.e., FRR's qualification for the 2023 RWC if this appeal is dismissed) does not, on its own, create standing for FRR to be joined as an interested party;

- b. **new or additional evidence** - in its Notice of Appeal, FER sought to include new evidence which was not before the JC. The new evidence can be broadly categorised as:
 - a. evidence in respect of the Player's complicity in the tampering of the photocopy of his passport ("Category 1"); and
 - b. evidence from team management and teammates that the Player was informed of eligibility requirements and acknowledged the same ("Category 2").

The AC received written submissions and heard the parties orally on the admissibility of the two categories of evidence.

New or Additional Evidence

29. For the AC to consider the two categories of new evidence in the appeal, Regulation 20.8.6(c) requires FER to show that the evidence was not, on reasonable enquiry, available at the time of the proceedings before the JC.
30. FER submitted that both categories of evidence were not available on reasonable enquiry for the following reasons:
 - a. the evidence Category 1 was outside of the control of FER and/or it was not reasonably available at the time of the JC hearing;
 - b. FER could not reasonably have known that the Team Manager and the Player interactions in Category 2 would be material to the JC's determination at the time of the hearing; and
 - c. it was only as a result of the publication of the JC Decision that FER came into possession of some of the evidence in private conversations between the Player and his teammates in the Category 2 evidence.

31. FER further submitted that even if there was no reasonable explanation for not adducing the evidence before the JC, the evidence should be admitted in the interests of justice because of the weight accorded by the JC to the evidence of the Player (which FER says was false).
32. WR's starting position was that FER had failed to meet the "reasonable enquiry" test in respect of the admission of the two categories of new evidence. WR submitted that the AC should take a cautious approach to admission of new evidence, highlighting that Respondents in a World Rugby judicial process are obliged to set out their case fully at the first instance hearing of the issue since finality and certainty are key to the successful application of the World Rugby judicial system. Where appellants seek to introduce new or additional evidence, there is a need to strike a fair balance between the need for finality and the need for the judicial process to achieve the right outcome.

Directions on Admissibility of Evidence

33. The Player is not a party to these proceedings. He had communicated to FER his refusal to provide any statement through FER on the new evidence due to the disciplinary and criminal proceedings FER had initiated against him. Given the new and serious allegations sought to be adduced by FER, the AC directed that the Player provide a response and that WR assist in facilitating independent legal representation for the Player. The Player supplied two statement(s) in response to the new evidence through his counsel and stood by the account he provided before the JC.
34. As FER's alternative ground of the interest of justice necessitated wading briefly into issues on the substantive appeal, in advance of the hearing, the AC directed that the parties address the AC on the weight to be attributed to the evidence in light of the appeal threshold, if adduced.

Category 1 - The Player's complicity in the tampering of the photocopy of his passport

35. At the JC hearing, FER originally provided evidence of a tampering scheme by three individuals at the Alcobendas Club, Mr Jano Cherr (the Player's teammate), Mr José Inchausti (Head Coach, Alcobendas) and Mr Fernando Diez (Assistant Coach, Alcobendas). The three individuals had affixed their signatures to a document dated 24 March 2022 under the letterhead of the Alcobendas Club stating that:

- a. they had arranged for the entry/exit stamps on the photocopy of the Player's passport to be altered; and
 - b. neither the Alcobendas Club, FER or the Player had the "slightest knowledge of the facts".
36. This evidence could not be tested by the JC as the three individuals declined to appear on the date of the JC hearing on 28 April 2022. In any event, the JC determined in paragraphs 24 and 37 of its decision that "*the passport tampering is irrelevant, except that it does point up the lack of any FER inquiry of the Player*" and that a "*... proper explanation, in evidence, from the responsible club officials might have been helpful, but not essential.*"
37. In its appeal, FER sought to introduce evidence of the Player's complicity in the tampering through a new statement of Mr Cherr. Contrary to the evidence produced by FER before the JC, Mr Cherr was now alleging that the Player had knowledge of the tampering and that he had signed the previous statement under duress from the club. FER submitted that Mr Cherr's change in position was pursuant to legal advice following the institution of FER disciplinary proceedings (31 March 2022) and Spanish criminal investigation proceedings (29 April 2022).
38. Based on the documents and timeline of events submitted by the parties:
 - a. on 25 March 2022, FER attached the statement on tampering by the three individuals in response to WR's enquiry of the discrepancy in passport stamps;
 - b. on 31 March 2022, FER initiated disciplinary proceedings against the three individuals;
 - c. on 28 April 2022, at the JC hearing, FER affirmed the evidence of the three individuals, including Mr Cherr, that the Player had no knowledge of the tampering of the photocopy of the passport. The JC delivered its oral decision finding that the Player was not involved in the tampering of the copy of his passport;
 - d. on 29 April 2022, the morning after the JC hearing, FER filed a criminal complaint with Spain's Public Prosecutors office, not just against the three individuals, but also the Player for forgery of documents (based on the proof of filing of criminal complaint produced by FER in the appeal bundle);

- e. on 25 May 2022, Mr Cherr provided a witness statement for this appeal alleging that the Player was complicit.
39. WR opposed the admission of the evidence on grounds that that FER had not provided adequate reasons why it was not able to provide the new evidence at the time of the JC hearing. Save for Mr Cherr's statement, FER provided no other information about the findings of its disciplinary investigation, or any further information on Mr José Inchausti and Mr Fernando Diez's evidence since they instituted their disciplinary proceedings on 31 March 2022.
40. FER's submission was that the new evidence came to light as a result of a "*thorough investigation carried out by the FER's lawyers and experts*" (Appeal Hearing Bundle, page 9[18]). When probed further at the AC hearing to explain the timing of the availability of the evidence, FER continued to maintain that Mr Cherr's new evidence was not available to it until he had obtained legal advice because of the various proceedings instituted by FER against him. FER submitted prior to this hearing that FER disciplinary proceedings are still under investigation before the National Sports Disciplinary Committee.
41. The AC finds the lack of information on these "thorough investigations" to be disconcerting. No reports or detail were provided on any findings of fact from FER's investigations since FER disciplinary proceedings were instituted on 31 March 2022. Noticeably absent was any explanation on the other two witnesses, Mr Diez and Mr Inchausti, as a result of these investigations. Finally, FER's explanations as to when Mr Cherr's change of position became available sits uncomfortably against FER's filing of a criminal complaint against the Player (for purported passport forgery) the morning after the JC hearing, in which FER had stood by Mr Cherr's original statement on the Player's lack of knowledge on the tampering.
42. As such, the AC was not satisfied that the Category 1 evidence was not available upon reasonable enquiry.
43. FER's argument in the alternative was to admit the evidence on the grounds of the interests of justice. Notwithstanding the JC's view that the passport tampering was irrelevant, FER argued that the Player's complicity would demonstrate that he was aware of the eligibility requirements. FER further suggested that it is analogous to cases where first instance decisions are obtained by fraud and would be grounds for a *de novo* hearing under English law.

44. The AC noted that FER had not made any application for the matter to be heard *de novo*. To do so would require FER to show that it is in the interests of justice to re-hear the entire case. Given the JC's determination that the tampering was irrelevant to the issues before it and FER's own submissions that this evidence mattered "very little" to the question of the breach, the AC noted that there would have been little ground for a *de novo* hearing. Instead, FER sought to admit the new evidence on the basis that it was not available upon reasonable enquiry (which the AC has dealt with above).
45. The AC had serious concerns about adducing Category 1 evidence not least because:
- a. FER initiated disciplinary proceedings against the Player on 31 May 2022 and according to FER's update immediately before this hearing, the Player is still "under investigation" by FER's National Sports Disciplinary Committee;
 - b. under the criminal investigation proceedings commenced by the Madrid Prosecutor's Office (and initiated by FER), the Player may be subject to criminal sanctions;
 - c. FER adduced what it conceded is only part of Mr Cherr's evidence on the tampering and that there were "limits" on what Mr Cherr was prepared to state, pursuant to legal advice which was now available to him;
 - d. there is a great deal of detail lacking in Mr Cherr's statement (e.g., about when, where or by whom he was asked to arrange the alterations, the explanation on the exhibits in terms of the identity of other persons in voice memos, the exhibit of the text messages was truncated). The AC notes that there was more detail in the Player's statement, but this is only significant insofar as it points to the probative value of Mr Cherr's evidence; and
 - e. there was also a noticeable absence of evidence, comment and/or explanation of the current position of the other two witnesses, Mr José Inchausti and Mr Fernando Diez (who averred to the Player's lack of knowledge of the tampering).
46. In the AC's view, the evidence sought to be adduced on the Player's complicity was not just evidently incomplete, but more pertinently, the Player is still subject to ongoing investigations pursuant to disciplinary and criminal proceedings in other forums in which more complete evidence is to be uncovered and/or is going to be examined, tested and presented. Whilst parallel proceedings are not *per se* a reason for the AC to decline to make a determination, based on the totality of the circumstances, including the probative value of the evidence, the risk of self-incrimination for the Player, that the Player is not a party to this appeal, the

nascency of the disciplinary and criminal investigations, and the fact that the JC had found the fact of tampering to be irrelevant, it would be not be in the interests of justice to admit the Category 1 evidence. If the Player had been complicit in the tampering (which he denies), a serious and criminal act, then there are procedures and forums where due processes will be accorded to the Player to make that determination.

47. In the circumstances, even if the AC were to accept that the evidence was not available upon reasonable enquiry, for the reasons stated, the AC refused the admission of the Category 1 in the interests of justice.

Category 2 – Player interactions with team management and teammates

48. FER sought to adduce five witness statements from FER's Team Manager, Second Team Manager and three team members to show that:
- a. the Player had been approached by the Team Manager on his interest to represent Spain and informed the Player to check his passport for the requisite number of days on 2 September 2021 through a text message;
 - b. the Player was aware of the details of the eligibility requirements based on his interactions with teammates and management in briefings and meetings which took place after the Player's selection in December 2021 to March 2022.
49. The evidence was not new but FER submitted that the Category 2 evidence was not available before the JC because:
- a. FER could not reasonably have known that the Team Manager briefing would be determinative before the JC and further, if it had been suggested by WR, FER would have been able to address these concerns;
 - b. it was only upon publication of the JC Decision in which the Player's account (which FER says is false) was made known that the Category 2 evidence came to be relevant and/or available to FER.
50. In the AC's view, FER had ample notice and opportunity throughout the proceedings at the first instance hearing to adduce the Category 2 evidence not least because:

Pre-hearing

- a. in FER's Response to the charges on all necessary steps, it submitted that it had "*protocols and systems in place to regulate players' eligibilities*" through its FER's Eligibility Commission and a Player's Eligibility Criterion Compliance Check Form;
- b. through WR Precis of Submissions dated 22 April 2022, WR made specific references to the need to show more steps were taken, in particular, steps related to clarification of the Player's eligibility:
 - a. paragraph 6 – WR pointed out as one of the five issues the JC would have to determine "...i.e., *did FER provide clear and indisputable evidence that truly exceptional circumstances exist and that it had taken all necessary steps to comply with Regulation 8? **World Rugby submits that FER has not met this test.***" [emphasis ours]
 - b. paragraph 27 - specific extract of Guideline 11 highlighted by WR "*...If a Union has any doubt over a Player's eligibility status it must take all steps necessary to clarify that position before selecting the Player to play....*"
 - c. paragraph 28 - on Guideline 21 on what Unions must do to demonstrate compliance with the eligibility requirements, WR submitted that "*FER should have been particularly aware of this requirement since in the Bell case, the Regulations Committee **specifically noted its dissatisfaction that [FER] had not sought confirmation of the Player's eligibility in advance of selecting him***" [emphasis ours]
 - d. para 39 – WR responded directly to FER's submissions regarding its eligibility system checks that,

*"...The difficulty is that the Player's file contained an incomplete record of his travel in that only the travel that was documented in his passport was considered. **It seems that the Player was not requested to confirm whether this was a full record of his time out of Spain. It is also unclear whether the Player was provided with any education or information as to the requirements of Regulation 8 prior to his selection. The committee in the Bell decision noted that the Union "had been sanctioned in the past for selection of non-eligible players [i.e., the***

RWCQ 2019 case] and in those circumstances, expected the Union to have stringent processes in place to ensure that the circumstances of each player has been carefully considered prior to being selected.” World Rugby suggests that the Committee considers what further information it requires from the FER to assess the eligibility review process that was undertaken. For example, the FER has stated that FER “systematically kept track” of the Player’s whereabouts and that it took “all necessary steps” to ensure compliance with Regulation 8.”

At the hearing

- c. Mr Eric Jara of FER’s Eligibility Committee, made no mention of the Team Manager’s briefing when he was specifically queried about the direct steps that FER took to ensure players acquiring residency understood the eligibility requirements; and
 - d. the Player’s testimony before the JC and FER’s representatives was that he was not informed at all by anyone in FER on the detail of the eligibility requirements. FER did not challenge this evidence nor did it seek an adjournment to address it.
51. In the AC’s view, it was untenable for FER to claim that it could not reasonably have known it was determinative to adduce interactions by the Team Manager with the Player in light of the onus of proof it bore, the terms of Regulation 8, the terms of the Guidelines, the warnings issued in the *Bell* case, and the very specific submissions set out above (which were in response to the JC’s specific questions before the hearing, further highlighting its significance to the proceedings). Regardless of assumptions made regarding and/or good faith placed the by FER in the Player (and his testimony), it was the duty of FER to apply all the necessary diligence and resources in preparing for the hearing before the JC to prove its case. This included demonstrating all evidence that it clarified the Player’s eligibility prior to selection.
52. Even if the AC accepted that the Team Manager’s briefing was not originally thought of as part of FER’s “protocols and systems”, it was incumbent upon FER and its representatives who were present at the JC hearing to challenge the Player’s testimony at the hearing that he was not informed at all by anyone in FER on the detail of the eligibility requirements, which FER did not. The AC found this to be inexplicable (three representatives of FER were present) and it rather suggests that a decision was made by FER at the JC hearing to accept the veracity of the Player’s evidence on this matter. No other reasonable explanation is

available in circumstances where the Player was not challenged in cross examination and no evidence was called by FER (or adjournment sought) to rebut the Player's evidence.

53. For these reasons, the AC was not satisfied that the Category 2 evidence was not available upon reasonable enquiry at the time of the JC proceedings.
54. On the alternative ground of the interests of justice, FER's argument was that the Player had lied about being briefed on the eligibility requirements. FER submitted that the Category 1 and Category 2 evidence were linked – both demonstrated the Player's knowledge of the eligibility rules which FER says was a "foundational slab" of the JC's findings.
55. In assessing whether to admit the additional evidence in the interests of justice, the AC took into account the materiality of the evidence to the threshold of the appeal. It must hold true that it would only be in the interests of justice to admit the additional evidence if such evidence would advance FER's case on the appeal. In the AC's view, to not exercise any kind of restraint on the evidence sought to be adduced on these grounds could result in the introduction of evidence which had little or no bearing to the appeal grounds. The effect of this would not just cause the duplication of resources, time, effort and cost to the parties but also has the potential to undermine the integrity of the first instance JC hearing process by encouraging appellants to engage in a different strategy in defending charges where the approach taken at first instance was unsuccessful.
56. Whilst the AC agrees that in certain circumstances, rather than engage in protracted debates on admissibility (where the evidence was not genuinely available or where there was a fair question whether it was available on reasonable enquiry) appeal committees may opt to admit the evidence and attribute the appropriate weight accordingly. However, for the reasons set out above on the reasonable enquiry test and the due diligence which should have been applied to the first instance proceedings, this was not one of those circumstances.
57. Weighing the factors set out above, the AC was alive to the need to strike a fair balance between the need for finality and the need for the judicial process to reach the right outcome.
58. The AC noted that by its own oral and written submissions, FER's position on the Player's knowledge on eligibility was (a) irrelevant to the question of whether the exceptional circumstances exist (i.e., breach); and (b) was relevant to sanctions only insofar as FER says it should have been one of several mitigating factors showing it took all the necessary steps by briefing the Player. The AC noted as well that evidence on the briefings and meetings sought to be adduced took place after the Player had already been selected and certified to be eligible by FER Eligibility Commission.

59. Having considered carefully the parties' oral and written submissions on whether the additional evidence would advance FER's appeal case having regard to the appeal threshold, the JC's decision (in particular, the weight placed by the JC on the knowledge of the Player on the residency requirements, the emphasis by the JC on the education and briefing of the Player **prior to selection** by FER), the principle of finality in these proceedings, the AC determined that the Category 2 evidence should not be admitted on the alternative ground of the interests of justice.

In summary

60. The AC considered the written and oral submissions carefully. In light of all the considerations set out above, the AC determined that the new or additional evidence should not be admitted.

E. APPEAL DETERMINATION

61. We now turn to address the substantive issues on appeal.

Eligibility Breach

Residency

62. FER's first argument was that the JC made an error in law by relying entirely on the Player's subjective testimony instead of coming to an objective view when arriving at its decision on the Residency. Specifically, FER pointed to the JC Decision (paragraph 43) which sets out the Player's evidence in response to the JCs' cross-examination. In the extract of the notes of evidence, the Player explained that he had only started to regard Spain as his home in late 2019. FER highlighted the JC's description of the Player's evidence as "clinching" to demonstrate the undue weight placed on his testimony.
63. WR submitted that eligibility is both an objective and subjective test under Regulation 8. Whilst Residence starts from the geographical / physical presence test (an objective one), and if there is any ambiguity, an assessment involving some subjective inquiries may be involved and that is where the Regulations Committee process is available under Guideline 17. In illustrating why Regulation 8 could not be applied purely objectively, WR cited holding

a passport as a pure objective test which was rejected through the WR legislative process due to the non-uniform way in which passports are issued by different countries.

64. In our judgement, FER's argument is misconceived. It is clear from the JC's Decision that it did not rely solely on the Player's subjective evidence to determine the Player's Residency. The JC specifically referred to other objective factors in paragraph 41 of the JC Decision on Residency:

"41. The JC has already mentioned at least 3 relevant factors (i) the Player's absences from Spain (totalling 127 days, including 119 in South Africa)...; (ii) the "Saffa" social media references (paragraph 26); and (iii) the 'paucity' of evidence in support of the submissions made on behalf of the FER, as to severance of ties with South Africa and growth of ties with Spain, as compared with the Bell case (paragraph 18 and its reference to the Player's evidence at pp 40-41 NoE). The WR submissions at paragraph 18 (p 90 of bundle) are pertinent and were explored in the cross-examination of the Player. The JC does not feel the need to detail those matters in view of the material in paragraph 43 ... Although the fact he was living in a "club house" with other players, and without any permanency of a physical place of residence, is a compelling factor against "Residency" as defined." ...

...

43. The comment made by the JC in paragraph 41 above, about it not detailing certain evidence, was made because "clinching" this aspect of the matter was the Player's complete openness and honesty in answering a question from Ms Woodman...

...

45. Applying these Residency tests to the evidence, would indicate that, at best, when the Player was first selected and played for Spain, he had completed only some twenty-four consecutive months or so of Residency in Spain. On the balance of probabilities, the JR (sic) determined that it could reach no other conclusion. "

65. In the AC's reading of the extract of the JC's Decision above, the Player's account simply fortifies the third objective factor in paragraph 41(iii) (i.e., the paucity of evidence on the severance of ties with South Africa). On this specific sub-paragraph, the JC had made an objective assessment of whether the Player retained his permanent home in South Africa and lived in Spain on a season-to-season temporary basis by considering amongst other things, the email from the Player's club on his accommodation arrangements in Spain and the Player's evidence he gave on his living arrangements in cross-examination. The Player's subjective evidence at paragraph 43 simply enhanced the objective evidence.

66. Further, the JC's approach and consideration of all the Residency tests referred to in paragraph 41 of its decision was reinforced by the JC's concluding paragraph 45. The AC found this to be a logical reading of the JC's reasons for coming to its factual determination. The Player's subjective account was only one of a host of factors considered.
67. Consequently, the AC finds that the JC did not make an error in law and this ground of appeal fails.
68. FER's second argument was that the JC made an error on the findings of fact by giving undue weight to the Player's subjective view when he regarded Spain as his permanent home and ignored the other objective evidence (e.g., the Player's Spanish National ID, that the Player worked and taught English in Spain and met his partner there).
69. The documents in the hearing bundle before the JC ran to over a thousand pages and the hearing before the JC was held over four hours. During the JC hearing, the parties and the JC had the opportunity to hear from the witnesses and ask questions. The JC's Decision is necessarily a summary. It does not need to refer to all of the evidence before it that it considered in the JC Decision, but it should explain the reasons for its findings. As set out above, in addition to the Player's subjective view in paragraph 43 of the JC Decision, the JC pointed to its other considerations of the objective evidence, citing other specific paragraphs of findings of fact in its own decision, the parties' submissions and its assessment of the evidence of the witnesses which influenced its decision on the Player's Residency. In this case, the JC determined that other objective factors set out in paragraph 41 of its Decision outweighed those raised by FER. (e.g., Player's Spanish National ID, that he taught English in Spain and met his partner there) in determining whether the Player could objectively be seen to regard Spain as his permanent home. This is an exercise of the JC's discretion in which the AC does not find any manifest error such as to overturn the JC's finding on Residency.
70. For the reasons set out above, this ground of appeal fails.

Exceptional Circumstances

71. As Residency is determinative of the eligibility breach, there is no need to consider the arguments on the Exceptional Circumstance. However, the AC will address this ground of appeal in any event.

72. FER's argument on this was that the JC "*took into account legally irrelevant matters and points that were factually wrong in its findings*" in paragraph 50 of its decision which listed nine factors that were "pertinent to the JC's consideration" on the Exceptional Circumstances.
73. During oral arguments, FER pointed in particular to the three months that the Player had spent in South Africa because of his father's illness as precisely the type of circumstances envisioned under the Guidelines as exceptional circumstances. FER argued that these three months should have been carved out of the four months that the JC determined were not exceptional circumstances in paragraphs 50 (f) to (h) of its Decision.
74. WR submitted that the splitting of time was never argued before the JC, and in any event, WR would object to such an argument. WR maintained that the exceptional circumstances provision is not meant to be a "whitewash procedure by which actions that would otherwise breach the Regulation can be made good."
75. The AC looked to the Guidelines which expressly state when considering the breaks in residency for players moving to a "new" country, that each case should be assessed on its overall merits (i.e., commitment to new country, relinquishing of ties to country in which they lived previously). As such, the AC can find no fault with the JC's approach to evidence provided on the Player's South Africa trip. When evaluating the JC's decision, the AC noted that the JC gave careful consideration not just to when the Player found out about his father's illness but also the circumstances surrounding the Player's return to South Africa (i.e., his attendance at the wedding, when the Player's season had ended, when the Player had originally intended to return to Spain, etc.) in making an evidential determination. The JC was entitled to find, based on a forensic examination of the evidence, that the entire period spent by the Player in South Africa did not constitute exceptional circumstances.
76. On the other factors in paragraph 50 of the JC Decision, FER says the JC either misread or took a flawed approach to the Player's evidence on the time he had spent out of Spain. Setting aside those arguments related to the evidence which was not put before the JC, FER's criticisms of the JC's approach to evidence relates to his father's illness and the time taken to get a visa.
77. The AC is mindful of the reasons for the restrictions on the approach of an appeal panel to overturning findings of fact which were set out by the Appeal Committee in *Matu'u* (RWC 2019, 2 October 2019):

“... This is because appellate panels have to be very cautious in overturning findings of fact, ..., made by committees sitting at first instance. This is because such committees have seen the players and taken into account the whole of the sea of the evidence as opposed to indulging in impermissible hopping on to islands or parts only of the evidence in an appeal....”

78. The JC had before it, documentary evidence, the parties’ submissions and the testimonies of the Player and FER representatives (who’s evidence the parties and the JC were able to test through cross examination). The AC notes further that the JC spent a lot of time during the JC hearing clarifying when the Player’s residency period had begun, when he made his extended trip to South Africa, or whether his time in Spain was originally based on a season-by-season approach. It was by careful examination of the Player’s written statements and oral evidence that the JC found inconsistencies which it set out in its decision. On the delay in the visa, the AC was entitled to make a determination on the evidence (or in this case, the lack of) put before it. It was for FER to show that the Exceptional Circumstances existed. The AC must accord the JC what is now long known as the “wide margin of appreciation” when considering the JC’s exercise of its discretion. FER has not shown that the JC was manifestly wrong in its exercise of its discretion in this respect.
79. In respect of the evidence that was sought to be adduced (and not allowed), it was FER’s case on appeal that the Player’s knowledge of the eligibility criteria was irrelevant to whether the exceptional circumstances exist. It must, therefore, follow that even if the Category 1 and Category 2 evidence were adduced and accepted, it would not have advanced FER’s case on this ground of appeal in any event.
80. For the reasons set out above, the AC finds that FER has not met the appeal threshold (i.e., shown that the JC made a manifest error in a central finding of fact) in the exercise of the JC’s discretion on the Exceptional Circumstances such as to overturn the JC’s finding on this matter. Accordingly, this ground of appeal fails.

Interests of Justice

81. FER relied on the same arguments above in its alternative ground of appeal on the interests of justice. And the AC has addressed the arguments above.
82. WR submitted that it is incongruous for FER to simultaneously claim that the Player had committed a fraud on the Union by covering up trips that breached Regulation 8; but that the

Player was also eligible under Regulation 8 because the trips fell under exceptional circumstances.

83. The AC agrees that it runs counter to FER's appeal on the grounds of the interests of justice for FER to maintain the position on the one hand that the Player dishonestly excluded the trips to qualify for Residency and on the other hand make a good faith claim that the same travel should constitute exceptional circumstances on the same Residency.
84. For the reason set out above, this ground of appeal fails.

Conclusions on eligibility breach

85. For the reasons set out above, FER has not met the appeal threshold on the eligibility breach.

Sanctions

86. In essence, FER's case on sanctions was that points deduction in addition to the fixed financial sanction was manifestly excessive.

Regulation 8.5.2 - All the Necessary Steps

87. FER accepted that if the decision as to breach is upheld by the AC, then the minimum fixed financial sanction shall apply. However, it was also FER's case that it had met the two-fold test set out in Regulation 8.5.2 to qualify for a reduction of the minimum fixed fine.
88. For the purposes of addressing the submissions made by FER on the JC's error in approach to sanctioning, the AC will address FER's submissions on the 2-fold test set out in Regulation 8.5.2:
 - a. first, "*clear and indisputable evidence that truly exceptional circumstances exist*" - FER said it was acting prospectively (by writing to WR) and was acting cautiously but did not have the opportunity to do that properly because of the passport tampering. As such, they had demonstrated that truly exceptional circumstances exist; and
 - b. second, "*the Union took all necessary steps to comply with Regulation 8*" - FER submits taking all necessary steps to comply with Regulation 8 by (i) putting an extensive process in place to ascertain eligibility, (ii) FER collected documentary

evidence from the Player's club, (iii) the Player was informed of the requirements (Category 2 evidence which was sought to be adduced), (iv) putting in place an education program.

89. Whilst WR agreed that the tampering of a passport could constitute truly exceptional circumstances, the JC had found that FER had not met the second part of the test on all the necessary steps.
90. It is an indication of the volume of evidence that the JC had to traverse that the JC makes specific reference to twenty-two paragraphs of its own decision³. The AC notes that the JC determined FER had not met the "all the necessary steps" test because, despite the serious warnings issued in the *Bell* case:
- a. FER had failed to make an application to the Regulations Committee for a ruling on eligibility *prior to selection* (The JC was clear that FER's purported "clearance" by writing to WR to clarify the eligibility of the Player did not suffice and was not the same as seeking an Eligibility Ruling as required by *Bell*);
 - b. the FER Eligibility Commission "(i) placed a determined and absolute reliance on the copy of passport stamps, (ii) was ignorant of the effects of the Schengen Agreement, (iii) demonstrated a wilful blindness to any inquiry of any other sources, including the Player";
 - c. the FER Eligibility Commission failed to interview the Player "*under scrutiny*", covering "*such vital matters*" as to whether Residency had been met, the extent and reasons for the breaks (including an inquiry of trips which would not have shown up on his passport such as to the Schengen area) and his actual physical presence leading up to the email to WR on 1 December 2021 and/or his selection for Spain;
 - d. FER failed to check the accuracy of the initial 101-day break in residency which was set out in WR Charges, and later discovered upon enquiry with the Player to be 127 days. FER's lack of checking was of "significant concern to the JC"; and
 - e. the failure of FER to educate and vet the players on eligibility prior to selection, as evidenced on cross examination of FER's Eligibility Commission member, Mr Jara. (Mr Jara confirmed there was a workshop for clubs to explain the eligibility

³ The JC referred to paragraphs 16-33,38-39,50 and 51.

requirements for F status players, FER says it has other education programs in its appeal but not produced any evidence of the same).

91. Additionally, it is instructive to the AC that the JC set out the entire warning in the *Bell Case* in its decision. The AC does not need to do the same here but highlights the next paragraph in which the JC states:

“To the JC, here are the clearest possible warnings to the FER on player eligibility matters:

(a) make sure the necessary rigorous processes were in place and applied;

(b) ensure the full awareness of players as to eligibility matters under R 8; and

(c) in matters of uncertainty, or where clarification or a Ruling is needed, or an “exceptional circumstances” exemption is sought, the Regulations Committee should be applied to in advance, and not (as here, and as with Bell) claimed retrospectively. Strict compliance by the FER was an imperative, surely.”

These were the benchmarks against which the JC determined in its findings that FER had not taken all the necessary steps and the JC concluded so at paragraph 51 of its decision. The AC found the JC’s approach to be sound and without error not least because of:

- a. the gravity of the warning issued to FER (the Regulations Committee had expressed its concerns in the “strongest possible terms”);
 - b. the specific processes which the Regulations Committee had recommended WR request FER put in place; and
 - c. the strikingly similar circumstances that *Bell* bore to the present case (i.e., a South African born player whom FER had selected and found to be eligible by meeting the Exceptional Circumstances rule).
92. Finally, FER submitted that there was an overreliance of the JC on the FER Eligibility Commission’s failure to interview the Player because if the Player was complicit in the tampering, an interview would not have made a difference (i.e., Player would have lied). As such, FER says that it was completely justified in its assumption that the passport copies were authentic.

93. In the AC's view, this argument cannot be sustained under Guideline 21 "*...before selecting a Player, Unions must ensure that they obtain valid/authentic documentation and such other evidence that may be necessary to prove, definitively, a Player's eligibility to play for that Union*". That the buck stops with Unions to ensure eligibility of the players it selects is further reinforced by the strict liability nature of Regulation 8.
94. It bears repeating that at paragraph 24 of its decision the JC had determined that the tampering of the passport was irrelevant except that it points up the "*wilful blindness to any further inquiry, let alone any approach to the Player for evidence*". Therefore, had FER exercised due diligence in checking "all sources" and interviewed the Player under the scrutiny the JC determined that it should have, FER might have been in a better position to argue before the JC that it had "taken all the necessary steps" under Regulation 8.5.2.
95. As a point of note, it was clear from the JC's decision that the timing of such an interview to check the Player's understanding on the eligibility before 1 December 2021 (when FER wrote to WR) and "prior to selection" is repeatedly emphasized by the JC throughout its decision. It follows, that even if admitted, the Category 2 evidence would not have advanced FER's case on the appeal threshold on this issue.

Wrong in Principle and Manifestly Excessive

96. FER argues that the JC was fundamentally wrong in its approach in that it did not apply a proportionate sanction by relevance to culpability but instead applied a 5-point deduction as a "standard" approach. As such the 10 point-deduction was manifestly excessive.
97. On its approach, the JC made specific reference paragraph 58 of the RWCQ 19 Case at the time of its oral decision in explaining its sanctioning approach:

"... when sanctioning for breaches of Regulation 8, it is appropriate to have regard to the factual circumstances of the individual breach/es, which includes any aggravating and mitigating factors. However, in our judgement, the appropriate starting point in the context of the league or tournament, is the imposition of a points deduction. It underlies the utmost importance of complying with Regulation 8..."

Factual Circumstances

98. In reviewing the JC's decision, the AC notes that the JC did apply its mind to the individual facts of FER's case and considered if there should be a suspended point deduction. The JC reflected this in the following:
- a. in its oral decision (set out at paragraph 55 of its Decision), the JC indicated that it had considered specifically FER's arguments for a suspended points deduction, a "*Damocles sword*", but did not regard it as appropriate given the aggravating factor of the current breach having been the third transgression;
 - b. in its written decision, the JC cited extracts of the RWCQ 2019 Case, on rare cases where particular facts, may justify a suspension of any points deduction (in whole or in part) or no deduction at all. The JC concluded that "*Regrettably, this was not such a case. But it is a case that brings with it this cautionary note to the FER ... A fourth R 8 transgression by the FER might well result, rightly, in dire consequences.*"

Aggravating Factors

99. FER further submits that the JC was wrong to place great weight on the fact that this was FER's "third transgression" as an aggravating factor when imposing the sanction because the RWC 2019 Case was about player capture, and in the *Bell* case, there was no breach of the eligibility requirements.
100. WR pointed out that the three incidents amount to multiple breaches that the JC rightly took into account. Firstly, FER was sanctioned for a breach of Regulation 8 in the RWCQ 2019 Case. Although the facts in that case were different, it was nevertheless a breach of Regulation 8 and ought to feature in any consideration of previous compliance. Secondly, FER received a formal warning from the Regulations Committee in the *Bell* case for selecting a Player without seeking a ruling in advance where his eligibility was in question. Thirdly, the JC found that FER is again in breach of Regulation 8 in this this matter.
101. In the AC's view, in referring to FER's "*third 'difficulty' in such a short time*" it was clear from the JC's decision that it was not referring specifically (or narrowly) to breaches of subparagraph (c) of Regulation 8.1 but to FER's failure to comply with Regulation 8. As highlighted above, the JC referred several times throughout the JC Decision that despite the very specific and strong warnings in *Bell*, FER failed to (1) ensure the eligibility of the player through rigorous processes for monitoring breaks in residency, (2) ensure the full awareness

of players as to eligibility, (3) apply to the Regulations Committee for an eligibility ruling prior to selection. The JC concluded that a “*Fair and clear warning has been given in Bell which had followed on from the RWCQ 2019 case*”.

102. The AC finds that given the sanctions and warnings it was reasonable and logical for the JC to regard the multiple eligibility issues faced by FER as an aggravating factor.
103. In addition, FER also argues that the JC considered the following which were either irrelevant or wrong factors:
 - a. the JC appears to have attributed a degree of bad faith on FER in respect of the Player “capture” before the rule change (from 36 months to 60 months Residence). The AC does not find any such adverse inference. The JC set out the significance of the rule change under “Some History and Factual Background” in its decision, which the JC was entitled to do, in setting out the context of the background facts. This was not a wrong or irrelevant factor taken into account by the JC;
 - b. that FER had failed to obtain clearance, which FER says it would have done but for the clearance given by WR pursuant to its query (using the false documents). The AC repeats the JC’s clear view on the need to seek an Eligibility Ruling from the WR Regulations Committee in these circumstances, as warned in *Bell*. As such, this was not a wrong or irrelevant factor;
 - c. that FER failed to explain the requirements of Regulation 8 to the Player, which FER says it had. The AC repeats the JC’s emphasis on these briefings to be made prior to selection. As such, this was not a wrong or irrelevant factor taken into account by the JC.

104. Accordingly, the AC finds that the JC had not applied the wrong principle, nor had it considered wrong or irrelevant factors in the exercise of its discretion in respect of the aggravating factors.

Mitigating Factors

105. FER also argued the JC had applied the wrong principles by failing to take account of the relevant mitigating factors. On this, FER submitted a list of factors in its submissions it says were mitigating factors which the JC failed to take into account.

106. The AC has made reference to the JC's findings on these matters in respect of Regulation 8.5.2 above. Suffice to say these factors were set out in the extensive submissions by the parties in advance of the JC hearing, examined by parties and the JC during the JC hearing and several of the mitigating factors addressed specifically by the JC in its decision (although the JC did not regard them as such). If they were not specifically mentioned, it does not mean they were not considered by the JC in its summary decision. The AC finds no error in the JC's approach in this respect
107. For completeness, the Player's alleged misrepresentations to FER were cited as some of the mitigating factors in FER's submissions and/or some factors which the JC failed to take into account. This referred to the Category 1 and 2 evidence which was not before the JC. For the reasons set out in the Regulation 8.5.2 findings, the AC notes that even if Category 1 and 2 of the evidence was admitted, it would have failed to advance FER's case having regard to the appeal threshold.

Previous cases

108. Finally, FER submitted that the sanctions are extremely harsh and disproportionate when applying it as a "standard" deduction based on the RWCQ 19 Case. FER listed five eligibility decisions by judicial committees in domestic leagues and two WR eligibility decisions from 2000, which FER says reflects an approach by reference to culpability and extraordinary circumstances. To this end, FER argued that *London Welsh RFC 2013*, a case involving fraud perpetrated by a club employee (in which a reduced point deduction was warranted) was the only relevant decision.
109. WR submitted that the *London Welsh RFC 2013* concerns a breach of a set of administrative rules that deal with the transfer of players in a domestic league which is not comparable with a breach of the international regulation that deals with the right to represent one's country, which could result in damage to the integrity and the fabric of the international game.
110. The AC agrees that *London Welsh RFC* offers little guidance to the present circumstances. By relying on the RWCQ 19 Case and referencing specifically the relevant paragraphs of the Judicial Committee and the Appeal Committee decisions, the JC's approach to sanctioning within a tournament and league environment in the international game was appropriate. That the RWCQ 19 Case relates to not just any international tournament but is similar to the current circumstances of a Rugby World Cup qualification, makes the JC's application of the guidance on 5-point deduction in this case entirely reasonable.

Interests of justice

111. FER relied on the same arguments which the AC has addressed on the alternate ground of appeal on the interests of justice. The AC has addressed these arguments above and finds the JC's approach to be proportionate and finds no reasons for the JC's decision to be overturned in the interest of justice.

Conclusions on Sanctions

112. For the reasons set out above, the AC finds that the JC applied a reasonable and appropriate approach in coming to a proportionate sanction. FER has therefore not shown the JC to be wrong in principle, in taking this approach; or that sanctions imposed were manifestly excessive and/or; or that the sanctions should be overturned in the interests of justice. Consequently, these grounds of appeal fail.

F. CONCLUSION

106. The AC carefully considered the written and oral arguments and repeats its appreciation to the parties for their submissions.
107. For all the reasons set out, we dismiss the appeal of FER.

A handwritten signature in black ink, appearing to be 'Wang Shao-Ing', with a stylized flourish on the left and a horizontal line extending to the right.

Wang Shao-Ing (Chair)

Adam Casselden SC

John Langford

27 June 2022

Signed on behalf of the Appeal Committee