

MISCONDUCT: IN THE MATTER OF ALLEGED BREACHES OF
WORLD RUGBY REGULATION 18 AND WORLD RUGBY CODE OF
CONDUCT

CHARGES BROUGHT BY: World Rugby

AGAINST: Johan (Rassie) Erasmus
South Africa Rugby Union (“SARU”)

HEARING: 27¹, 30, 31 October & 15² November 2021

JUDICIAL COMMITTEE: Christopher Quinlan QC, Chair, Independent Judicial Panel Chairman
Nigel Hampton QC, Chair NZRU Judicial Committee, Chair SANZAAR Judicial Committee
Judge Mike Mika, New Zealand District Court Judge and former Samoa International Rugby Player

COUNSEL FOR THE PARTIES: Kendrah Potts, Counsel for World Rugby
Frikkie Erasmus, Counsel for Johan (Rassie) Erasmus
Thomas Plewman QC, Counsel for South Africa Rugby Union

PARTIES:

World Rugby: Alistair Maclean, General Counsel
Yvonne Nolan, Deputy General Counsel
Brian Hammond, Legal Counsel

Johan (Rassie) Erasmus

South Africa Rugby Union: Jurie Roux (CEO)
Vanessa Doble, Head of Legal and Compliance
David Becker, Attorney
Matt Kemp, Attorney

SECRETARIAT: Joyce Hayes

¹ 28 October New Zealand (“NZ”) time.

² 16 November NZ time.

DECISION OF THE JUDICIAL COMMITTEE

A. INTRODUCTION

1. Following the hearing on liability a written Decision was issued to the parties and their lawyers on 10 November 2021. Its publication embargoed until the sanction stage had been completed. That written Decision on Liability comprised paragraphs 2-117 below (“Decision on Liability”).
2. The British & Irish Lions (“BIL”) 2021 tour to South Africa (“the 2021 BIL Series”) culminated in three Test matches played on 24 July, 31 July and 7 August 2021. The BIL Head Coach was Warren Gatland, whose assistant coaches included Robin McBryde.
3. South Africa Rugby Union (“SARU”) Head Coach was Jacques Nienaber. Johan (Rassie) Erasmus (“RE”) was the SARU Director of Rugby.
4. Late in July 2021 a video featuring Rassie Erasmus (“the Erasmus video”) appeared online. The Erasmus video was centred around Rassie Erasmus’s monologue critique of the officiating in the first Test. It is that video which gives rise, directly or indirectly, to the charges we have to determine.
5. This first stage of the proceedings was conducted by video conference call on 27, 30 and 31 October 2021. At the conclusion thereof we reserved our decision on the charges.
6. This document constitutes our final reasoned Decision as to whether all or any of the charges have been proved. It is unanimous and each member contributed to it. It is necessarily a summary. Nothing should be read into the absence of specific reference to any aspect of the material or submissions placed before us: we considered and gave appropriate weight to all the material and submissions, written and oral, placed before and made to us.

B. CHARGES

7. The Respondents were charged in summary form on or about 2 August 2021. The Misconduct charges alleged various breaches of World Rugby Regulation 18 (“Regulation 18”) and World Rugby’s Code of Conduct (“Code of Conduct”). More particularised and formulated charges were set out in a document from World Rugby (“WR”) dated 10 August 2021 (“the Charge Document”). Therein RE was charged as follows:

“Charge RE1: In contravention of Regulation 18.4(b) and paragraph 1.10 of the World Rugby Code of Conduct, Mr Erasmus (i) threatened a Match Official that unless a requested meeting took place, he would publish footage containing clips criticising the Match Official’s performance and then making good on that threat; and (ii) published or permitted to be published the Erasmus Video containing numerous comments that were either abusive, insulting and/or offensive to Match Officials.

Charge RE2: In contravention of Regulation 18.4(i), Mr Erasmus published or permitted to be published the Erasmus Video containing numerous comments that either attacked, disparaged and/or denigrated the Game and the Match Officials appointed by World Rugby to officiate the B&I Lions Series 2021.

Charge RE3: In contravention of paragraph 1.4 of the World Rugby Code of Conduct, Mr Erasmus did not accept or observe the authority and decisions of Match Officials, he published or caused to be published the Erasmus Video containing criticism of 38 different refereeing decisions in the first South Africa v B&I Lions Test on 24 July 2021.

Charge RE4: In contravention of paragraph 1.5 of the World Rugby Code of Conduct, Mr Erasmus published or caused to be published criticism of the manner in which a Match Official handled a match when he published or caused to be published the Erasmus Video containing criticism of 38 different refereeing decisions in the first South Africa v B&I Lions Test on 24 July 2021.

Charge RE5: In contravention of paragraph 1.7 of the World Rugby Code of Conduct, Mr Erasmus engaged in conduct or activity that may impair public confidence in the integrity and good character of Match Official(s).

Charge RE6: In contravention of paragraph 1.9 of the World Rugby Code of Conduct, Mr Erasmus brought the Game into disrepute when he published or caused to be published the Erasmus Video.”

8. SARU was charged as follows:

Charge SA Rugby 1: In contravention of Regulation 18.5 and paragraph 2 of the World Rugby Code of Conduct, SA Rugby did not: (i) ensure that Mr Erasmus complied with the World Rugby Code of Conduct and/or (ii) permitted Mr Erasmus to commit acts of Misconduct; (iii) and/or did not publicly correct any comments or publications by or on behalf of Mr Erasmus that amounted to Misconduct.

Charge SA Rugby 2: In contravention of Regulation 18.5 and paragraph 2 of the World Rugby Code of Conduct, and paragraph 1.13 of the Code of Conduct, SA Rugby: (i) permitted; (ii) and/or did not prevent Mr Kolisi and Mr Stick to make comments at the press conference on 30 July 2021 that were not disciplined or sporting and adversely affected the Game of Rugby; (iii) and/or did not publicly correct any such comments so as adversely affected the Game of Rugby.”

9. The way in which the charges were put against each Respondent was explained in the body of the Charge Document.

10. The charges were denied.

C. RESPONSES

11. The Respondents filed detailed responses. What follows is a summary of their respective defences. It does not attempt to record the nuances thereof but to identify the substance,

so the public understands the core issues and the matters we had to decide. We, of course, considered the totality of the defences advanced.

(1) **Rassie Erasmus**

12. Rassie Erasmus (“RE”) agreed that he commissioned the Erasmus video. It was produced because he was dissatisfied with the response he received from the match official, Nic Berry (the first Test Match Referee) to his requests (to put it neutrally) to meet to discuss certain decisions in the first Test. He also wished to discuss what he claimed was the “*disrespect*” shown by the match officials to the Springbok captain.
13. He accepted emailing the Erasmus video to the following five recipients at 07.05 on 28 July³: Nic Berry, Joe Schmidt (Rugby and High Performance Director, World Rugby), Joël Jutge (Head of Match Officials, World Rugby), Jacques Nienaber (SA Head Coach) and Jurie Roux (CEO SARU). In his evidence, he said he shared it with another forty members of the Springbok playing and coaching staff by way of a WhatsApp group message⁴. He also denied that the content thereof breached Regulation 18 or the Code of Conduct. He denied threatening the Nic Berry.
14. The Erasmus video was produced by Russel Belter, from whom we heard. The background thereto was that RE has utilised such videos throughout his rugby career. As a coach he uses them:
 - a. To advise players on how specific Laws are interpreted by the referee;
 - b. After a match to obtain what he described as “clarity” from the referee about decisions RE considered (his word) “dubious”; and
 - c. To explain to his players transgressions made during the match when they were penalised.
15. Those matters feed into his team selection. His case was that the video in question was prepared for such purposes. It was sent by him to only five people. He said he did not

³ Row 66, Appendix 2.

⁴ Row 67, *Ibid.*

make it public nor play any role whatsoever in it becoming public. That was never his intention nor the purpose, or a purpose, for which it was prepared.

16. In addition to his own account, he relied, *inter alia*, on the evidence of Russel Belter who said it took several hours to produce the Erasmus video on 27 July and he finished it that evening. Once he had done so, he uploaded it to his Vimeo platform and forwarded the link to RE who said the Erasmus video was intended for viewing by the match official of the first test, certain officials at World Rugby, the CEO of SARU, Rassie Erasmus's coaching staff and the Springbok playing group. He said it was impossible to access the Erasmus Video without the dedicated link. It was not password protected and there was no privacy setting.
17. On the 28 July, RE checked the analytics showing the number of views the Erasmus video had received. He does so as a matter of course as he wishes to check how many of the players have viewed such videos. At 13.41 there had been forty-one views in South Africa, eight in Australia, three in UK and two in France⁵. When was he told this by Russel Belter he replied in a WhatsApp message: "*Hoe de fok in Australia and UK?*" (Translated: How the fuck in Australia and the UK?)⁶. He replied: "*Geen idee, die refs deel miskien jou mail*" (No idea, perhaps the refs share your mail?)⁷.
18. He pointed to the absence of a "*formalised or published protocol, directive procedure*" from WR to regulate communications between coaches and match officials during the BIL tour. He also said the production of the Erasmus video must be seen in the context of not only his practice but also the build-up to the first Test. That build-up included his meeting with Joël Jutge and Joe Schmidt to discuss the public conduct of BIL coaching staff in their dealings with the media.

(2) South Africa Rugby Union

19. The first charge is predicated on establishing RE committed Misconduct. That was denied by SARU. In any event, it denied that it was responsible and liable for any

⁵ Row 71, *Ibid.*

⁶ Row 72, *Ibid.*

⁷ Row 73, *Ibid.*

Misconduct proved against RE. In its Response it asserted that neither Regulation 18.5 nor paragraph 2 of the Code of Conduct impose strict liability on a Union for the conduct of people within its jurisdiction.

20. In respect of the second charge, it averred that the Captain Siya Kolisi's responses to journalists' questions were "*true, heartfelt and justified in the circumstances*". So far as Mzwandile Stick's (the assistant coach) comments were concerned, it said they were "*fair comment and justified in the circumstances*". SARU denied that these statements amounted to Misconduct and made specific submissions about the context in which those answers were given. In any event SARU argued that neither men's statements "crossed the line" so as to amount to Misconduct and since the individuals were not charged it was difficult to see "how it was appropriate" to charge SARU in respect thereof. Further, SARU relied upon its strict liability arguments. Finally, it submitted that it was not possible to correct the said comments

D. PROCEDURE

(1) Regulatory framework

21. Paragraph A of the preamble to Regulation 18 provides:

"A. Adherence to the Laws of the Game, Regulations Relating to the Game, the spirit of fair play and the integrity of the Game remains fundamental to the proper administration and preservation of the Game in the modern era. Accordingly, a general obligation arises on all stakeholders to uphold the integrity of the Game and address Misconduct matters within their jurisdictions to ensure that discipline, control, honesty and mutual respect which are fundamental to the integrity of the Game are preserved."

22. Regulation 18.3 states:

"For the purposes of these Regulations Relating to the Game, 'Misconduct' shall mean any conduct, behaviour, statements and/or practices on or off the playing enclosure during or in connection with a Match or otherwise, that is unsporting and/or cheating and/or insulting and/or unruly and/or

ill-disciplined and/or that brings or has the potential to bring the Game and/or any of its constituent bodies, World Rugby and/or its appointed personnel or commercial partners and/or Match Officials and/or judicial personnel into disrepute. Misconduct shall only exclude Foul Play during a Match which has been the subject of consideration and a finding under the regime prescribed for Ordering Off and/or Citing in Regulation 17.”

23. Regulation 18.4 contains a non-exhaustive list of conduct, behaviour, statements or practices that may amount to Misconduct under these Regulations. That list includes:

“(b) acting in an abusive, insulting, intimidating or offensive manner towards referees, assistant referees, Citing Commissioners, members of Disciplinary Tribunals or other officials or any person associated with the Host Union, the Rugby Body or the Unions participating in the Match or spectators;

[...]

(f) comments and/or conduct in connection with current and/or anticipated disciplinary proceedings and/or Match officiating (or any aspect thereof), which may be prejudicial to or adversely impact such proceedings and/or which are prejudicial to the interests of the Game and/or any Person and/or any disciplinary personnel (including Disciplinary Tribunals and Citing Commissioners);

[...]”

24. World Rugby’s Code of Conduct is Appendix 1 to Regulation 18. It states:

“1. All Unions, Associations, Rugby Bodies, Clubs and Persons:

1.1 must ensure that the Game is played and conducted in accordance with disciplined and sporting behaviour and acknowledge that it is not sufficient to rely solely upon the Match Officials to maintain those principles;

1.2 shall co-operate in ensuring that the spirit of the Laws of the Game are upheld and encourage players to refrain from committing acts of foul play (including by refraining from selecting them where appropriate);

1.3 shall not repeatedly breach the Laws of the Game;

1.4 shall accept and observe the authority and decisions of Match Officials and all other rugby disciplinary bodies, subject to Regulation 17;

1.5 shall not publish or cause to be published criticism of the manner in which a Match Official handled a Match;

1.6 shall not publish or cause to be published criticism of the manner in which Council or any other rugby disciplinary body handled or resolved any dispute or disciplinary matter resulting from a breach of the Bye-Laws, Regulations, or Laws of the Game;

1.7 shall not engage in any conduct or any activity on or off the field that may impair public confidence in the honest and orderly conduct of a Match, tour, tournament or Series of Matches (including, but not limited to, the supply of information in relation to the Game, directly or indirectly, to bookmakers or to persons who may use such information to their advantage) or in the integrity and good character of any Person;

1.8 shall not commit a breach of any of the World Rugby Regulations;

1.9 shall promote the reputation of the Game and take all possible steps to prevent it from being brought into disrepute;

1.10 shall not abuse, threaten or intimidate a Match Official, whether on or off the field of play;

1.11 shall not use crude or abusive language or gestures towards Match Officials or spectators;

1.12 shall not do anything which is likely to intimidate, offend, insult, humiliate or discriminate against any other Person on the ground of their religion race, sex, sexual orientation, colour or national or ethnic origin;

1.13 shall not do anything which adversely affects the Game of Rugby, World Rugby, any member Union or Association or any commercial partner of the Game.

2. Each Union and Association is under an obligation to comply with and to ensure that each of its members comply with this Code of Conduct and adopt procedures to monitor compliance with and impose sanctions for breaches of the Code of Conduct by Persons under its jurisdiction.”

25. WR has the burden of establishing the charges. The standard of proof on all questions to be determined by the Judicial Committee is the balance of probabilities⁸.

26. It does not seem to us that the law is now much in doubt on what the balance of probabilities means. In *Bank St Petersburg PJSC, Alexander Savelyev v Vitaly Arkhangelsky, Julia Arkhangelskaya v Oslo Marine Group Ports LLC* [2020] EWCA Civ 408 it was explained thus⁹:

⁸ Regulation 20.1.5.

⁹ Sir Geoffrey Vos, Chancellor of the High Court at [44].

"It is encapsulated in the following passages from Lady Hale's judgment in Re B, which, though stated to be applicable to care proceedings are, I think, of more general application in civil proceedings: -

'64. Lord Nicholls's nuanced explanation [in Re H] left room for the nostrum, "the more serious the allegation, the more cogent the evidence needed to prove it", to take hold and be repeated time and time again in fact-finding hearings in care proceedings" ...

70. My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies. ...

"72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."

27. That is the approach we adopted, giving appropriately careful consideration to all the evidence and submissions in this serious case. Where we express ourselves as satisfied, it is to that standard.

(2) Proceedings

28. Following service of the Charges Document, we issued directions to manage the proceedings and ensure the parties were prepared for the substantive hearing. Those

directions were issued on 4, 13 and 18 August, 1, 3 and 12 September and 1, 5 and 14 October. They are reproduced in Appendix 1.

29. To accommodate the availability of the parties and witnesses, as well as the Disciplinary Committee the hearing took place on 27, 30 and 31 October 2021. In advance thereof we were provided with and read a considerable volume of written and video materials, which included:

- a. The hearing bundle, which ran to 520 pages.
- b. A further documentary exhibit being provided on the 27 October.
- c. WR's 189 page bundle of authorities also served on the first day of the hearing.
- d. Written submissions filed on 26 October 2021 on behalf of SARU.
- e. Further authorities from WR during the evening of 30 October.

30. In addition to the documentation, including witness statements, we heard 'live evidence' from RE and the following witnesses:

- a. Nic Berry (Australia).
- b. Ben O'Keeffe, assistant referee first Test and match referee for the second Test (New Zealand).
- c. Joël Jutge (France).
- d. Russel Belter, director of WILDCAM (PTY) Limited (South Africa).
- e. Jurie Roux (South Africa).
- f. Jacob (Jaco) Peyper, international referee (South Africa).

31. Each of those witnesses was cross examined. We have had regard to the whole of the evidence of each of them. It is unnecessary to set out here what each said. We refer below to their evidence to the extent it is necessary to decide the issues before us.

32. We heard detailed and helpful closing submissions from the advocates. As with all the material before us, we had regard to them.

(3) Public or private hearing

33. Both RE and SARU wished for these proceedings to be conducted in public. Both made applications in writing. The applications were resisted by WR. We also received an

application from a television production company which had no *locus* and which we therefore summarily dismissed.

34. Having considered the application and written submissions from the parties, we ruled in these written terms:

“These proceedings will be recorded. They will not be transmitted to or accessible by the public live. We will explain our reasons in our written decision which will be published once the proceedings are complete. We will consider in due course whether it is in the interests of justice to make public any part of the recorded proceedings.

There must be no breach by any party of this ruling at any stage of these proceedings including but not limited to while they are ongoing.”

35. Having concluded the proceedings, we have decided that no part of the recording thereof should be released. We now give our reasons.

36. Regulation 20.1.8 states:

“Hearings shall ordinarily take place in private, save where any of the parties wishes the hearing to take place in public. In such circumstances:

(a) The party wishing to have the hearing take place in public shall make an application to the Judicial Tribunal seized of the proceedings setting out their reasons;

(b) Judicial Tribunals shall grant such application (i) if all parties are in agreement; or (ii) if the Judicial Tribunal determines that it is in the interests of justice to do so; and

(c) ‘In public’ in this context does not necessarily mean that the hearing shall take place in a publicly-accessible location but rather that the proceedings may be recorded and/or transmitted and viewed by the public on a live or recorded basis.”

37. There are differences between the public being interested, the public interest and the interests of justice. The starting point, as is clear from Regulation 20.1.8, is that ordinarily hearings of this nature will take place in private. Nothing we have read or heard has shifted that presumption. We also had regard to the interests of the witnesses, and in particular Nic Berry who has already been the subject of what we conclude to have been a great deal of unfair and unwanted public criticism (and worse) following

publication of the Erasmus video. We were also concerned to ensure these proceedings did not develop into a spectacle detracting from the true issues we had to resolve.

38. RE relied upon Article 6(1) of the European Convention for Human Rights. He was right to acknowledge that it has no direct application to these proceedings. In that context, and although the parties made no reference to the decision in *Pechstein & Mutu v CAS/Switzerland*, we considered it. The Court there noted that private arbitration clauses¹⁰ were not, in principle, incompatible with the Convention.

39. We disagree with the submission that in this case public proceedings would afford the parties protection which privacy does not. RE and SARU are represented by senior and experienced lawyers. The Judicial Committee is comprised of the same and each member is independent of WR. Due process and fairness were observed at all stages. Public scrutiny would have no affect at all on the fairness of these proceedings nor oblige witnesses to be more truthful than they might otherwise be.

40. We understand the importance of public scrutiny. However, while the proceedings are private, they are not secret. The public will be informed by published decisions which record the significant aspects of the case, the relevant evidence, our factual findings and the reasons for them. A fully detailed factual chronology is attached to, and is a part of, this Decision, as Appendix 2. It contains some 98 individual entries covering a period from 14 July to 3 August. This chronology is discussed at paragraph 47 below.

(4) The perception of delay

41. There has been a good deal of comment about the time which has elapsed between the appearance of the Erasmus video and the hearing. We should seek to explain that to the interested reader.

42. The directions in Appendix 1 will shed some light on the preparatory matters which needed to be undertaken and resolved. It will be apparent that the parties supplied to us, and relied upon, a great deal of factually complicated material. The evidence and oral

¹⁰ Such as Regulation 20.1.8 with the power to grant a public hearing.

submissions were heard over three separate days and necessarily occupied more than ten hours. The issues are complex and the charges serious. Any person or Union charged in such circumstances is entitled to due process.

43. We have devoted not inconsiderable time and effort and tried very hard to get the case heard before now. The professional and other important commitments of the parties, witnesses and the members of the independent Judicial Committee could not easily be brushed aside. Nor could the “juggling” which was involved in accommodating the relevant time zones of all persons involved, with that juggling made even more difficult by the travel arrangements of some of the parties and witnesses.

44. What had to be achieved were substantial periods of hearing times, as near to each other as possible to ensure a fair hearing, which did not intrude into times when any person, whether a party, a witness, a counsel or a Judicial Committee member, would be disadvantaged by the lateness or the earliness of the hour when they were called upon to attend. Given the world-wide geographical spread of all persons involved (let alone the individual commitments already mentioned) this was very logistically difficult to achieve. The reality was that the dates on which the hearing took place were the earliest practically possible.

E. DETERMINATION

45. We considered each element of each charge in turn. It is unnecessary to add further to the length of this Decision by setting out the lengthy and detailed cases advanced by the parties through evidence and in oral and written submissions.

(1) The core facts

46. In advance of the hearing the parties agreed a helpful chronology, agreeing a number of relevant facts. Many, if not all, were supported by contemporaneous or other documents, such as emails or WhatsApp messages.

47. We have amended and incorporated that chronology as Appendix 2. We have used red coloured font to identify entries which were in issue between the parties¹¹. There is no purpose in setting those out in any more detail, save to the extent it is necessary to refer to them to explain our Decision and the reasons for it.

(2) Published or permitted/caused to be published

48. Common to five of the six charges brought against RE was that he “*published or permitted to be published*” (RE1-2) or “*published or caused to be published*” (RE3-4, RE6) the Erasmus video. The said video was uploaded to the Vimeo platform, which is a public site. While it is possible to password protect videos uploaded to that site, this video was not password protected nor was there any other privacy setting. However, the unchallenged evidence from Russel Belter was that there was no way to access this video without the specific link.

49. WR’s case on those charges was that he “*published or permitted to be published*” or “*published or caused to be published*” simply by causing it to be uploaded to the Vimeo online platform (by Russel Belter) on 27 July¹². As a matter of fact, RE then sent that link by email at 07.05¹³ and by WhatsApp at 07.27¹⁴ on 28 July. However, both RE and SARU contended that the publication concept must be interpreted more widely, namely to mean the dissemination of the video to the public at large, which RE denied. It was argued on behalf of the Respondents that we must be satisfied that RE published or permitted it to be published to the public more widely, which it was submitted could not be proved, not least because WR had not treated that matter sufficiently or at all.

50. We have decided that the “*published or permitted/caused to be published*” does not have the wider meaning that the Respondents seek to attribute to it. The factual particulars of each charge include this phrase: “*as detailed in paragraphs 45 to 61 above*”. The words “*as detailed in*” are missing from Charge RE4 but that error is of no consequence.

¹¹ Save for the message on 29 July 2021, 08.02 (Row 79) where red font was used as part of the original email.

¹² Row 63, Appendix 2.

¹³ Row 66, *Ibid.*

¹⁴ Row 67, *Ibid.*

51. Paragraph 45 of the Charge Document reads:

“On 28 July, World Rugby became aware that the Erasmus Video had been published online on the Vimeo platform. A search of the metadata on the Vimeo platform shows that the video was published on 27 July 2021.”

52. The remaining paragraphs 46-61 inclusive address the content of the Erasmus video. It is only paragraph 45 which contains any factual averment as to the way the respective charges are put. That paragraph expressly pleads uploading the Erasmus video to the Vimeo platform. There is no issue that Russel Belter uploaded that video and that RE was complicit in that. We are therefore satisfied that he published or permitted/caused the Erasmus video to be published.

53. In any event it goes further. We are also satisfied that the following actions taken, whether individually, or cumulatively, amount to publication:

- a. Sending by email the link to the Erasmus video (knowingly un-password protected and without any other privacy setting, as it was) to Messrs Berry, Schmidt, Jutge, Nienaber and Roux.
- b. Sending by WhatsApp that link to the Erasmus video to some forty other people, namely the SARU players and coaching staff. That was compounded by the absence of any warning that it was confidential and not for sharing or onwards transmission.
- c. Given those actions, along with the Erasmus video being un-password protected and with it having no additional privacy setting, a leak to the public more widely was, in our view, an almost inevitable consequence; and a consequence readily foreseeable to any perceptive person, which we conclude RE is.

54. Further we reject RE’s argument that the Erasmus video was made for such a limited audience, namely WR staff, SARU employees, players and staff. We do so for these reasons:

- a. RE had prepared video clips with commentary. There was simply no need or purpose for a video of this kind if it was for internal SARU use or WR officials.
- b. Had that been so, the long introduction (15 or so minutes) before he gets to the first clip would have been wholly unnecessary. Therein, for example, he refers to

comments in the media and social media, meeting Nic Berry and having sent, by AirBridge, clips to the referee.

- c. He would not have needed to identify, and would not have identified, the roles occupied by some of the persons he referred to – for example Marius Jonker in the TMO box, Jacques Nienaber as the Head Coach, Joël Jutge as the WR Referee Manager. It would have been unnecessary.
- d. The following passages are, for us, telling as to the true purposes of and intention for the Erasmus video:

“...That is why I would probably like Joel, Joe, Nic, Ben, Mathieu, Marius Jonker, SuperSport maybe, if you guys get this eventually, I am not sure who this is going to...”

and

“...Again I have had previous encounters, previously where I made mistakes saying things in public about referees and that normally comes back to bite you...”

and

“...that is why I said this might be a 40-minute video and it might only be shown to you Joel, and Joe, and Nic, and Ben, and Mathieu, and Marius, or it might, if they take me off the thing, I might, you know, SuperSport, you guys might use it and understand why there is sometimes craziness in the game....”

and

“...I am really not sure how to answer this one and I guess this is probably one of the reasons why we made this video. I am not sure where it is going to or where I am after this and what will be the repercussions of this video or the thing that we did...”

and

“...Yeah, if you think this was going over the top and this shouldn't go out to the media then I did this in my personal capacity, not as part of the Springboks and I will withdraw myself from the Springboks Management Team. Thank you.”

- e. We are also satisfied from those and other passages that the Erasmus video was made with wider public dissemination in mind. Therein RE (1) is contemplating it going to the media (2) refers to it being seen by SuperSport and (3) it is also clear he (at least) anticipated wider public dissemination and trouble for him. If the Erasmus video was made for just the email and WhatsApp recipients, then that would not have been an issue. We reject RE's explanation that the reference to SuperSport referred to some possible future documentary for which they may get access to the Erasmus video. With respect, that did not make sense to us and does not sit with other aspects of the Erasmus video such as those we have identified.
- f. Before the Erasmus video was made, RE said he would go public and play out in the media his concerns¹⁵. In his email sent to Nic Berry at 20.44 on 25 July RE said, *“...just a heads up from our side!!= we feel the pressure which the lions attempted to put on your team of 4 through media did actually work well for them!! While we will be doing the same this week I think you will note that ours is more factual and honest!!”*¹⁶. That was, as RE accepted, a clear warning to play out matters in public. That is exactly what happened with the release of the Erasmus video. We simply do not accept that a day or so after he threatened to go public on match officiating, the leaking of that video was a coincidence. In his oral evidence, during cross-examination, RE said this, in his relaying a message to Nic Berry: *“This will not get into the media – just have a chat to me tonight”*. The implicit implication, the underlying premise, of that statement is clear to us.
- g. Further, it was contrary to the interest of Nic Berry, his coach, WR staff and officials to leak it. We are satisfied on the evidence that no member of the SARU staff or official would do so without RE's permission or authority.
- h. We are satisfied that the only sensible inference from all the evidence is that the Erasmus video was made 'public' by or at the behest of RE. That is not a decision

¹⁵ Rows 32 and 46, *Ibid.*

¹⁶ Row 46, *Ibid.*

reached solely by rejecting all the known alternatives but also from the evidence which we have identified that points positively to that being the only sensible conclusion.

55. The WhatsApp exchanges on the morning of 28 July¹⁷ is not inconsistent with that. It includes an initial request for views and ends with a request to be kept informed. Surprise that it had travelled so far as quickly (Australia and the UK) is not inconsistent with publication. We note RE did not then ask for it be taken down or password protected.
56. We also reject the contention that RE made the Erasmus video in a personal capacity. He said that in the video and in the email sent at 07.05 on 28 July¹⁸. That argument is simply unsustainable. He is dressed in Springbok kit. He is speaking about the first Test in anticipation of the next Test. He is plainly doing so in his capacity as Director of South Africa Rugby. Further, he had discussed the making of the Erasmus video, and its contents, with the Springbok coaches over some time on the day he made it, and then sent them to their coaching duties whilst he made the Erasmus video.

(3) **“Crossing the line”**

57. WR adopted this expression to seek to explain what was and was not acceptable public comment. The comments which gave rise to the charges including the content of the Erasmus video were said to have crossed the line and so amount to Misconduct. The concept (if that is what it is) is neatly expressed in paragraph 86 of the Charges Document:

“The rugby-watching public and fans have come to understand that coaches seek to use the media and other public avenues to put pressure on the opposition or in an attempt to influence how a game is officiated. Up to a limited point, this is part of the game. However, there is a line that must not be crossed to ensure that the values and spirit of our game remain intact. That line was crossed in the actions of Mr Erasmus and SA Rugby during this B&I Lions Series.”

¹⁷ Rows 69-76, Ibid.

¹⁸ Row 66, Ibid.

58. The expression is classically one of those easier to say than to define. That presupposes that it is capable of definition. In any event we think that a sterile exercise. The correct approach, and the one we have adopted, is to decide whether a particular comment/s and/or conduct amount to Misconduct, in the sense that they breach Regulation 18 and/or the Code of Conduct. Such judgement involves, inter alia, consideration of the provisions of Regulation 18 and/or the Code of Conduct, as well as context and prevailing behaviour and standards.

(4) The Erasmus Video

59. We all watched the Erasmus video on several occasions. We also had the benefit of a verbatim transcript and careful and detailed submission from the advocates on the content. It is 62 minutes and 31 seconds long. We have considered it with great care.

60. It is important to understand the context in which the Erasmus video was made. In summary:

- a. On 25 July RE tried to arrange a meeting with Nic Berry to discuss the same.
- b. RE caused to be sent to Nic Berry, by AirBridge, 36 video clips of incidents and decisions from the first Test. It was not just clips but he added commentary¹⁹.
- c. By the time he made the Erasmus video RE was frustrated by a number of related factors.
- d. He was deeply dissatisfied by the fact Nic Berry had not met with him.
 - i. By way of example his response at 19.44 on 25 July: *“we will take the route as discussed on the phone”*²⁰.
 - ii. On 25 and 26 July he chased Nic Berry for a response to those clips²¹.
 - iii. He recruited Jacob Peyper to try to arrange a meeting²².
 - iv. Further, he said this in the Erasmus video:

“I am not saying that the referee was a cheat at all, I am saying that we just wanted clarity on a Sunday night, and which we now got on a Tuesday. To be honest, we are not very, or I, personally, am not very convinced of the clarity that

¹⁹ Row 34, Ibid.

²⁰ Row 40, Ibid.

²¹ See Rows 46 and 52, Ibid.

²² See Rows 41 and 42, Ibid.

we got from Nic Berry in this match.”

and

“If he told us this on Sunday night we would not be sitting here at 12 o'clock on a Tuesday making a video of probably an hour if he just picked up the call and answered our questions on Sunday night and explained to us and nothing would have been all over Twitter and all over the bloody media.”

- e. As we have said, RE was frustrated by the treatment, as he saw it, of the Springbok captain Siya Kolisi. By way of just two examples, he said this in the Erasmus Video:

“When Siya spoke to the referee and when Alun spoke to the referee I just felt the reactions on how they treated both those players was totally, there was a vast difference between who he was taking serious and who he wasn't taking serious. I might just play this for you and talk you through it. (Clip played)”

and

“...It is almost like he is having a laugh at Siya and saying to him: Yeah, it was knock-on, it is only a knock-on. He is actually laughing at Siya now.”

- f. It should also be noted that he had received from Nic Berry a reasoned reply to his 36 clips²³. In our judgement it was sensible for the referee to consult with the other match officials and carry out a full review before replying to the video clips. To take exception to that and press for a meeting, as RE did, was unreasonable. We reject his contention that he needed it for selection purposes. Joël Jutge had never heard such an argument in all his time as referee and in any event as he correctly observed, it was a different referee for the second Test.

²³ Row 57, *Ibid.*

61. Against that background RE prepared the Erasmus video with the help of Russel Belter. We are satisfied from those facts, the content of the said video and his presentation throughout, that he felt profoundly aggrieved by a number of the officials' decisions in the first Test, the treatment (as he saw it) of the Springbok captain, Siya Kolisi, and the responses he had received from Nic Berry. Such feelings do not provide a stable foundation for an objective assessment of the available evidence. Regrettably that is not what the Erasmus video was.
62. In the said video, RE is speaking to camera and is also looking at a laptop on the table or desk in front of him. After the fifteen minute introduction, RE plays and speaks to 38 video clips of incidents in the first Test. What followed was not an objective analysis of the refereeing seeking explanations, discussion, correction. Rather it lacked perspective, impartial analysis or balance. In places it is sarcastic. We have selected some examples, but that is all they are.

The different treatment of Siya Kolisi, as he asserted it was

In addition to those above, at paragraph 60(e)

"...I thought the way they listened to Siya compared to the way they listened to Alun was definitely not with the same respect that both players should have."

The different and disadvantageous treatment of the Springbok team

"The question is just, if we shoulder charge like that will it always just be a penalty if you don't use your arm?"

and

"For me this is not big issues, but it definitely shows the difference in attitude towards the Springboks I feel and the Lions. I am not saying cheating. I am saying having the narrative being imprinted that we are more into foul play and to dangerous and reckless play than the Lions"

and

“if you tackle around the shoulder and neck area and you do a safety belt tackle it is a penalty, but that wasn't refereed when they tackled us like that.”

and

“How do you get that wrong? How do you give one team eight seconds and there is not even material or territorial advantage and obviously not time advantage and then you give the other one territorial and time advantage more than the other team? It is just something that is very tough to understand how he can do that. But, again, we couldn't get the answer. He admitted afterwards, Joel, and you guys also saw that. That is a difficult one to explain, how do you make a mistake like that?”

and

“So, again, I am just asking if the ARs is aligned and they don't see a clear and obvious offside why would they say offside? So, you know, if it is not clear and obvious then you don't call offside. If it is clear and obvious you call offside. This is not close to clear and obvious. So, yeah, this is definitely something that bothering us. Why would the ARs call that?”

and

“It is comical the way, the respect the ARs and the guys show towards the South African players compared to the Lions players.”

A number of clips are entitled *“roll away consistency?”* and *“offside consistency??”*. The selection was designed to indicate that the Springbok team was unfairly treated or officiated against.

The officiating was or may have been influenced by comments made to the media by Warren Gatland

“We refer it back to the TMO, to Marius Jonker, which I the person that Warren Gatland has openly now put so much pressure on during the week because he is now the TMO, which, again, we have no control over, Marius has no control over. But obviously that is the way Warren put

through the media pressure on Marius on that because knowing Marius and knowing the laws that should definitely be a yellow card. Again on minute 63 it means that in the next 17 minutes they will probably only play six or seven minutes with 15 men on the field, which is that the way the law should be refereed...I think the whole world knows by now that that should be a yellow card. Now, again, if you see in slow motion he lifts him beyond horizontal and he drives him in to the ground. So, yeah, that is weird one, especially on minute 63.”

Disparaging the decision making

“Here is obviously the big debate which is mind-baffling...”

and

“Here you can obviously see, and we actually think it is a little bit silly the way they referee, this specific part of the game now, where they say, you know, if the guy kicks the ball from the back that everybody must stand still...”

and

“This one is actually, it is not funny, it is actually a difficult one to explain, most of the things here, that we have spoken about here a lot of them is about player safety...”

63. The Respondents relied on Joël Jutge’s email to RE in which he thanked RE for his video and described it as a “*big and great work*”²⁴. When asked about this in evidence Mr Jutge explained it was an attempt to “*pacify*” RE in the context of an ongoing Test match series. As he said, and we accept, if he said anything negative about the Erasmus video to RE the matter would never end.

(5) **Charge RE1**

64. This has the following elements in contravention of Regulation 18.4(b) and paragraph 1.10 of the World Rugby Code of Conduct.

²⁴ Row 78, *ibid.*

RE:

- a. Threatened Nic Berry that unless a requested meeting took place, he would publish footage containing clips criticising the Match Official's performance,
- b. Then made good on that threat, and
- c. Published or permitted to be published the Erasmus video, which
- d. Contained numerous comments that were either abusive, insulting and/or offensive to Nic Berry and the other first Test match officials.

65. We are satisfied that RE did threaten Nic Berry in the way alleged. We have considered with care the evidential dispute between RE and Nic Berry as to the content of the call at 19.10 the same evening²⁵. We accept the evidence of Nic Berry that RE said to him that if he was unwilling to meet immediately, he would put the footage online to go viral.

We do so for these reasons:

- a. First, the context which we have explained above (at paragraphs 60-61). His behaviour and state of mind at that time is entirely consistent with intemperance of this kind.
- b. Secondly, Nic Berry has no reason to make this up to be mistaken about it. He was resolute when questioned about it.
- c. Thirdly, it is confirmed by the evidence of Dr Ben O'Keeffe. He said that Nic Berry spoke to him straight after he had spoken with RE at 19.10. He told him that RE said that he would go viral with the clips. Once more Dr Ben O'Keeffe has no reason to make this up to be mistaken about it and was not shaken when questioned about it.
- d. Fourthly, it is confirmed by the evidence of Joël Jutge. He too said that Nic Berry spoke to him after he had spoken with RE at 19.10. He related that RE had said to him that the footage would go viral. Once more the witness was not shaken when questioned about it.
- e. We considered with care the evidence of Jacob Peyper.
 - i. He denied that during the call at 19.51 that night²⁶ Nic Berry told him that RE had threatened to leak the clips on social media. He denied in

²⁵ Row 32, *Ibid.*

²⁶ Row 42, *Ibid.*

robust and direct terms that Nic Berry showed him a draft version of his statement which Nic Berry said he approved.

- ii. Nic Berry was more circumspect in his evidence and characterised the difference as one of recollection.
- iii. We do not need to resolve that dispute between refereeing colleagues. There is ample evidence, which we accept, which supports Nic Berry's version of events.

66. Further, we also find that the primary (if not only) purpose of sending the email to Nic Berry at 19.44 on 25 July 2021²⁷, was to threaten Nic Berry. RE was expressly asked about this by the Chairman. He replied that he really wanted to sort out the treatment of Siya Kolisi in respect of which felt helpless. RE said he meant (by that comment) that he would take the “Warren Gatland route”. Asked the question again, he said:

“Well, I was hoping that after that we will won't be bad friends that you know, because when we spoke on the phone he actually spoke in a very nice tone to me... I was just trying to warn him that we will take the Warren Gatland route if they ask us anything that was a reason.”

67. That is a clear threat to discuss matters in the media. Asked by the Chairman if he thought Nic Berry would have welcomed discussion of refereeing decisions in the media he replied:

“Well, I think he wouldn't have been surprised if that happened, but then it didn't happen...”

68. Further, there is the email sent at 20.44 on 25 July in which RE said, “...just a heads up from our side!!= we feel the pressure which the lions attempted to put on your team of 4 through media did actually work well for them!! While we will be doing the same this week I think you will note that ours is more factual and honest!!”²⁸. That was, as RE accepted, a clear warning.

69. As for the point made about some of the formal content and amendments of the Berry witness statement, we find nothing of substance in those. It is not uncommon for lawyers

²⁷ Row 40, *Ibid.*

²⁸ Row 46, *Ibid.*

to deal with the formalities, as Nic Berry observed. As he said, the factual narrative of events was his and his alone. He has no prior experience of preparing statements which may be used in litigation; nor of the surrounding “niceties” and formalities. We also had the benefit of seeing him and hearing his evidence. He withstood the test of cross-examination and impressed us as an honest, straightforward witness doing his best.

70. We have already decided that RE published or permitted to be published the Erasmus video (at paragraphs 48-56 above). By doing so he made good on his threat.

71. We turn to the words “*abusive, insulting and/or offensive to Match Officials*”. The words “*abusive, insulting, offensive*” are lifted from Regulation 18.4(b). The issue is whether the Erasmus video contained comments which are, when assessed objectively, abusive, insulting and/or offensive. It is not necessary for WR to prove that RE intended his comments to be abusive, insulting and/or offensive or indeed that Nic Berry and/or any of the match officials took offence.

72. The Chairman asked RE if looking back he considered any part for his Erasmus video to be abusive, towards Nic Berry. He replied that he did not think that it was. Asked if any part was insulting, he said:

“Well, if it's insulting because you had a bad game and i'm pointing that out there, then it is insulting.”

73. The lack of insight is surprising. We are comfortably satisfied that the Erasmus video contained comments which were abusive, insulting and/or offensive to Nic Berry and the other match officials. We have set out above (at paragraph 62 above) a small number of examples. Viewed objectively the Erasmus video was an attack on the impartiality and the integrity of the match officials, which can never have any place in the Game.

74. One of the points made by the Respondents is that referees must be able to accept feedback. That is a fair observation. However, there is a difference between feedback and abuse. This video was not feedback, properly understood. It was an *ad hominem* attack, which as we have said lacked detached analysis or balance. In any event, feedback is best

provided by those trained and experienced in officiating. There is no shortage of people employed and able to do just that.

75. The Respondents also asserted that they were justified in doing this because the referee made mistakes and there was no governing protocol. It is right that in his response at 23.22 on 26 July Nic Berry accepted some of the points made²⁹. Of some significance is this: that acceptance by Mr Berry was before the Erasmus video was uploaded to the Vimeo online platform³⁰. However, that does not justify the insulting, abusive and offensive way the message was delivered. The absence of a protocol does not help the Respondents. That does not justify saying things that are abusive, insulting or offensive. Further, it was completely unreasonable for RE to demand a meeting with Nic Berry immediately. To threaten him was wholly unacceptable.

76. Accordingly, we find this charge proved.

(6) Charge RE2

77. Alleges that RE in contravention of Regulation 18.4(i):

- a. published or permitted to be published the Erasmus Video
- b. which contained numerous comments that either attacked, disparaged and/or denigrated the Game and the Match Officials appointed by WR to officiate the 2021 BIL Series.

78. We have already decided that he published or permitted to be published the Erasmus Video (at paragraphs 48-56 above).

79. For the reasons set out in relation to **Charge RE1** and in our analysis of the Erasmus video we are satisfied that it contained comments which attacked, disparaged and denigrated the Game and the match officials.

²⁹ Row 57, *Ibid*.

³⁰ Row 63 – 19.00 on 27 July.

(7) Charge RE3

80. Alleges that RE in contravention of paragraph 1.4 of the Code of Conduct,
- a. did not accept or observe the authority and decisions of match officials, in that he
 - b. published or caused to be published the Erasmus video containing criticism of 38 different refereeing decisions in the first Test.

81. We have already decided that he published or caused to be published the Erasmus video (at paragraphs 48-56 above). For the same reasons, we are satisfied that he “caused” it to be published in the sense we have explained. We agree that it contained criticism of many of the refereeing decisions made in the first Test. Given the content of the Erasmus video we are satisfied that thereby RE did not accept or observe the authority and decisions of match officials in breach of paragraph 1.4 of the Code of Conduct.

82. Accordingly, we find this charge proved.

(8) Charge RE4

83. In contravention of paragraph 1.5 of the Code of Conduct, RE
- a. Published or caused to be published criticism of the manner in which a match official handled a match,
 - b. When he published or caused to be published the Erasmus video containing criticism of 38 different refereeing decisions in the first Test.

84. This covers almost the same ground as **Charge RE3**. “*Published or caused to be published*” is a specific ingredient of paragraph 1.5 of the Code of Conduct. In the other charges it is a factual averment. We can see no reason why it should have a different meaning from the charges where it is a factual averment.

85. Given the content of the Erasmus video we are satisfied that by publishing or causing it to be published, RE breached paragraph 1.5 of the Code of Conduct. Accordingly, we find this charge proved.

(9) Charge RE5

86. This alleges that in contravention of paragraph 1.7 of the Code of Conduct, RE engaged in conduct or activity that may impair public confidence in the integrity and good character of match official(s).

87. The conduct is the creation and publication of the Erasmus video. We are satisfied that it was a serious criticism of the officials which may well have eroded public confidence in those officials for the remaining matches. We have already found that the Erasmus video was an attack on the impartiality and the integrity of the match officials.

88. Accordingly, we find this charge proved.

(10) Charge RE6

89. Paragraph 1.9 of the Code of Conduct 1.9 requires:

"The person shall promote the reputation of the game and take all possible steps to prevent it from being brought into disrepute."

90. The Erasmus video generated a great deal of public attention and media coverage. We have been provided with a small selection of the international media coverage. We include a few examples to illustrate the kind of it:

From the UK newspapers:

The Times - describes this as an "extraordinary hour long rant at the referee." And under the picture one sees this being an "unprecedented monologue" and, notes that Rassie Erasmus was unhappy about the level of respect shown to both.

The Daily Telegraph - "Mr. Erasmus tears into referee Nic Berry and World Rugby."

The Guardian - describes it as a "stinging attack on refereeing".

New Zealand

Stuff - "Springboks boss Rassie Erasmus in trouble for hour long anti referee rant."

France

France 24 - "slamming the first test refereeing".

91. We agree with WR's submission that the public reporting was, and indeed the general perception is, that this has been an extraordinary attack on the match officials, including on their integrity.
92. By publishing or causing the Erasmus video to be published in the sense we have explained, RE brought the Game into disrepute.
93. RE pointed, by way of defence, to the other examples where referees have been criticised publicly by coaches, to Warren Gatland's comments preceding the first Test and even where WR has agreed publicly that a referee made a mistake. However, those examples are all materially different from the Erasmus video both in tone and in content.
94. Accordingly, we find this charge proved.

(11) Charge SA Rugby 1

95. **Charge SA Rugby 1** is put on three factual bases, namely that SARU:
- a. Did not ensure that RE complied with the Code of Conduct; and/or
 - b. Permitted RE to commit acts of Misconduct; and/or
 - c. Did not publicly correct any comments or publications by or on behalf of RE that amounted to Misconduct,
96. The Charge is parasitic. It depends upon establishing Misconduct against RE. We have found those charges proved.
97. We deal first with nature of the liability of a union under Regulation 18.5. Rules and regulations of sport constitute a contract between the participants and the governing

body. On questions of interpretation the starting point is the language of the provision. Regulation 18.5 could not be clearer:

"Unions are responsible and accountable for the conduct of their Players and all Persons within their jurisdiction. Unions, Platers and Persons must conduct themselves in a disciplined and sporting manner and ensure that they do not commit any act(s) of Misconduct."

98. That is strict liability. Paragraph 2 of the Code of Conduct is in similarly unequivocal terms:

"Each Union and Association is under an obligation to comply with and to ensure that each of its members comply with this Code of Conduct and adopt procedures to monitor compliance with and impose sanctions for breaches of the Code of Conduct by Persons under its jurisdiction."

99. SARU argued that Regulation 18.5 required it to take reasonable steps to ensure that the players and those subject to Rules and Regulations complied. We disagree. That is contrary to the plain language of Regulation 18.5 and the Code of Conduct. In any event there are good policy reasons why it is not the position. It would be too easy for Unions to avoid responsibility simply by saying that the offenders were warned not to and/or it is a contractual requirement that they comply with the Regulations. The extent of a Union's fault is reflected in sanction.

100. The first limb of the gravamen of this Charge is what we have called the strict liability element. SARU did not stop or prevent RE from committing Misconduct and is therefore liable for a breach of Regulation 18 and the Code of Conduct.

101. As Ms Potts rightly recognised in her closing submissions, arguably the second limb of permitting would be more relevant to sanction than the charge itself. However, she also pointed to the fact that RE told Jurie Roux in a WhatsApp message sent at 21.55 on 27 July³¹ that he had made the Erasmus video. Further, we note that the Erasmus video was sent to Jurie Roux as one of the five recipients of the 07.05 28 July email³². It is also

³¹ Row 65, *Ibid.*

³² Row 66, *Ibid.*

correct that on the evidence before us no steps were taken by Jurie Roux or any other SARU official to request or instruct RE to take down the Erasmus video. He said it was too late but, in our judgement, it was not too late to do something – to instruct him to have it taken down.

102. Indeed, our sense is that SARU did not, and arguably from the way the case was defended, do not consider that the Erasmus video represented any overstepping of the line by RE. For example, two lines from Jurie Roux’s email sent at 08.25 on 30 July³³:

“We also supported Rassie and did not back down and also not in the media and rather Gatland’s councils of last week pointed out.”

and

“I think your point is now well made in the media and as always you are all one ahead.”

103. The third limb alleges a separate and distinct species of liability. It is not vicarious liability based on RE’s conduct but on SARU’s alleged failure to act. As Mr Hampton QC observed during submissions, it should have been pleaded as a separate charge. Jurie Roux, from whom we heard, said that once it was on social media, the dissemination was impossible to stop. We appreciate the genie cannot be put back in the bottle, but it is, in our view, at the very least surprising that SARU appears not to have taken any steps or made any public comment about the Erasmus video. Whether or not it had a duty to do so is not, with respect, the point. We will consider that further in the context of sanction.

(2) Charge SA Rugby 2

104. **Charge SA Rugby 2** is put in this way, namely that SARU:

- a. Permitted and/or did not prevent Siya Kolisi and Mzwandile Stick from making comments at the press conference on 30 July 2021 that were not disciplined or sporting and adversely affected the Game of Rugby and/or
- b. Did not publicly correct any such comments so as adversely affected the Game.

³³ Row 89, *Ibid.*

105. At 16.59 on 29 July 2021 Alan Gilpin, WR CEO sent an email to seven people and was addressed to the BIL CEO and Jurie Roux³⁴. Therein he stated:

“Public criticism of match officiating and match official selection has the potential to bring into question the core values of our sport. Match Officials are a vital backbone of our sport and without them we have no game.”

106. We agree with those sentiments. He continued:

“Your coaching staff and management must treat the Match Officials with the respect that they deserve. Any questions about Match Official performance must be directed through the formal and confidential feedback channels...”

and

“Please discuss with your coaching staff the need for appropriate respect in upholding the values of sport.”

107. He then issued to both teams this direction:

“There should therefore be no further media comments that include allegations about the integrity of match officials and officiating. If there is further public commentary, a more formal approach will need to be considered.”

108. Ms Potts described that as a very clear “direct instruction” that there should be “no further comment” to the media. We are not sure that it prohibits all comment to the media about match officiating, notwithstanding WR’s assertion that WR expected the matter to be drawn to a close and trusted that both BIL management and SARU would ensure that no further public commentary would arise.

³⁴ Row 86, *Ibid.*

109. At 08.19 on 30 July, Jurie Roux replied to Alan Gilpin saying “*just to confirm that I had a management meeting and had the discussion with our team on process, protocol and values*”³⁵. He then forwarded Alan Gilpin’s 16.59 email to members of the SARU coaching staff and said this:

“Not for distribution

As you can see I handled WR yesterday and we only got the letter.

We also supported Rassie and did not back down and also not in the media and rather Gatland's councils of last week pointed out.

I will not bore you with all the detail of the calls.

I think your point is now well made in the media and as always you are all one ahead.

Given the official warning now we must please stay within the protocols.

So our party line is we will do everything via the channels and follow the protocols if we are asked at media conferences.”

110. That email is clearly supportive of RE. When he was asked about this, he denied he was referring to the “leak” of the Erasmus video.

111. Neither Siya Kolisi nor Mzwandile Stick were witnesses³⁶. We have not heard from them. We have watched the press conference and considered transcripts of the comments. The relevant exchanges are in Row 90, Appendix 2. It is important to appreciate that what Siya Kolisi did in his answer was to express his own feelings or belief. Observing from a distance – which is all we can do³⁷ – Siya Kolisi is a deeply impressive individual who leads the Springbok team with distinction. We have no reason to doubt the genuineness of his feelings. However, that is not the same as asserting *as a fact* that he had been disrespected nor that those feelings are correct.

112. During his evidence Nic Berry told us that he had “*massive respect*” for Siya Kolisi as a person and as a player. So concerned was he by the reported feelings of unfair treatment, that at the second Test he sought him out and apologised if he had done anything which

³⁵ Row 88, *Ibid.*

³⁶ This was as drafted after the liability hearing. We heard from Siya Kolisi during the subsequent sanction hearing.

³⁷ At the time of drafting that paragraph we had not heard from him.

created the contrary impression. We accept without reservation Nic Berry's evidence that he, and his officiating team, did not intentionally disrespect Siya Kolisi.

113. During his closing submissions Mr Plewman QC described this issue as the "*elephant in the room*". With respect, we disagree. It was plain to us that RE was and remains aggrieved at what he saw as the unequal treatment of Siya Kolisi. That was part of his motivation for making the Erasmus video. However, the alleged treatment of the Springbok captain by the match officials was not central to this case.

114. Returning to **Charge SA Rugby 2** neither Siya Kolisi nor Mzwandile Stick have been charged with Misconduct arising out of their comments. When Ms Potts was asked about that by Mr Hampton QC, she said that was because WR was not alleging that those comments *per se* were necessarily insulting. The charge was put upon the basis that SARU failed to instruct those persons and others not to comment at all on the match officials and officiating in the first Test.

115. We do not agree with WR's assessment of the answers given by Siya Kolisi and Mzwandile Stick. They did not offend the direction from Alan Gilpin as they did not include any allegation about the integrity of the match officials. We also do not agree with WR's assessment of the answers given by Siya Kolisi and Mzwandile Stick. We do not assess those comments to be ill-disciplined or unsporting nor ones which adversely affected the Game. Therefore, the core foundation for the Charge falls away.

116. Further and as to the second limb, given our assessment of the comments, we do not find that the failure publicly to correct those remarks adversely affected the Game.

117. Therefore, we do not find **Charge SA2** proved.

F. SANCTION

118. In our Decision on Liability, we directed that:

- a. Any written submissions on sanction must be filed not more than 48 hours from receipt of this Decision.

- b. If any party wished to make oral submissions on sanction such request must be made within 48 hours from receipt of this Decision.
- c. If we granted an oral hearing for sanction such must take place within 7 days from receipt of this Decision.

119. Pursuant to the said directions we received written submissions from all parties early on 12 November 2021 (UK time). That evening we:

- a. Ruled on a WR application for RE to be provisionally suspended;
- b. Granted the Respondents' application for an oral hearing on sanction ("the sanction hearing"); and
- c. Fixed the said hearing for 15 November 17.00 (UK time)/16 November 06.00 (NZ time).

120. The sanction hearing took place as fixed.

121. We have read and had appropriate regard to the written and oral submissions on sanction and the evidence placed before us.

(1) The provisional suspension application

122. We ruled as follows:

- a. Without notice, by email at 14.58 on Wednesday afternoon 10 November, we were sent an application by WR for RE to be provisionally suspended pursuant to Regulation 18.9.3.
- b. We directed that the said application should be provided forthwith to the Respondents and any responses served within 24 hours.
- c. We have received and considered separate responses filed by the Respondents.
- d. Regulation 18.9.3 reads:

"In exceptional circumstances where the conduct of a Player(s) or Person(s) is considered by a Judicial Committee or Judicial Officer to be of such a serious/gross nature that their continued involvement in the Game in any capacity pending the final determination of the matter, then the Judicial Committee or Judicial Officer may at their discretion impose a provisional suspension on a Player or Person subject to a Misconduct complaint pending

the resolution of the case. The Player or Person affected may appeal such decision in which case an Appeal Committee or Appeal Officer shall be appointed and the appeal provisions in this Regulation 18 shall apply accordingly.”

- e. As will be apparent to the careful reader this part of the Regulation is incomplete: “...where the conduct of a Player(s) or Person(s) is considered by a Judicial Committee or Judicial Officer to be of such a serious/gross nature that their continued involvement in the Game in any capacity pending the final determination of the matter...”. It does not provide for the standard their continued involvement must offend. For example, “their continued involvement in the Game in any capacity pending the final determination of the matter is inappropriate or prejudicial to the image and reputation of the Game and/or would itself bring the Game into disrepute” (possible additional wording underlined)
- f. WR did not draw that to our attention nor make any submissions on the issue. In contrast the Respondents identified and addressed the said lacuna. We agree with the Respondents that the relevant provision is seriously defective, and we are far from satisfied that we can or should write in the appropriate test.
- g. Secondly, WR submits that “*RE should not be permitted to participate in any rugby activities*”. The ambit of the proposed provisional suspension is insufficiently precise, particularly where one is dealing (as here) with a Director of Rugby.
- h. Thirdly, we note and agree with the observation of SARU that “the findings are serious and that serious sanctions are likely”. However, we also agree that the proceedings should take the course we proposed and the parties agreed. Where we are now was always one of a limited number of eminently foreseeable outcomes.
- i. For those reasons we decline the application.

123. We suspect WR will wish to remedy the defect in Regulation 18.9.3 forthwith.

(2) Regulatory powers, guidance and principles

124. Regulation 18.10.1 provides:

“If a Judicial Committee or Judicial Officer determines that an act or acts of Misconduct have been committed then it/he shall receive and consider representations on sanctions. The Judicial Committees and Judicial Officers shall be entitled to impose such sanction as they think fit on the Union, Person and/or Player and/or other party concerned including, but not limited to, the following:

- (a) a caution, warning as to future conduct, reprimand;*
- (b) a fine and/or compensation orders;*
- (c) a suspension for a specified number of Matches (including all on-field activities) or period of time;*
- (d) expulsion from the remainder of a Tournament and/or Series of Matches;*
- (e) exclusion orders from Unions or grounds within Unions;*
- (f) suspension from involvement in officiating, coaching and/or administration of the Game;*
- (g) the withdrawal of other benefits of membership of World Rugby including but not limited to the right to apply to host World Rugby Matches or International Tournaments and/or funding;*
- (h) the deduction or cancellation of points or any such similar sports or tournament based sanction;*
- (i) the cancellation of a Match result;*
- (j) the replaying of a Match;*
- (k) the forfeiture of a Match; and/or*
- (m) any combination of the above or such other sanction as may be appropriate.*

When imposing a sanction for Misconduct the Judicial Committee or Judicial Officer shall describe the precise nature of any sanction and its scope and the extent of any activities restricted and/or prohibited.”

125. A useful starting point is Appendix 1 to WR Regulation 17, which provides sanctions for similar conduct (i.e. verbal abuse of match officials on-field). The Sanction Table in Appendix 1 (“the Sanction Table”) provides:

- a. *Verbal abuse (Law 9.28): low-end 6 weeks/matches; mid-range 12 weeks/matches; top-end 18+ weeks/matches; max 52 weeks/matches.*
- b. *Offences involving threatening words or actions being used towards Match Officials: low-end 12 weeks/matches; mid-range 24 weeks/matches; top-end 48+ weeks/matches; max 260 weeks/matches.*

126. We agree with WR that there is no good reason why the same conduct should attract a lesser sanction where it is committed off-field.

127. There is virtue in consistency of sanctioning. We have been provided with plenty of examples of sanctioning in cases involving a coach or director of rugby directly threatening a match official. We need not add to the length of this decision by setting them out in detail. We have read them and have had appropriate regard to them all and a small selection will suffice.

128. SANZAR³⁸ v Eddie Jones 2007³⁹ - Jones then coach of Queensland Reds, admitted Misconduct arising out of his media comments which included the following observations: "Referee decided to referee the scrums a different way which I thought was absolutely outrageous", "Just can't have that in professional Rugby, but unfortunately that's the case", "Referee decide he was going to square up in the second half - gave them, I think, four penalties in a row" and "How much is the fine? I'll have to check with my accountant . . . whatever the fine, I'll pay twice. I thought it (the refereeing) was outrageous". He was fined and ordered to apologise.

129. RFU v Richard Cockerill 2009 - Cockerill, then coach of the Leicester Tigers, entered the technical area and threatened "this bloke is f***ing s**t" "you are all a bunch of useless c***s" and "I'm going to slag this c**t off to every f***ing newspaper going, you watch me". he admitted both charges and was suspended from match day coaching for four weeks. The suspension from match day contact (direct and indirect) with his team and match officials was on match days.

130. RFU v Venter 2010- the Saracens' Director of Rugby was found 'guilty' of conduct prejudicial to the interests of the Union arising out of the following post-match media interview:

BBC: *Is that a blip or is it a more serious concern for you?*

BV: *No, no, no its not a real blip – if you look at why we lost we're not that worried about the way we played, you know there was factors...we conceded ten penalties in the second half, we only conceded three in the first half, they conceded nine in the first half and only four in the second half,*

³⁸ As it then was.

³⁹ Before the late and much respected Terry Willis.

so something else went wrong here and we do not know what it is. I did not say anything in the half-time talk...

BBC: You believe its an inconsistency of refereeing?

BV: I think so, I think, the referee was influenced at Half-time and that's all I can think.

BBC: You think he might have been influenced by a Leicester...

BV: I don't know.

BBC: Part of the Leicester management?

BV: Something happened. I have no idea something happened, y'know, so it would be wrong of me to make a statement, all I know is something happened at half-time, the game changed – as a matter of fact, Steve Borthwick got a yellow card with twenty minutes to play and that also killed us

131. The Panel accepted that Venter did not intend to attack the integrity of the referee, but concluded that there was an implication in the BBC question that the referee had been improperly influenced at half time and the way in which Venter answered that question was (objectively) likely to have left the listener with the impression that this was the case. He was ordered to apologise and suspended from match day coaching for 4 weeks, which was itself suspended for 12 months.

132. *RWCL v Eliota Fuimaono-Sapolu and the Samoan Rugby Union* - Following Samoa's Rugby World Cup ("RWC") match against South Africa, the player posted a range of tweets on his twitter account about the referee Nigel Owens, saying "*Nigel Owens: he was fucking shit! I can understand the hate!!*"; "*Haha good luck u racist biased prick*" and "*That's why we need a neutral ref. All I'm hearing is how bullshit the ref was! Haha*". He then appeared on a television programme where he confirmed that he had used and meant the term "*racist*." He was found to have committed Misconduct and was suspended from playing for 6 months, which suspension was suspended for 2 years, provided he issued a full and unconditional public apology to Nigel Owens and an unconditional retraction of any criticism of him and the RWC; undertook 100 hours of rugby Community Service in Samoa in support of the IRB (as it then was) high performance programme⁴⁰ and attended and passed a recognised referee's course at his own expense. The Samoan Rugby Union admitted

⁴⁰ That aspect of the sanction was quashed on appeal in light of evidence not available to the Judicial Officer at first instance.

Misconduct and was reprimanded, having behaved “*responsibly*” and done all it could to control the player. We are compelled to say that the sanction imposed upon *Fuimaono Sapulo* appears extremely lenient for such an offensive attack on a match official’s integrity.

133. *RFU v Steve Diamond 2012* – Diamond, then coach of Sale Sharks, verbally abused the match official saying “*your f***ing decision making is a shambles*” and “*you are a f***ing disgrace*”. He was suspended for 18 weeks which suspension prevented him from entering the playing enclosure, technical area, approaching match officials and communicating or attempting to communicate with match officials before, during or after a match on the day of the match.

134. *IRB v South African Rugby Union & Ors 2009* - SARU was fined £10,000 for permitting its players to wear armbands protesting the disciplinary suspension imposed against one of the SA Rugby players for an on-field offence (on the last BIL tour of South Africa). SARU was found to have been aware of the players’ actions in advance.

135. *RWCL v Scottish Rugby Union 2019* - SRU was fined £70,000 for misconduct involving comments made by or on behalf of the SRU. It is important to note that it was SRU that committed the Misconduct.

136. Those cases are illustrative of the length and nature of sanctions imposed *on their own facts*. We have found no especially useful precedent. That is not a reflection on the endeavours of the parties, but that sanctioning is a fact sensitive exercise. In sanctioning, unless previous decisions establish principles or guidelines, they have limited value.

137. Match officials are integral to the Game. They are entitled to, and must receive, appropriate respect, particularly from participants such as players, coaches and directors of rugby. They have a very difficult job. The constant sniping, questioning, and challenging of officials’ decisions by players besmirches the professional and international Game. One cannot watch an international match this November window without seeing it.

138. That said, match officials are not and should not be beyond proper scrutiny nor fair comment or, where warranted, criticism. Robust debate about all aspects of the Game is healthy. The press has an important part to play in such discussions. Directors of Rugby and coaches rightly are free to express general concerns about the Game. However, they must only do so in ways consistent with the core values. If they have issues to raise about officiating those are properly done using the appropriate channels.

139. To suggest that a referee is a cheat or allege that they are making inaccurate decisions for the benefit of one side over the other is an attack on that official's integrity. Such an attack undermines one of the core values of rugby and sport more widely. That is reprehensible and it is serious. The drain of people away from officiating is not helped by public shows of disrespect such in the instant case.

140. In its written submissions SARU observed "*various parties including Rugby Australia have already publicly called for serious sanction, but the sanctions should be determined on the merits and not in the light of those demands*". Should it be necessary to state the obvious we do so: we sanction for the Misconduct we have found proved, on the facts as we find them, having appropriate regard to the relevant guidance and principles. We do so uninfluenced by what we are told are the opinions of others.

(3) Effect on Nic Berry

141. There is a human element to this case which we have been concerned not to lose sight of. While RE and SARU concentrated their attentions on the treatment of Siya Kolisi, it is Nic Berry who was vilified in the Erasmus video. We had over an hour to observe and to listen to Nic Berry, as his account was tested and challenged before us. We had no hesitation in accepting his evidence. It was measured and he made concessions where appropriate. He had no motive to lie, exaggerate or mislead. We were impressed by his quiet dignity, humility, and the restraint he showed during his evidence.

142. We also accept without reservation that what he endured because of the publication the Erasmus video has had a profound effect upon him. We use his words:

“Needless to say, the whole situation has been an extremely difficult time for my family and I. As a match official I understand that our performances will be heavily scrutinised, especially in such a prestigious tournament. However, the public attack on my integrity and character is not something that should be tolerated in any workplace.

“...I considered officiating in a Lions tour comparable with that in a World Cup. The appointment is a honour which few achieve. However, due to the actions of Mr Erasmus, my family and I have endured a significant amount of distress and we will only have negative memories of the whole experience.

I feel that Mr Erasmus engaged in a character assassination of me on social media. I have spent many years trying to build my reputation as an international referee and in the course of his video which was posted online, Mr Erasmus has caused it immeasurable damage. Though a small proportion of the rugby community will follow the outcome of this matter, and in the process obtain an accurate account of what really occurred, the wider rugby community will only be aware of me in the context of this incident. I feel that regardless of the outcome and any sanctions imposed, my reputation as a referee and person will forever be tarnished.

Throughout Mr Erasmus’ video he makes unsubstantiated claims about the incidents that occurred in the 72hrs after the first test match which I refereed. Throughout this whole ordeal I’ve maintained my professionalism despite being the target of an unprecedented personal attack played out in the media. The evidence attached is an accurate and detailed account of what really happened and should assist World Rugby in their judicial hearing into the matter.

I felt that Mr Erasmus’ video brought into question my professionalism and my integrity as a match official and that there was an inference to be drawn that I was in some way cheating as an official, which is obviously completely untrue.

My reputation throughout the rugby community has suffered immeasurably from his actions and I acknowledge that the impending investigation will likely lead to more public scrutiny and unwanted media attention. However, his actions are against everything our game stands for and I feel it’s important to take a stand against such behaviour. I sincerely hope that the outcome of the independent judicial hearing will set a precedent to discourage similar behaviour in the future so that no person has to experience what I have these past few weeks.”

143. No further words from us are necessary. That is the human cost of RE’s conduct. It is that cost which he and SARU have yet to acknowledge.

(4) World Rugby's submissions

144. For reasons it set out in writing and expanded upon, WR submitted that the offending by RE was, at the very least, at the mid-range of offending in the Sanction Table. It submitted that the appropriate suspension for RE was one of 24 matches in relation to the SA Rugby National Teams (National Senior Representative Teams (Men and Women) and Next Senior National Representative Teams (Men and Women)).

145. Once more for reasons it set out in writing and expanded upon, it submitted that appropriate sanction for SARU was a fine in the sum of £25,000.

(5) Rassie Erasmus

(a) Evidence and submissions

146. Having been asked, we gave permission for Siya Kolisi to give evidence. He gave evidence of RE's general character. He paid fulsome tribute to RE's role in his career and for South Africa rugby more widely. He confirmed the impression articulated at paragraph 111 above and we told him so.

147. We read and had appropriate regard to a short statement from RE. He elected not to address us during the sanction hearing. The statement contained no acceptance of fault, no apology or any acknowledgement of the effect on Nic Berry. Therein he said: "*the sensitive and complicated racial component could not sufficiently be dealt with within the limited time allowed and the constraints of the written submission and I requested an indulgence to make oral submissions in supplementation*". In the said statement he addressed the financial damage he would suffer if he was suspended. To that end he provided us with the details of his performance and incentive based, including win, bonuses. We had regard to that information.

148. In written submissions filed on his behalf (the content of which we had full regard to) it was submitted that he has an "*unblemished career record*"⁴¹ exceeding 25 years and has

⁴¹ Paragraph 11.

never been charged with Misconduct, a breach of World Rugby's Regulations or Code of Conduct nor accused of or charged with conduct or activity that brought the Game into disrepute. We were invited to consider his "*passionate and emotional reaction to what he perceived to be disrespectful treatment of the black Springbok captain, should be understood in context of a unique, extremely sensitive and very complex South African racial landscape*"⁴².

149. We were invited to fine him. It was submitted that a suspension will "*undoubtedly be harmful to the Springbok squad of players*"⁴³.

150. We also had appropriate regard to SARU's submission that RE should not be suspended. It was submitted that such was a "*very blunt tool, which has the potential to damage innocent parties*"⁴⁴. In that context, we were invited to consider, and we have had regard to, his wider responsibilities as Director of Rugby. SARU submitted that the *Jones*, *Fuimaono-Sapolu* and *Venter* decisions were particularly relevant in fixing the appropriate sanction. If there was a suspension, it should be on suspended terms, confined to match day activities and in clear terms.

151. In mitigation once more Mr Plewman QC returned to the topic of Siya Kolisi. He submitted that "*a very significant factor leading up the making of the video was Mr Erasmus' belief that Mr Kolisi did not have equal access to or was treated differently by the referee when compared to Mr Jones. It has never been suggested that that perceived discrimination was deliberate or racist, but only that in the event it occurred*"⁴⁵. He was right to underline that any discrimination was "*perceived*" and in this respect the match officials did not act deliberately nor were they racist.

152. If there be doubt, we remove it: we recognise the exceptional sensitivity of race in South Africa. We are sure that none of the match officials deliberately or consciously treated Siya Kolisi differently from any other player. Nothing they did was motivated by race. That RE believed his captain was treated differently does not get close to justifying the

⁴² Paragraph 12.

⁴³ Paragraph 18.

⁴⁴ Paragraph 14(1) SARU submissions.

⁴⁵ Paragraph 15(1), *Ibid*.

content of his video. We also note that only two of the clips concerned that topic and there were a further four or so references to the Springbok players being disrespected.

153. In the written submissions filed on his behalf, it is said that “*the accusations against him and disciplinary process has caused his family immense distress and harmed his reputation significantly*”⁴⁶. This is said to be a “*severe punishment*”⁴⁷ for RE. With respect, it is wrong. The accusation and process are the product of his own conduct. He brought the proceedings on himself. He could have shortened them radically by accepting his Misconduct. However, we do recognise what may be seen as a fall from grace for him, having led his country’s Senior Men’s Representative team with such distinction including at RWC 2019.

154. A striking feature of RE’s evidence, and the submissions made in mitigation is the failure to acknowledge that any part of the content of the video was abusive, insulting and/or offensive (paragraphs 72-73). Further there has been no apology to Nic Berry. That is a matter for RE and SARU. We do not punish him for that, nor for the fact he and SARU fought the case. That was their right. However, it deprives him of the mitigation an acknowledgment of fault and an apology would otherwise have afforded.

155. A further point made in mitigation in written submissions on his behalf is that any suspension “*should also not be interpreted by the players as retribution for their coach standing up for them*”⁴⁸. With respect, he appears not to appreciate the corrosive effect his behaviour has on the Game more widely, as well as the viewing public and press. We cannot see how such conduct improves his standing or moral authority in the eyes of his players or of informed observers.

(b) Sanction

156. We sanction on the basis of our factual findings as explained above.

⁴⁶ Paragraph 10.

⁴⁷ Ibid.

⁴⁸ Paragraph 18.

157. In assessing the seriousness of the offending, the important factual features (as we have found them – relevant paragraph identified) are as follows:

- a. RE threatened a match official, which we have found was wholly unacceptable (paragraphs 65-69, 76).
- b. The Erasmus video was a sustained attack on the integrity and impartiality of the match officials (paragraphs 62 and 87).
- c. The Erasmus video contained repeated comments which were abusive, insulting and/or offensive to Nic Berry and the other match officials (paragraphs 62 and 71-73).
- d. RE made the Erasmus video with wider public dissemination in mind (paragraph 54(e)).
- e. The Erasmus video was made public by or at his behest (paragraph 54(a-h));
- f. It was planned, scripted and he recruited another to help him produce it.
- g. As Director of Rugby RE was in a position of considerable responsibility.
- h. The detrimental effect on Nic Berry which has not been inconsiderable.
- i. His Misconduct has received widespread international attention and consequently brought the Game considerably into disrepute.

158. The following mitigates his conduct:

- a. He has no previous findings of Misconduct against him.
- b. We recognise and reflect his very significant contribution to the Game, as a player and coach, which reached its zenith in Japan at RWC 2019.

159. In light of those factors, we have no hesitation in concluding that RE's Misconduct is much more serious than any of the cases cited to us. This was an especially serious and egregious example of offending of this kind. It involved premeditated, multiple abusive and insulting comments and attacks on the officials' integrity in the course of that 62 minute video. That is compounded by three further facts (as we find them to be):

- a. The Erasmus video was made for wider public dissemination.
- b. It was made public by or at the behest of RE.
- c. RE threatened the referee.

160. The 'offending' reflected by these charges is so serious that only an immediate suspension is appropriate.

161. We turn to the nature and length of that suspension. We have regard (of course) to his 'offending' and to all the matters we have read and heard. We have also had regard to first principles. Any suspension must have effect. It must be meaningful. A suspended player misses matches. That has a direct and meaningful consequence for them; it is central to that which they do.

162. Our powers under Regulation 18.10.1 are very wide. Indeed, there is no principle that a suspension for Misconduct should be tied to matches. In that context it is noteworthy that the Erasmus video was made not in a personal capacity but as Director of Rugby. There I merit in the sanction being imposed to reflect that wider role.

163. Further a suspension of the nature and length suggested by WR would

- a. Extend in excess of a year on the basis of the provisional schedule provided to us; and
- b. Bite only in respect of SARU matches. If RE resigned and took up a coaching position with a professional club or province (including in South Africa) the terms of suspension suggested by WR would then be of no effect. That would make a mockery of the process.

164. Further, RE is not the head coach. If he were suspended only from attending at, and participating on, match days (as WR suggests) that would be a penalty of limited impact. An observer might ask whether it would do any more than stop him acting as 'water carrier'. It would also not impact upon his wider role in South African rugby. According to SARU's written submissions that role includes providing "*strategic direction to rugby in South Africa while improving the overall quality of the game, and lead responsibility for:*

- a. *The long-term planning of SA Rugby's Elite Player Development pathway and succession planning;*
- b. *The operation of SA Rugby's National Academy;*
- c. *Professional coach development and succession planning;*
- d. *The performance of all National Teams (which includes both Men's and Women's teams, the National Sevens teams and all age grade teams);*
- e. *The selection policies and processes regarding all National Teams;*
- f. *The monitoring of all franchise and provincial teams' performance;*

- g. *The effective functioning of all of SA Rugby's sports science and medical services (including conditioning and nutrition) to participants; and*
- h. *The performance of SARU's Elite Referees panel*⁴⁹.

165. All of which he could continue to do and indeed participate in coaching right up to match day.

166. We note the point made by RE and SARU that others would suffer were he suspended. That others suffer when an 'offender' is punished is no means unusual. A team generally suffers when a red card is issued. That is not the fault of the rest of the team, but it does not mean the otherwise appropriate red card should be a yellow. In criminal sentencing it is sometimes the case that the suffering of others can mitigate the otherwise appropriate sentence. All of that we have in mind. What RE cannot do is seek to place others between himself and the proper consequences of his actions.

167. All of the above has led us to conclude that a suspension limited only to match days would not reflect properly the gravamen of his Misconduct. An element of the suspension must be wider than that. In fixing the total length of the suspension is we have had proper regard to its ambit and the impact on RE. Had it been limited to matches, it would have been longer, but in our judgement of less actual consequence.

168. There is a good deal of unnecessary duplication in the charges. The sanction we impose is concurrent on all charges and reflects the totality of his offending, having regard to the mitigation and all the factors we have identified. The sanction is as follows:

- a. Johan (Rassie) Erasmus is warned as to his future conduct (Regulation 18.10.1(a)).
- b. Johan (Rassie) Erasmus is suspended with immediate effect from any involvement of any kind in Rugby Union at whatever level including all off-field as well as all on-field activities for a period of 2 (two) months, from the date of this Decision.
- c. Johan (Rassie) Erasmus is suspended with immediate effect and until 30 September 2022 in relation to all Rugby Union including but not limited to the SA Rugby National Teams (National Senior Representative Teams (Men and

⁴⁹ Paragraph 14(1).

Women) and Next Senior National Representative Teams (Men and Women)) in the following terms:

- i. He is suspended from any match day involvement including coaching, which prohibits any direct or indirect contact (via communications devices or otherwise) with team management or players on match days.
 - ii. He is prohibited from entering the relevant stadium, coaches' box, playing enclosure, technical area, approaching and/or communicating with match officials on match day.
 - iii. He is prohibited from engaging in any 'feedback' process with match officials during the period covered by the suspension.
 - iv. He is prohibited from engaging in media duties in relation to the relevant matches.
- d. Within 14 (fourteen) days of the date of this Decision, RE must issue a full public apology to the first BIL Test match officials.

169. In simple terms the effect of the suspension is as follows:

- a. He is suspended from all rugby and rugby related activities for two (2) months.
- b. He may then return to his Director of Rugby duties but must continue to serve a 'match day' ban until 30 September 2022 which will therefore include the SA Senior Men's inbound tour by Wales in July and the 2022 Rugby Championship.
- c. That 'match day' ban will remain in place and covers all Rugby Union at whatever level. It would prohibit, therefore, participation in that way at club or provincial level.

170. In fixing the length of the suspension we have had regard to the provisional schedule provided by Jurie Roux (at Appendix 3). We appreciate it is provisional. WR accepted that every match therein was meaningful for the purposes of the Regulations. It will be noted that during the progress of these proceedings he has participated in the 2021 Rugby Championship and (to date) the 'November window'. The suspension is proportionate in terms of length and scope. It reflects the *real* capacity in which he committed the Misconduct, the gravity of his offending and is meaningful. It takes him out of the Game completely for a time. Thereafter, he can return and to attend to his other duties, but the punishment continues to have meaningful effect for a further 8 or so months.

(4) South Africa Rugby Union

171. We read and have had regard to the contents of a statement from Jurie Roux. Mr Roux asked for much of his statement to be kept “*confidential*” and referred to only in “*careful terms*”. Much of his statement concerns what is described therein as the social and political environment of South African rugby and RE’s role within it.

172. In his written submissions Mr Plewman QC addressed the failure to instruct RE to take down the video, as identified it in paragraph 101 above. He submitted

a. “SARU defended the case on the basis that Mr Erasmus did not publicly disseminate the video which was its belief. It did not argue that if publicly disseminated there were no grounds for criticism.”

i. In his written submissions filed before the liability hearing started, Mr Plewman QC said, “*The first point about the content of the video is that once it is correctly analysed in the context of a behind the scenes and proper channels communications to the officials not for wider distribution there is nothing wrong with it...nothing improper is said in it...*”⁵⁰.

ii. We profoundly disagree with that analysis of the Erasmus video.

b. He further submitted “*sanction ought to be assessed on the basis that SARU is being held vicariously liable; and that it was not shown that it was aware of or could have prevented the public dissemination, only that it was aware of the creation of the video, and its having been uploaded to the Vimeo Platform in order that it could then be shared with a closed group*”⁵¹. We sanction on that basis alone.

173. As for our observation in paragraph 102 above that our sense was that the SARU did not consider that the Erasmus video represented any overstepping of the line by RE, Mr Plewman QC submitted that SA Rugby “*had good reason to believe that robust debate within appropriate channels is acceptable*”. We do not sanction on the basis of what was “our sense”. We agree with the principle that such may be conducted in the appropriate channels, but the Erasmus video was obviously the wrong side of that line.

⁵⁰ Paragraph 28.

⁵¹ Paragraph 9(4).

174. As for our observation in paragraph 103 that it was at the very least surprising that SARU appeared not to have taken any steps or made any public comment about the Erasmus video, he submits that it is “*not fair to increase sanction on the ground that something else unidentified should have been done*”⁵². If WR had charged the third limb of Charge **SA Rugby 1** (failure to take steps publicly correct the content of the Erasmus video) separately and it had been proved, then the sanction would have been considerably greater. However, it did not, and we do not reflect that element in sanction.

175. Mr Plewman QC submits further that if a fine is imposed it should not be “*substantial*”⁵³.

176. In assessing the seriousness, we of course must and do reflect the parasitic nature of the charge. It was, as we observe in paragraph 100 a failure to ensure RE complied with Regulation 18 and the Code of Conduct. However, the underlying conduct was grave indeed.

177. SARU has a previous finding of Misconduct, also arising out of a BIL tour of South Africa. That aggravates the present charge. The passage of time does not save SARU as such tours occur only every 12 years.

178. The sanction is as follows:

- a. SARU is warned as to its future conduct (Regulation 18.10.1(a)).
- b. SARU is fined £20,000.
- c. Within 14 (fourteen) days of the date of this Decision, SARU must issue a full public apology to the first BIL Test match officials.

G. SUMMARY

179. For the reasons set out above we find proved the **Charges RE1, RE2, RE3, RE4, RE5, RE6 and SA Rugby 1**.

⁵² Paragraph 11(2).

⁵³ Paragraph 12.

180. For the reasons set out above we dismiss **Charge SA Rugby 2**.

181. Sanction:

- a. Johan (Rassie) Erasmus-
 - i. The sanction we impose is concurrent on all six charges.
 - ii. Johan (Rassie) Erasmus is warned as to his future conduct (Regulation 18.10.1(a)).
 - iii. Johan (Rassie) Erasmus is suspended with immediate effect from any involvement of any kind in Rugby Union at whatever level including all off-field as well as all on-field activities for a period of 2 (two) months, from the date of this Decision.
 - iv. Johan (Rassie) Erasmus is suspended with immediate effect and until 30 September 2022 in relation to all Rugby Union including but not limited to the SA Rugby National Teams (National Senior Representative Teams (Men and Women) and Next Senior National Representative Teams (Men and Women)) in the following terms:
 1. He is suspended from any match day involvement including coaching, which prohibits any direct or indirect contact (via communications devices or otherwise) with team management or players on match days.
 2. He is prohibited from entering the relevant stadium, coaches' box, playing enclosure, technical area, approaching and/or communicating with match officials on match day.
 3. He is prohibited from engaging in any 'feedback' process with match officials during the period covered by the suspension.
 4. He is prohibited from engaging in media duties in relation to the relevant matches.
- b. Within 14 (fourteen) days of the date of this Decision, RE must issue a full public apology to the first BIL Test match officials.
- c. SARU:
 - i. SARU is warned as to its future conduct (Regulation 18.10.1(a)).
 - ii. SARU is fined £20,000.

- iii. Within 14 (fourteen) days of the date of this Decision, SARU must issue a full public apology to the first BIL Test match officials.

182. We make no order as to costs.

183. The Respondents have a right of appeal as provided by Regulation 18.11.

H. POSTSCRIPT

184. It is not part of our own role to comment upon the alleged conduct of members of the BIL coaching staff. It is neither necessary nor is it appropriate for us to do so. None has been charged with any offence and we have not heard from any of them.

185. We are confident Nic Berry found himself in a position he should never have been because of

- a. The prevailing practice which permits discussion (to put it neutrally) between head coaches and match officials; and
- b. The absence of a formal protocol governing that practice. Joël Jutge tried to put one in place at 15.35 on 26 July⁵⁴.

186. The pressures on Nic Berry were exacerbated by the fact it was the first in a three-match series; by RE's persistence; and the exigencies imposed by Covid-19. Consistent with what we are told is the usual practice, and what seemed to us to be his decent disposition, he tried to meet RE before he was advised (wisely) not to.

187. We understand that communications between match officials and head coaches are commonplace, at all levels of the professional game. It routinely includes the provision of (often many) video clips from coaches for what we shall call 'discussion'. Those are often (if not invariably) clips of decisions the coaches believe or assert the referee has got 'wrong'. No doubt in this context 'wrong' means adverse to their team.

⁵⁴ Row 51, *Ibid.*

188. We were told such meetings have benefits for both 'sides'. We readily understand why head coaches would wish to have access to match officials. We can see that match officials may wish to maintain respectful communications with coaches. However, it is right to observe that referees receive objective analysis from trained and experienced reviewers. At the professional level they, like Nic Berry, are likely to have their own coaches or others from whom they can seek advice.

189. It seems sensible to us that if this practice continues it should always be regulated by a written protocol. Whether it is possible for that to be standardised across all competitions we rather doubt. However, a protocol or competition bespoke protocols would provide transparency as well as clarity as to when and in what circumstances such meetings occur; who should be present; the matters to be discussed; and the manner thereof. To remove the match official/s from the firing line, we think it sensible for such meetings to be arranged through and to be chaired by a person such as Joël Jutge or those in a comparable position. Such meetings might also be recorded so there can be no doubt as to what was discussed. No doubt hard thought will now be given as to whether it is appropriate for match officials to be having such meetings with coaches once a series has begun.

190. Another virtue of such procedure is that it would prevent match officials being ambushed and subjected to unfair and unwarranted pressure as happened to Nic Berry in this instance. It is to be hoped those with responsibility for such matters attend to this area of the Game forthwith.



Christopher Quinlan QC, Chair, Independent Judicial Panel Chairman
Nigel Hampton QC, Chair NZRU Judicial Committee, Chair SANZAAR Judicial
Committee
Judge Mike Mika, New Zealand District Court Judge and former Samoa International
Rugby Player
Signed on behalf of the Judicial Committee

17 November 2021

Appendix 1 Committee Directions

4 August 2021

1. Pursuant to Regulation 20.3 I appoint the following Judicial Committee:
 - a. I will chair the said Judicial Committee as the Independent Judicial Panel Chairman
 - b. Nigel Hampton QC, NZ
 - c. Mike Mika, NZ
2. At this stage I issue the following directions:
 - a. World Rugby to serve particularised charges with supporting evidence by 10 August 2021.
 - b. SARU and Mr Erasmus to reply to the said charges and evidence by 17 August 2021, setting out
 - i. whether they admit or deny the said charges;
 - ii. if the charges are denied,
 1. their defences with such particularity as they will rely upon at any substantive hearing and
 2. any supporting evidence.
 - c. The parties have liberty to apply to vary the said directions on 24 hours' notice.
3. Should it become necessary to appoint an Appeal Committee, I delegate that power to Adam Casselden SC (Regulation 20.3.1).

13 August 2021

We amend the directions as follows:

1. By 17.00 (BST) on 17 August 2021 the SARU and Mr Erasmus must indicate in writing whether they admit or deny the charges.
2. By 17.00 (BST) on 24 August 2021 the SARU and Mr Erasmus must reply in writing to the said charges and evidence.
 - a. If the charges are denied, the SARU and Mr Erasmus must
 - i. State their defences with such particularity as they will rely upon at any substantive hearing,
 - ii. Supply in writing any supporting evidence, and
 - iii. Specify whether they wish the matter to be determined at an oral hearing or on the written documentation.
 - b. If the charges are admitted, the SARU and Mr Erasmus must
 - i. Set out in writing all matters they wish the Judicial Committee to consider in respect of sanction, and
 - ii. Specify whether they wish the issue of sanction to be determined at an oral hearing or on the written documentation.
3. The parties have liberty to apply to vary the said directions on 24 hours' notice.

18 August 2021

As for paragraph 2 of Mr Frikkie Erasmus's application:

1. He need have no concern. He made the application, World Rugby responded, and we adjudicated on the merits. It is the conventional approach.
2. It is wrong to assert, as he does, "that the date proposed by World Rugby seem to have been accepted on the strength of the baseless reasons put forward by World Rugby".

As for the substance of the application, we grant it. [*... application that Mr Erasmus be granted the extension of time initially requested allowing him to file his response on or before 31 August 2021*]

1 September 2021

Our original directions were:

1. By 17.00 (BST) on 17 August 2021 the SARU and Mr Erasmus must indicate in writing whether they admit or deny the charges.
2. By 17.00 (BST) on 24 August 2021 the SARU and Mr Erasmus must reply in writing to the said charges and evidence.
 - a. If the charges are denied, the SARU and Mr Erasmus must
 - i. State their defences with such particularity as they will rely upon at any substantive hearing,
 - ii. **Supply in writing any supporting evidence, and**
 - iii. Specify whether they wish the matter to be determined at an oral hearing or on the written documentation.
 - b. If the charges are admitted, the SARU and Mr Erasmus must
 - i. Set out in writing all matters they wish the Judicial Committee to consider in respect of sanction, and
 - ii. Specify whether they wish the issue of sanction to be determined at an oral hearing or on the written documentation.

We amended 24 August to 31 August. However, it seems to us that neither the SARU and Mr Erasmus parties have not complied with the emboldened part. If they wish to rely upon any evidence, they must do so by 17.00 (BST) 2 September 2021.

3 September 2021**Directions of Chair of Judicial Committee**

1. SARU and Mr Erasmus have not complied with my direction to “supply in writing any supporting evidence” in support of their respective written submissions. Notwithstanding the submissions I have read, I can see no good reason why they cannot produce signed witness statements from all witnesses upon whom they wish to rely including Mr Erasmus. Therefore, such witness statements must be filed and served upon Joyce Hayes no later than 17.00 (BST) on 7 September 2021.
2. Given the
 - a. Responses filed on behalf of each of SARU and Mr Erasmus;
 - b. The factual challenges made by SARU and Mr Erasmus to various of the assertions made by World Rugby in support of the misconduct charges; and
 - c. The arguments to be advanced on behalf of SARU as to the standard of liability which should be applied by this Committee in determining questions of SARU’s potential responsibility in relation to the alleged conduct of Mr Erasmus; and
 - d. To assist this Committee to
 1. determine what evidence it will need to have placed before it at the substantive hearing of the charges and the form thereof; and
 2. Estimate how long a period should be set aside for the substantive hearing of the charges,

I direct that World Rugby must file and serve upon Joyce Hayes by 17.00 (BST) 10 September 2021, a detailed Reply to each of the Responses.

12 September 2021**Further Directions of Chair of Judicial Committee**

1. In light of the submissions and evidence served by the parties and the issues the Judicial Committee will grant an oral hearing in this matter. It will be conducted by video conference call but not in public.

2. In order to fix a hearing date to determine liability (i.e. whether any charge is proved), the Committee directs that, by 16.00 BST on 14 September 2021 each party shall:
 - 2.1. Identify in writing the witness/es it wishes to call;
 - 2.2. Identify any good reason why that witness/es witness statement cannot stand as their evidence-in-chief;
 - 2.3. Give a time estimate for the said oral hearing on liability; and
 - 2.4. Nominate any dates when the parties and/or witnesses are not available and why.
3. Once the hearing date is fixed, the Committee will direct the parties to use their best endeavours to:
 - 3.1. Define the factual issues, including preparation of an agreed chronology and a statement of agreed facts;
 - 3.2. Define any legal issues which will need to be resolved; and
 - 3.3. Agree a witness list and the form of evidence.
4. The parties will have regard to the different time zones of all involved, including that two members of the Judicial Committee are in New Zealand. The parties are expected to liaise with each other in answering the said directions and to assist the Committee to fix the hearing date. It is self-evidently in the interests of all that the matter is heard and resolved as soon as possible.

1 October 2021

I am grateful for the assistance of the parties to date. Finding a convenient date for all parties and the Disciplinary Committee (“DC”) is impossible.

There are three options.

1. We hear this matter on the weekend of 16-17 October. That will necessitate my replacing one member of the DC.
2. We hear this matter on the weekend of 30-31 October. All members of the DC are available that weekend but we recognise it is some way off and very close to the ‘November window’.
3. I release the three of us and appoint a new Disciplinary Committee to hear this matter in the hope the hearing can be fixed earlier. That is by no means certain given it is 1 October.

I consider it appropriate to invite submission from the parties, though emphasise the decision will be made by the DC. Any submissions on this topic alone must be received by **16.00 (BST) on 4 October**.

5 October 2021

We have considered the representations from the parties. As we pointed out if we hear any part of this case on the weekend of 16-17 October, that will necessitate replacing one member of the Committee. That is far from desirable. We note Mr Berry’s commitments on the weekend of 30/31 October. Therefore, we will start these proceedings and hear his evidence at **19.00 (BST) Wednesday 27 October**. We will then hear the balance of these proceedings on liability in 2 sessions each commencing at **07.00 (BST) on Saturday 30 October and Sunday 31 October**.

We have commented more than once on the desirability for expedition. We cannot act on what we are told is “ongoing public speculation”. To the extent that there is such, that can be addressed in one of two ways. World Rugby could issue a statement informing the public of the progress of these proceedings and the reason for what the ill-informed may characterise as delay. Alternatively, we could do so.

14 October 2021

1. We have received written submissions from the parties on the issue as to whether the matter will be heard in private or public. We will determine that issue on the basis of those written submissions and announce our decision before 27 October 2021.

2. We had expected and indeed understood the parties were working together in respect of 3.1, 3.2 and 3.3. If the suggestion is that a direction will assist we shall make one: we direct the parties to file written documents in respect of the following no later than 17.00 BST 22 October:
 - a. 3.1 Define the factual issues, including preparation of an agreed chronology and a statement of agreed facts;
 - b. 3.2 Identify any legal issues which will need to be resolved; and
 - c. 3.3 An agreed witness list and the form of evidence. "

**Appendix 2
Chronology**

	Date/time	Incident	Detail
1.	Wednesday, 14 July 2021	SOUTH AFRICA 'A' v BIL	
2.	Thursday, 15 July 2021	BIL Press Conference	<p>Warren Gatland comments regarding Faf de Klerk: <i>"Well, I can't understand when the comments were that there was no contact with the head. Someone was watching a different picture to me. So, I agree, I thought, it looked reckless to me, no arms and it was definitely, you know, he's hit the arm first and then the shoulder, but there's definitely head on head contact. So, we've got a meeting with the referees tomorrow and just to get a little bit more clarity on that. Just so that what we want is some clarity so that we get complete consistency"</i>.</p> <p>Warren Gatland comments regarding Mr Erasmus acting as a water carrier: <i>"I don't know, I think he was just trying to wind us up by saying we were scared, which sometimes he's capable of doing. I thought last night he's a water boy and running on to the pitch, but the thing is if you're the water boy running onto the pitch, you've got to make sure you're carrying water. I don't know, I didn't kind of understand what his role was. You know you don't run onto the pitch giving messages and stuff without – if you're the water boy without carrying the water so, my advice is to make sure he's carrying water next time when he does that"</i>.</p>
3.	Friday, 16 July 2021	Erasmus tweets and retweets	<p>Erasmus tweet: <i>"While you are at it please get clarity on this also, penalty or play on? We have to 100% sure and aligned! can't agree more"</i></p> <p>And <i>"If there is time maybe get absolute clarity and alignment on this one please, I know its way after the whistle, but lets just align and get clarity to be sure"</i>.</p> <p>Erasmus retweets "Jaco Johan" twitter account: <i>"here's some help with the video for footage quality"</i>.</p>
4.	Wednesday, 21 July 2021	Both teams informed of TMO appointment	
5.	21 July 2021	Meeting between Springbok management, Joel Jutge and Joe Schmidt	Scheduled meeting between Joel Jutge, Joe Schmidt and the SA Rugby management team takes place. Media statements made discussed during that meeting.
6.	Thursday, 22 July 2021	Meeting between Mr Erasmus, Mr Siya Kolisi and Mr Handre Pollard and the Match Officials.	Meeting at the request of Mr Erasmus between Springbok team representatives and the Match Officials for the 1 st Test. SA Rugby comment: "Mr Erasmus impressed upon the Match Officials that they accord both teams' captain's equal respect."
7.	22 July 2021	Media reports of Warren Gatland as "furious" about the appointment of TMO Marius Jonker	Various reports in media reporting that Mr Gatland was "understood" to be "furious"
8.	Saturday, 24 July 2021	FIRST TEST – BIL v SPRINGBOKS	
9.	24 July 2021 [Post Test Match – time unknown]	Springboks' post-match media conference video and audio	Springboks' post-match media conference video and audio files featuring Springbok head coach, Jacques Nienaber, captain Siya Kolisi Faf de Klerk and Ox Nche.

	Date/time	Incident	Detail
10.	24 July 2021 [Post Test Match – time unknown]	Springboks' post-match media statement issued by SA Rugby Communications	
11.	24 July 2021 22:34	Erasmus tweets	<i>Erasmus tweet: "No excuses this side!! You are far away from home, families and going through same tough covid protocols like we do!! Congrats and well deserved !!!"</i>
12.	25 July 2021 16:45	Mr AJ Jacobs contact with Mr van Blommestein	<i>Request to arrange a meeting between Mr Berry and the Springbok management team</i>
13.	Sunday, 25 July 2021 16.45	WhatsApp message from Deon van Blommenstein (SA Rugby) to Mr Berry	DVB: "You resting?"
14.	25 July 2021 16.48	WhatsApp message from Mr Berry to Mr van Blommenstein	Mr Berry: "Just jumped in bath mate. Will come find you when I get out."
15.	25 July 2021 16:54	WhatsApp message from Mr van Blommenstein to Mr Berry	Mr van Blommenstein: "👍 👍"
16.	25 July 2021 17.00	WhatsApp message from Ben O'Keeffe to Match Officials WhatsApp group	Mr O'Keeffe: "Sorry Bez, did you get Deon wanting to meet with the boks right now? Crazy isn't it?"
17.	25 July 2021 17:02	WhatsApp message from Mr Berry to Match Officials WhatsApp group	Mr Berry: "Yeah he came and saw me but said he would tell them we'd meet him tomorrow. Did he say something different to you boys just now? I haven't finished watching the game yet." South Africa Rugby disputed that Mr Berry has conveyed to Mr O'Keeffe an accurate description of his communications with Mr van Blommenstein at that time.
18.	25 July 2021 approx. 17.25-50	Mr van Blommenstein and Mr Berry meet in person and agree to meeting with SA Rugby meeting that evening.	Mr Berry says that he agreed to a meeting subject to receiving clips in advance and approval from Mr Judge to do so
19.	25 July 2021 18:09	WhatsApp message from Mr van Blommenstein to Mr Berry	Mr van Blommenstein: "19h00 meeting with Boks?"
20.	25 July 2021 18:15	WhatsApp message from Mr Berry to Mr van Blommenstein	Mr Berry: "Are the others back?"
21.	25 July 2021 18:18	WhatsApp message from Mr van Blommenstein to Mr Berry	Mr van Blommenstein: "Should be by then"

	Date/time	Incident	Detail
22.	25 July 2021 18:20	WhatsApp message from Mr Berry to Mr van Blommenstein	Mr Berry: "If he wants to discuss clips he'll have to send them through first"
23.	25 July 2021 18:24	WhatsApp message Mr Berry to Mr Jutge	Mr Berry: "Evening Joel. Rassie and the Boks want to have a quick chat to us before they select their team. It's late notice but they want the TO4 to go on a meeting with them at 7pm. We are happy to attend. Is that ok with you?"
24.	25 July 2021 18:26	WhatsApp message Mr Berry to Mr van Blommenstein	Mr Berry: "Actually mate. We won't have time to discuss clips. I'd want to go through them properly with my coach before I comment on them. Happy to have a general discussion. Tell Rassie we can discuss clips once we've had a chance to do our review."
25.	25 July 2021 18:28	WhatsApp message Mr van Blommenstein to Mr Berry	Mr van Bommenstein: "👍"
26.	25 July 2021 18:30	Mr Berry telephone call to Mr Jutge	[Mr Berry did not reach Mr Jutge]
27.	25 July 2021 18:30	Mr Berry discussion with Mr van Blommenstein	Mr Berry says he told Mr van Blommenstein that he should not attend the planned meeting until he receives approval from Mr Jutge.
28.	25 July 2021 18:32	Mr Berry telephone call with Mr Erasmus	Mr Berry says he spoke to Mr Erasmus on Mr van Blommenstein's phone where they agreed the meeting would be "general" in nature. The content of this call was in dispute. Mr Erasmus admits having spoken to Mr Berry via Mr Jacobs phone. Mr Erasmus alleges that Mr Berry informed him that he (Mr Berry) "wanted to look at the video clips before [the] meeting took place" and that on this basis he undertook to have the video clips sent to Mr Berry immediately. Mr Erasmus states further that "we" (the Springbok coaching team) "immediately started to prepare the clips for transmission to Mr Berry and proceeded to air-bridge the clips to him".
29.	25 July 2021 18:50	Match Officials gather in conference room arranged by Mr van Blommenstein for video call with SA Rugby	
30.	25 July 2021 19:01	Mr Berry receives telephone call from Mr Jutge	Mr Berry says that Mr Jutge is concerned about the motivation for the meeting and that the meeting is "highly unusual and out of protocol" and tells Mr Berry not to attend the meeting.
31.	25 July 2021 19:05	Match Officials leave the conference room	Mr Berry says the Match Officials left the meeting room based on Mr Jutge's call and because no clips had yet been provided for review. Mr Erasmus says that the reason the Springbok coaching team did not enter the call with the Match Officials at exactly 7h00pm, is because the clips were still transmitting (the process took time because of the size of the file).
32.	25 July 2021 19:10	Mr Erasmus telephone call to Mr Berry	The content of this call was in dispute. Mr Berry said: - Mr Erasmus said that "because Mr Berry was unwilling to meet immediately, he would put the footage online to go 'viral'".

	Date/time	Incident	Detail
			<ul style="list-style-type: none"> - Mr Erasmus told him that <i>“the media pressure put on by the Lions the previous week had an affect on us and he intends to do the same”</i>. - He told Mr Erasmus that what he is asking (meeting the day after the game) is completely unusual but still agreed to look at his clips as he said they were “general in nature” and Mr Erasmus said they would affect his team selection. - Mr Erasmus agreed to send through the clips. <p>Mr Erasmus says:</p> <ul style="list-style-type: none"> - He questioned why Mr Berry no longer wanted to discuss the clips. - Mr Berry advised that he had not yet received the clips. - He told Mr Berry he would receive it soon. - Mr Berry said he did not have permission from Mr Judge to discuss the clips. - He explained to Mr Berry the need to get clarity on his decisions for team selection purposes. - Mr Berry told him that his request to meet the day after the match was completely unusual, which Mr Erasmus says is not the case. <p>It became clear to him that despite genuine requests, Mr Berry <i>“was totally uninterested”</i>. Mr Erasmus was upset with Mr Berry’s attitude and told him that the only option will be to follow Mr Gatland’s example and address the clips in the media, <i>“because clearly that had the desired effect”</i>.</p>
33.	25 July 2021 Approx. 19.10	Mr Berry discusses above call with Mr O’Keeffe	Mr Berry and Mr O’Keeffe say that they discussed the above telephone call
34.	25 July 2021 19.15	Email from Felix Jones (SA Rugby) to Mr Berry	[link sent to download clips] Clips provided via MyAirBridge under the name “Test 1 ref queries”
35.	25 July 2021 [unknown time between 19:15 and 19:27]	Mr Berry discussed clips with the team of match officials	Mr Berry says that the Match Officials unanimously agree that the clips “clearly have nothing to do with team selection”.
36.	25 July 2021 19.26	WhatsApp message from Mr Judge to Mr Berry SA Rugby Comment: In context this appears to be a response to Mr Berry’s message to Mr Judge set out at Item 23 above.	Mr Judge: “Nic, Let s chat tomorrow again on this question, but I am not sure its useful. In addition to that at the beginning of the Tour we said no face to face because the bubble. It was the agreement.” “Just Zoom call if meeting”
37.	25 July 2021 19.27	Mr Berry telephone call to Mr Judge	Mr Berry informed Mr Judge about his call with Mr Erasmus. Mr Berry says that he advised Mr Judge that he would forward the clips received from SA Rugby. Mr Berry told Mr Judge about his earlier telephone call with Mr Erasmus.
38.	25 July 2021 19.29	Email from Mr Berry to Mr Judge	[no text in email forwarding Mr Jones’ email with “MyAirBridge” link to clips]

	Date/time	Incident	Detail
39.	25 July 2021 19.39	Email from Mr Berry to Mr Erasmus	<p>Mr Berry: <i>"I received your clips thank you, and feel our immediate comments on these timings would not influence the selection of your team as per your request.</i></p> <p><i>As a team of four we will conduct our detailed review tomorrow morning and would be very happy to meet with you once it has been completed.</i></p> <p><i>If you have anything further that you wish to discuss before that time then please contact Joel."</i></p>
40.	25 July 2021 19.44	Email from Mr Erasmus to Mr Berry	<p>Mr Erasmus: <i>"Hi Nic,</i></p> <p><i>Thanks for the feedback we will take the route as discussed on the phone.</i></p> <p><i>Kind regards,</i></p> <p><i>Rassie"</i></p>
41.	25 July 19:48	Whatsapp message from Mr Peyper to Mr Berry	Mr Peyper: <i>"Can I give you a quick call?"</i>
42.	25 July 2021 19.51	Telephone call from Mr Berry to Mr Peyper	<p><i>The content of this case was in dispute.</i></p> <p><i>Mr Berry says that: " I'm able to get Jaco on the phone. We speak for 10mins. He tells me that Rassie has called him and wants him to comment on the clips. Jaco refuses and said that it is unprofessional and out of protocol. He says that Rassie is putting AJ Jacobs under pressure to comment on the clips as he is in camp with the SA team.</i></p> <p><i>We discuss the fact that Rassie has threatened to leak footage on social media. I ask Jaco for his advice and he suggests that I should try and get ahead of it and respond to Rassie's clips."</i></p> <p><i>Mr Peyper says:</i></p> <p><i>"Mr Berry did not indicate to me that Rassie threatened to leak footage on social media. He only asked for my advice whether he should provide answers to the video clips received from the Springbok management team and I recommended that from experience he should do so, as that often defuses the media reporting the next day as teams now engage with the referee and not the mainstream rugby media."</i></p> <p><i>"My view, as expressed to Mr Berry during the telephonic conversation, was that it would be preferable for him to engage with the Springbok management team rather than to ignore the request, as in my experience, providing a response has had the effect of diffusing tensions between coaches and referees. This in turn leads to fewer comments in the media about refereeing decisions from previous matches and an increased focus on preparations for upcoming matches."</i></p>
43.	25 July 2021 20.07	Email from Mr Jutge to Mr Jones	<p>Mr Jutge: <i>"Hi Felix,</i></p> <p><i>I just received your clips from Nic.</i></p> <p><i>Thanks for your work but please for the following test matches, send me them first, and then I will forward them to the Team of 4.</i></p> <p><i>It's the World Rugby process. Thanks for your understanding.</i></p> <p><i>I raised in live several clips mentioned in your movie.</i></p>

	Date/time	Incident	Detail
			<p><i>FYI I will do the review via zoom call with the team of 4 tomorrow lunch time.</i></p> <p><i>Thanks again</i></p> <p><i>Best regards</i></p> <p><i>Joel</i></p>
44.	25 July 2021	WhatsApp message from Mr Berry to Mr Peyper	Mr Berry: <i>"Can you send me Rassie's number mate?"</i>
45.	25 July 2021 20.24	Email from Mr Berry to Mr Erasmus	<p>Mr Berry: <i>"Hi Rassie,</i></p> <p><i>We will be completing our review tomorrow in addition to receiving Joel's feedback on the footage sent through. As soon as that process is complete, the team of four are happy to arrange a time to discuss the footage and any other questions you might have.</i></p> <p><i>Regards</i></p> <p><i>Nic</i></p>
46.	25 July 2021 20.44	Email from Mr Erasmus to Mr Berry with Mr Jones and Mr Jutge in copy	<p>Mr Erasmus: <i>"Understood thanks Nic, unfortunately it does not work for us in terms of time lines with our squad announcements and tactical and technical adjustment times!! Obviously I respect your time and schedules, but just a heads up from our side!! = we feel the pressure which the lions attempted to put on your team of 4 through media did actually work well for them!! I While we will be doing the same this week I think you will note that ours is more factual and honest!!</i></p> <p><i>Thanks for your time and reply"</i></p>
47.	25 July 2021 20:55	Email to Mr Berry from Mr Erasmus with Mr Jones and Mr Jutge in copy	<p>Mr Berry: <i>"Thank you Rassie, I understand your point of view.</i></p> <p><i>I would like you to understand that anything that is put in the media has no effect on us as a team of 4, last week or this week. I hope this helps your understanding and we look forward to working with you positively over the next few weeks.</i></p> <p><i>Regards,</i></p> <p><i>Nic</i></p>
48.	25 July 2021 21.06	Mr Berry and match officials review clips provided by SA Rugby	Team of 4 match officials reviewed clips sent by SA Rugby and provide responses to clips to Mr Jutge.
49.	Monday, 26 July 2021 10.00	Match Officials meet to carry out post-match review.	Team of 4 match officials met in a conference room to carry out their regular match performance review
50.	26 July 2021 12.00	Match Officials take part in video call with Mr Jutge to review performance	Team of 4 match officials conducted a Zoom call with Mr Jutge.

	Date/time	Incident	Detail
51.	26 July 2021 15.35	Email from Mr Jutge to Mr Gatland and Mr Erasmus	<p>Mr Jutge:</p> <p><i>"Gentlemen, We enjoyed seeing the respect between both teams on the pitch, last weekend.</i></p> <p><i>We are convinced we all learnt from this first test match.</i></p> <p><i>On our side we had a solid and complete review with our guys.</i></p> <p><i>Just a quick and firm reminder regarding the WR process on your communication with the referees. This process was already used during the 6 Nations 2021:</i></p> <ul style="list-style-type: none"> • <i>Monday or Tuesday prior the game (Saturday), possible contact between referees and the scrum coach</i> • <i>2 days prior the game, possible contact between the referees and the head coach</i> • <i>Feedback post-match (clips) must be sent to me only, then I will forward them to the Team of 4.</i> • <i>The referee will reply to your clips.</i> <p><i>All these contacts must be done via zoom call because the sanitary conditions.</i></p> <p><i>Thanks for following these guidelines.</i></p> <p><i>I am always available by phone or by email. The same for Joe.</i></p> <p><i>Regards Joel"</i></p>
52.	26 July 2021 20.52	Email from Mr Erasmus to Mr Berry with Mr Jones and Mr Jutge in copy	<p>Mr Erasmus:</p> <p><i>"Hi Nic</i></p> <p><i>Would you please still respond on the clips we send to you when you have a gap please?</i></p> <p><i>Thanks Rassie"</i></p>
53.	26 July 2021 21.21	WhatsApp message from Mr Berry to Mr Jutge	<p>Mr Berry:</p> <p><i>"Did you want me to respond to Rassie's email? Or just send you my comments on the clips?"</i></p>
54.	26 July 2021 21.31	WhatsApp message from Mr Jutge to Mr Berry	<p>Mr Jutge:</p> <p><i>"Please wait a little bit, Can I Have look first your answers. Please?"</i></p>

	Date/time	Incident	Detail
55.	26 July 2021 21.33	Mr Berry WhatsApp message to Mr Judge	Mr Berry: "Sure mate. I'll send them to you now".
56.	26 July 2021 21.47	Email from Mr Berry to Mr Judge	Mr Berry sent Mr Judge his commentary on each of 36 clips
57.	26 July 2021 23.22	Email from Mr Berry to Mr Erasmus with Mr Jones and Mr Judge in copy	Mr Berry: <i>Evening Rassie, See below my comments to your footage. As per my previous email, I look forward to working positively with you for the rest of the series. Nic</i> <i>Clip 1: I don't feel this has enough force to warrant a YC.</i> <i>Clip 2: I don't believe this to be foul play.</i> <i>Clip 3: Only dangerous foul play would result in the knock on being cancelled.</i> <i>Clip 4: This is the same incident as clip 3. See above comments regarding dangerous foul play.</i> <i>Clip 5: Initial contact by Green #4 is on the shoulder of Red #12. The PK is against Green #5. Replay shows his arm making contact with the head of Red #12. The force is minimal and not clear and obvious.</i> <i>Clip 6: Low degree of force to the head of the ball carrier. PK sufficient.</i> <i>Clip 7: Green #12 lowers body height into contact and Red makes contact across the shoulder. There is no evidence of head or neck contact.</i> <i>Clip 8: Agree. This should have been reviewed by the on field team because of the driving action by Red #20.</i> <i>Clip 9: Same incident. See above comments.</i> <i>Clip 10: Agree. Side entry by Red 11. Should be PK to Green.</i> <i>Clip 11: Agree. I called this advantage over too soon after Green #15 broke through. I should have gone back for the PK.</i> <i>Clip 12: Agree.</i> <i>Clip 13: We have a low tolerance for players falling on the wrong side.</i> <i>Clip 14:</i>

Date/time	Incident	Detail
		<p>Agree. Should be PK advantage.</p> <p>Clip 15: Agree. Same as above.</p> <p>Clip 16: The ball is immediately available after the kick challenge so I play through. This is different to the previous two examples.</p> <p>Clip 17: Agree. Red #6 went straight to ground.</p> <p>Clip 18: Not clear to me. No tackle has been made and it's not yet a ruck.</p> <p>Clip 19: Red #4 is legal. Green #1 tackles Red #5 off the ball so should be PK to Red.</p> <p>Clip 20: It's irrelevant as I was already playing advantage for an earlier infringement.</p> <p>Clip 21: No clear lift of the ball.</p> <p>Clip 22: Live I felt he played at the ball late and didn't lift the ball initially but on review he is legal.</p> <p>Clip 23: Green #4 came onto his elbows so I called him off. He responded quickly so I played through. The reverse angle footage shows this clearly.</p> <p>Clip 24: Agree. Green #12 is onside. It's a disappointing call.</p> <p>Clip 25: Disagree. Red make it back to the offside line.</p> <p>Clip 26: Agree.</p> <p>Clip 27: Strip consistency. In the first two examples are ball is stripped after the tackle is completed. The strip by Red #4 is simultaneous with the knee hitting the ground.</p> <p>Clip 28: Are you asking for a PK here?</p> <p>Clip 29: Yes Red #3 should not lean on the ruck like this. Joel will speak to the lions about this and next example.</p> <p>Clip 30: See above comments regarding the same player.</p> <p>Clip 31: Agree. The wording should have been better. It needed to be clear and obvious to overturn my on field decision of a try.</p> <p>Clip 32: Agree. The lineout should be where Green took it out and not where the ball was kicked.</p> <p>Clip 33: Agree. Red #4 grabs the ball and doesn't allow Green #9 to go quickly.</p> <p>Clip 34: Timing is marginal. No PK here.</p>

	Date/time	Incident	Detail
			<p><i>Clip 35:</i> <i>Agree I got this wrong. Red #7 shouldn't slide up on your LH.</i></p> <p><i>Clip 36:</i> <i>I disagree. Green #4 got a hand to the ball in the air knocking it forward."</i></p>
58.	Tuesday, 27 July 2021 06.32	Email from Mr Erasmus to Mr Berry with Mr Jones and Mr Judge in copy	<p>Mr Erasmus:</p> <p><i>"Thank you"</i></p>
59.	27 July 2021 08.58	Mr Erasmus invites Messrs Berry, Judge and Schmidt to join WhatsApp group	Mr Erasmus sent an invitation to Messrs Berry, Judge and Schmidt to join a WhatsApp group with South Africa management team, which invitations were not accepted
60.	27 July 2021 09.47	Mr Berry resends email to Mr Erasmus	Mr Berry says he assumed Mr Erasmus did not receive the email and resends his email with his comments on the clips with the text <i>"See below"</i>
61.	[unknown time before 12:00 on 27 July 2021]	Mr Erasmus decides to record the Erasmus Video	
62.	27 July 2021 Approx. 12:00	Mr Erasmus records Erasmus Video	
63.	27 July 2021 19:00	Erasmus Video uploaded to Vimeo	Erasmus Video source code shows upload at 19:00 (time log 13.00 EST which is 19:00 Cape Town). The Erasmus Video was uploaded without any privacy setting, meaning it could be viewed by anyone who had a link to the video.
64.	27 July 2021 21.47	Link to Erasmus Video sent by Mr Belter to Mr Erasmus	Link sent via WhatsApp without comment
65.	27 July 2021 21.55	WhatsApp message from Mr Erasmus to Mr Roux, SA Rugby CEO	[wording of message not provided by SA Rugby or Mr Erasmus. SA Rugby describes this message as Mr Erasmus informing Mr Roux that Mr Erasmus had made the Erasmus Video.]
66.	Wednesday 28 July 2021 07.05	Email from Mr Erasmus with Vimeo link to Erasmus Video to 5 people: Messrs Berry, Schmidt, Judge, Jacques Nienaber (SA Head Coach) and Roux	<p><i>"Hi Guys</i></p> <p><i>I send this link in my personal capacity and not as Director of Rugby of SA Rugby. To be honest I am really a bit lost for words on what to say to the Springbok Players or management. Please have a look at the video when you click on the link.</i></p> <p><i>https://vimeo.com/579940415</i></p> <p><i>I think the video will summarize my opinion and frustration at how things were handled pre / during / post the match.</i></p>

	Date/time	Incident	Detail
			<p><i>I want to reiterate the respect I have for all copied in on this email, but I am also very disappointed about how things unfolded on the field.</i></p> <p><i>I would fully understand if you don't agree with my view and opinions and will respect that. I will also send this link to all the players in the current Springbok squad and obviously to the coaches.</i></p> <p><i>I just personally think that we were not treated with the same respect which the BIL players and coaches received.</i></p> <p><i>You are welcome to comment or reply on the video. I am confident you will probably disagree on most. If you don't reply I would fully understand as this is a personal email and not in my role as Director of Rugby or water carrier .</i></p> <p><i>My only wish is that both teams are treated equal and with the same respect for the last 2 test matches.</i></p> <p><i>Please communicate directly with Jacques Nienaber (copied in) our head coach going forward.</i></p> <p><i>Thanks for your time</i></p> <p><i>Rassie"</i></p>
67.	28 July 2021 07.27	Mr Erasmus circulated Erasmus Video to WhatsApp group entitled "Test 2 SA v BIL" comprising SA Rugby Coaches and Players	<p>The WhatsApp information revealed the identities of the persons in this group are Lindsay Weyer, Andy Edwards, Anuerin, Bongji, Daa... However in evidence Mr Erasmus said the recipients comprised the numbered 40.</p> <p>Mr Erasmus posted screenshot of the email at 66 above with the following comment</p> <p><i>"No rush to watch, but just to make sure you guys know whats happening behind the scenes to keep the contest fair.</i> https://vimeo.com/579940415 Ras"</p>
68.	28 July 2021 07.38	Mr Berry email to Mitch Chapman (Rugby Australia Head of Referees	<p>Mr Berry: <i>"Just so you're in the loop. I don't want this to disrupt Ben's presentation so let's be smart how we handle it".</i></p> <p>[Note: 3.38pm AEST is 7.38am Cape Town]</p>
69.	28 July 2021 09.29	WhatsApp messages between Mr Erasmus and Mr Belter	<p>Mr Erasmus: "have you got 10 views already?" "Hey jy al 10 views gekry? Dankie vir al die hulp"</p>
70.	28 July 2021 09.31		Mr Belter replies with a screenshot showing 31 views and the text "21 views since this morning".
71.	28 July 2021 13.48		Mr Belter sends a further screenshot of analytics showing views in South Africa (41), Australia (8), United Kingdom (3), France (2), United States (0). (Total 54)
72.	28 July 2021 13.55		Mr Erasmus replies "How the fuck in Australia and UK?" "Hoe de fok in Australia and UK?"
73.	28 July 2021 13.55		Mr Belter says "no idea, maybe the refs share your mail" "Geen idee, die refs deel meskien jou mail."
74.	28 July 2021 14.07		Mr Erasmus says "Keep me informed please mate" "Hou my op hoogte asb tjom"
75.	28 July 2021 14.07		Mr Belter says "will do so" "Sal so maak,"

	Date/time	Incident	Detail
76.	28 July 2021 unknown time	Partial Russel Belter WhatsApp to Mr Erasmus	[Only the top of this message is visible which shows 67 views in South Africa]
77.	28 July 2021 Unknown time	Vimeo Data	Vimeo data shows that on Wednesday 28 July, there were 131 views in South Africa, 10 views in Australia, 5 views in the United Kingdom, and 2 views in France. This is further broken down to show in Australia; 10 views in Brisbane, Queensland, in the United Kingdom; 2 views in Bristol, 2 views in Reading, and 1 view in Palmers Green, and in France, 2 views in Cahors.
78.	28 July 2021 14.09	Mr Jutge emails Mr Erasmus and Mr Nienaber copying Mr Berry, Mr Roux, Mr Schmidt	Mr Jutge: <i>"Rassie, Jacques, Thanks for your relevant clips and explanations. It's a big and good work. You have good competencies around you, so I don't need to go back on each clip. If you need clarity on 1 or 2 specific situations, please give me a phone call, I will reply to you. Last Sunday, I called you back 35' after your call. ... but you were not available. I will be very clear and honest, we raised on our side some similar footages to yours. We did not hide anything to the team of 4, we had a solid and detailed review. Just 2 technical answers to your questions: • on "Kolbe's knock on", you are right we should have given a PK against R13 because the pull back must be assimilated as an act of foul play (the word "dangerous" is not in the law book) • Players over the ruck: I sent a clear message with clips to Gatland. I will forward my email+ clips to you. I did it yesterday evening ... Regarding the feedback day, I understand your point, so the performance reviewer will do the review with the Team of 4 on Monday morning instead of Tuesday. Monday afternoon, the referee will be able to reply to your questions. Does it work for you? This process can be applied for the last 2 games. Now, I hope you understand we need to move forward. As I said in my previous email, we all learnt from this first game. I hope that what we experienced last weekend will be very useful for Saturday! All the best Joel"</i>
79.	Thursday 29 July 2021, 08.02	Email response from Mr Nienaber with comments in red	Mr Nienaber: "Thank you very much for the feedback. Please see my comments in RED Kind regards, Jacques Nienaber Rassie, Jacques, Thanks for your relevant clips and explanations. It's a big and good work.

	Date/time	Incident	Detail
			<p>You have good competencies around you, so I don't need to go back on each clip.</p> <p>If you need clarity on 1 or 2 specific situations, please give me a phone call, I will reply to you .</p> <p>Last Sunday, I called you back 35' after your call ... but you were not available.</p> <p>I will be very clear and honest, we raised on our side some similar footages to yours. We did not hide anything to the team of 4, we had a solid and detailed review. Just 2 technical answers to your question s:</p> <ul style="list-style-type: none"> • on "Kolbe's knock on", you are right we should have given a PK against RB because the pull back must be assimilated as an act of foul play (the word "dangerous" is not in the law book) <i>Thank you for the clarity. This is exactly what we need. The players (Siya) asked the question and he/we saw it differently than Nic and now we can provide him with clarity. This alignment, with you, is critical for us as a team.</i> • Players over the ruck: I sent a clear message with clips to Gatland. I will forward my email+ clips to you . I did it yesterday evening ... <i>Thank you. As discussed before the test we feel this is negative coaching. We told our players that it has been dealt with before the test and that the referee team will sort it out during the game. So when it continued to happen in the test we lost some credibility as coaches with our players as we promised them that it will be dealt with. Your feedback will certainly help us as coaches to get some credibility back with the players because it will show that we did discuss it with you before the test match.</i> <p>Regarding the feedback day, I understand your point, so the performance reviewer will do the review with the Team of 4 on Monday morning instead of Tuesday. Monday afternoon, the referee will be able to reply to your questions. Does it work for you? This process can be applied for the last 2 games. <i>Thank you for this. Our work flow in preparation for a test is different to other teams. We train Monday, Tuesday and Wednesday. Our off day is on Thursday. So being able to have feedback and clarity from the referee's on the Monday will certainly be better than the Tuesday. I want to stress that to have clarity on the Monday morning will be better, but very thankful and appreciative for the adjustment in your schedule.</i></p> <p>Now, I hope you understand we need to move forward. <i>Happy and are moving forward.</i></p> <p>As I said in my previous email, we all learnt from this first game.</p> <p>I hope that what we experienced last weekend will be very useful for Saturday!"</p>
80.	29 July 2021 10.41	WhatsApp messages from Sbu Mjikeliso (deputy editor of Sport24) to Andy Colquhoun	<i>"Howzit Andy. Hope you're alright. I've just seen a Rassie video that looks like an internal leak</i>
	10.42		https://twitter.com/edmundrabe/status/1420657239648571394
	10.42		<i>Have you guys seen this?</i>

	Date/time	Incident	Detail
	10.56		<i>Or is it a PSA</i>
81.	29 July 2021 unknown time	Mr Erasmus screenshots of graph showing video analytics.	Vimeo data including a graph showing a blue line with 45k views on 29 July 2021 The screenshot shows a red line at over 30k view It also shows a blue line at just under 15k views
82.	29 & 30 July 2021	WhatsApp message from Andy Colquhoun (SA Rugby General Manager, Commercial) to Mr Roux.	Mr Colquhoun circulated a WhatsApp message informing SA Rugby that the Erasmus Video was in the public domain. [Partially redacted message provided by SA Rugby]
	29 July - 10.57		Andy Colquhoun: "Just watching the Rassie video (only 13 minutes in) but when you are ready let me know what our position will be."
	30 July – 08.29		Andy Colquhoun: "Did you see that mail from me about JLR? [Redacted text]? The asked for a response by today."
	30 July – 08.29		Jurie Roux: "What you think?"
	30 July – 8.41		Andy Colquhoun: "That we [rest of message redacted, approx. 3 lines]"
	30 July – 08.41		Jurie Roux: "Ok"
83.	29 July 2021 13.33	Email from Mr Chapman to colleagues Ben Whitaker, Scott Young, Scott Johnson, and Andy Marinos in Rugby Australia	Mr Chapman: <i>"FYI email thread below and now he has released it publicly".</i>
84.	29 July 2021 Time unknown	SA Rugby Executive Committee and Management Teams convened to discuss Erasmus Video.	Mr Roux engaged with SA Rugby's Executive Committee and Management members to consider what action to take in response to the Erasmus Video; it was decided that no further action would be taken (on the basis that <i>"there was little that SARU could do to halt the spread of the Erasmus Video"</i>).
85.	29 July 2021 [exact time unknown, prior to 16:59]	Telephone calls between Alan Gilpin, World Rugby CEO, Mr Roux and BIL Team Management	Mr Gilpin, World Rugby CEO and Mr Roux discussed the Erasmus Video
86.	29 July 2021 16.59	Mr Gilpin email to Mr Roux, Ben Calveley (CEO BIL), Bill Beaumont (Chairman of World Rugby), Mark Alexander (President of SA Rugby), Jason Leonard (Chairman BIL), Mr Schmidt and Mr Jutge	Mr Gilpin: <i>"Dear Jurie and Ben,</i> <i>Good to speak to you both today, and congratulations for the huge effort to continue with the staging of the Lions Tour despite the ongoing and serious effects of the pandemic.</i>

	Date/time	Incident	Detail
			<p><i>As you know well, each Lions Tour is a fantastic opportunity to promote rugby on a global scale. However, the high profile nature of the Tour also places significant pressures on all involved, and particularly on the coaches, coaching staff and players. We understand of course that coaches seek to use the media and other public avenues to put pressure on the opposition or influence how a game is officiated. Up to a limited point, this is part of the game. However, there is a line that we need to ensure is not crossed in this regard.</i></p> <p><i>Public criticism of match officiating and match official selection has the potential to bring into question the core values of our sport. Match Officials are a vital backbone of our sport and without them we have no game.</i></p> <p><i>Your coaching staff and management must treat the Match Officials with the respect that they deserve. Any questions about Match Official performance must be directed through the formal and confidential feedback channels. We understand that there has been some frustration here, but Joel and Joe are available to clarify how those channels should and will operate, including review timeframes.</i></p> <p><i>As discussed, please could I ask each of you to discuss with your coaching staff the need for appropriate respect and the upholding of the values of our sport. You have indicated that you are agreeable to drawing a line prior to the second Test and both the SA Rugby and the Lions will remind coaching staff and management of their responsibilities. There should therefore be no further media comments that include allegations about the integrity of match officials and officiating. If there is further public commentary, a more formal approach will need to be considered.</i></p> <p><i>We all look positively towards the remainder of what should be, in these trying times, a wonderful example of rugby and its values at their best.</i></p> <p><i>As always, please don't hesitate to contact me if you would like to discuss further.</i> <i>All the best</i> <i>Alan"</i></p>
87.	29 July 2021 – 30 July 2021 Time unknown	WhatsApp messages between Mr Roux and SA Rugby staff Charles Wessels, Rayaan Adrianse and Zeena Isaacs-van Tonder	<p><i>Charles Wessels states that he received an email from Mr Roux in which Mr Roux "advised and instructed the Springbok management team to ensure that we followed the processes, channels and protocols as outlined by World Rugby" (the email has not been provided).</i></p> <p><i>SA Rugby said that it contacted Mr Wessels, Mr Rayaan Adrianse, Mrs Zeena Isaacs-Van Tonder, Mr Erasmus and Mr Nienaber by telephone and/or WhatsApp to tell them to cease commenting on integrity of match officials. Wording of message and records of calls not provided by SA Rugby</i></p>
88.	Friday 30 July 2021 08.19	Mr Roux email to Mr Gilpin copying Ben Calveley (CEO BIL), Bill Beaumont (Chairman of World Rugby), Mark Alexander (President of SA Rugby), Jason Leonard (Chairman BIL), Mr Schmidt and Mr Jutge	<p>Mr Roux:</p> <p><i>"Morning Alan,</i></p> <p><i>Thank you, just to confirm that I had a management meeting and had the discussion with our team on process, protocol and values.</i></p> <p><i>Have a good day.</i> <i>Jurie "</i></p>

	Date/time	Incident	Detail
89.	Friday 30 July 2021, 08.25	Email from Mr Roux to Rassie Erasmus, Jacques Nienaber, Charles Wessels, forwarding on Mr Gilpin's email above.	<p>In Afrikaans</p> <p><i>"More Manne</i></p> <p><i>Nie vir distribusie nie</i></p> <p><i>Soos julle kan sien het ek WR gehanteer gister en ons het slegs die brief gekry.</i></p> <p><i>Ons het Rassie ook support en nie teruggestaan nie en ook nie in die media nie en eerder Gatlant se ^rade van verlede week uitgewys.</i></p> <p><i>Ek sal julle nie bore met al die detail van die calls nie.</i></p> <p><i>Ek dink julle punt is nou goed gemaak in die media en soos altyd is julle almal een voor.</i></p> <p><i>Gegewe die amptelike waarskuwing nou moet ons asb binne die protokolle bly.</i></p> <p><i>So ons party line is ons sal alles via die kanale doen en die protokolle volg as ons gevra word op media konferensies.</i></p> <p><i>Sal julle net sekermaak die res van die bestuur wat dalk voor media gaan dit ook weet en ook spelers.</i></p> <p><i>Cheers en good luck more manne ek weet ons sal goed doen.</i></p> <p><i>Jurie"</i></p> <p>Google Translation – English version [provided by World Rugby]</p> <p><i>"More Manne</i></p> <p><i>Not for distribution</i></p> <p><i>As you can see I handled WR yesterday and we only got the letter.</i></p> <p><i>We also supported Rassie and did not back down and also not in the media and rather Gatlan's councils of last week pointed out.</i></p> <p><i>I will not bore you with all the detail of the calls.</i></p> <p><i>I think your point is now well made in the media and as always you are all one ahead.</i></p> <p><i>Given the official warning now we must please stay within the protocols.</i></p> <p><i>So our party line is we will do everything via the channels and follow the protocols if we are asked at media conferences.</i></p>

	Date/time	Incident	Detail
			<p><i>Will you just make sure the rest of the management who might be in front of media also know this and also players.</i></p> <p><i>Cheers and good luck more guys I know we will do well.</i></p> <p><i>Jurie</i>"</p>
90.	30 July 2021 13:42	SA Rugby Press conference with Mr Kolisi and Mr Stick from SA Rugby	<p>Mr Pearce:</p> <p><i>"Siya, just a reference to the video that has been the talk of the town for the last 24 hours, particularly pertaining to you. It's said that you were treated differently to the Lions captain. This is not a trick question, it's not a right or wrong answer. Did you feel that way personally. And secondly, are you confident going into the second test that you will be given an equal voice?"</i></p> <p>Mr Kolisi:</p> <p><i>"First question, yes, I didn't feel, I didn't feel respected at all, I didn't feel a fair, I was given a fair opportunity. That's the answer to the first question. And the second one is, yeah, I'm looking forward. It's a new game, it's a new referee, which I'm looking forward to. I think Ben will give a fair, a fair opportunity for both captains and that's all I've always asked for."</i></p> <p><i>And</i></p> <p>Mr Weir:</p> <p><i>"Thank you very much. Good afternoon, gentlemen. Siya, if I could just follow up on your comments. In what way do you feel you were disrespected as regards from the referee, in what way was Alun Wyn Jones granted more respect do you feel? Can you give us any specific examples?"</i></p> <p>Mr Kolisi</p> <p><i>"Did you watch the video?...Did you watch the video that's been put out there – [journalist replies that he has not seen entire video] Okay, I think watch that and then we can -- After playing the game. I don't really want to get into it to be honest, but we can speak about it after the game. I will speak anything about the game but I don't want to get involved in that. I just say I just didn't feel as, I didn't get given the same access to the referee and there's proof. If you watch the game again you'll definitely be able to see yourself. Yeah, I don't want to speak too much about that because it has already happened, there's nothing I can do about it, it's not going to change anything. My focus is in the next game and that's what we're focusing on right now".</i></p> <p>Mr Pearce</p> <p><i>"Mzwandile, if I could move to you and just the thoughts of the management team in the last 24 hours. I mean, it has been extraordinary to observe the different opinions from South Africa and out of the UK. I mean, do you see the principle here as any different to questions being asked about the neutrality of a TMO ahead of the first test?"</i></p> <p>Mr Stick:</p> <p><i>" Yeah, I think without going deep on it, let's go on and build up the first game where firstly the integrity of world rugby was challenged by another human being when Marius Jonker was appointed TMO ... Gatland on the other side, went crazy where</i></p>

	Date/time	Incident	Detail
			<p>he was was asking, World Rugby and challenging them, you know, about the decision they've made ... and even still today I haven't heard any statement, you know, from him, from his side where he was apologising about it, I haven't heard any statement from World Rugby, you know. So I feel like, you know what, we're not asking for any favours, we're not asking for any favours. We just want equal grounds, you know, because of once again this took about twelve years to get to where we are at the moment. So I wouldn't love the series to all be about a decision that was taken by the officials, you know, or the whole vibe about the coaches off the field, you know, and once again people must make peace with the fact that we're living in different times now. So there are traditional media conferences. And there's a social media which is very powerful. And I know there has been a lot of ire between the two coaches, with our Director of Rugby Rassie and Gatland on the other side. But all I'm saying is that if whatever Rassie said on the social medias or whatever, I'm not on Twitter so I don't know, but I see videos around, all that stuff. For me, media conference or social media, there's a saying (in Xhosa....as said). The Birds, they've all got different sounds but they all come under the same bush. So that is my point that I'm trying to get across. That even if things have been said in the social media or they're being said in a traditional media conference, it's still the media. All the coaches wanted to get their messages across and it was straight that Rassie wanted to state his own personal view. It had nothing to do with us as a team. Our main focus was to train. And actually, I'm also on Facebook so I saw a couple of things. But once again, for us, we're not asking for any favours, we just want a fair equal ground for everyone. So if Rassie got into trouble because of what he said on social medias, I think the gentleman that challenged the integrity of the game at the beginning when the the TMO was challenged, I think that is something that really destroyed the dignity of the series and it also challenges the integrity of world rugby, and he says a lot about the gentleman who was going to be a TMO at that time, which is Marius Jonker."</p> <p>And</p> <p>Mr Weir:</p> <p>"I respect that, thank you. Can I just ask one other question. In regards Rassie's video, you know, rugby is a game which prides itself on respect for the referee. When a Director of Rugby comes out with a video like that, do you think it damages the game?"</p> <p>Mr Stick</p> <p>" First things first. To question the appointments made by World Rugby, that is where it starts. So the video or the gentleman that questioned the integrity of World Rugby, that's where it should start. That's something that we need to question. And like I said earlier on, if it is in a traditional media or it's on a social network, what is right for the other side must be right for the other side. It can't be two-way thing, where one team is playing on a grass field and the other one is playing on a mud. So once again, I'm not too sure about the video and I'm not too sure about the gentleman complaining about the appointments, but once again, we both needed the same treatment and respect, that's all."</p>
91.	Friday 30 July 2021	World Rugby statement: Rassie Erasmus	<p>World Rugby:</p> <p>"World Rugby statement: World Rugby notes the comments made by Rassie Erasmus regarding match officiating. The nature of these is being raised with the South Africa Rugby Union via the usual official channels and no further comment will be made at this stage."</p>

	Date/time	Incident	Detail
92.	Monday 02 August 2021	World Rugby Media Release - Disciplinary update: Rassie Erasmus and SA Rugby misconduct	<p>World Rugby:</p> <p><i>“South Africa Director of Rugby Rassie Erasmus and SA Rugby will face an independent misconduct hearing for comments regarding match official performance during the test series between South Africa and the British and Irish Lions.</i></p> <p><i>Match officials are the backbone of the sport, and without them there is no game. World Rugby condemns any public criticism of their selection, performance or integrity which undermines their role, the well-established and trust-based coach-officials feedback process, and more importantly, the values that are at the heart of the sport.</i></p> <p><i>Having conducted a full review of all the available information, World Rugby is concerned that individuals from both teams have commented on the selection and/or performance of match officials.</i></p> <p><i>However, the extensive and direct nature of the comments made by Rassie Erasmus within a video address, in particular, meets the threshold to be considered a breach of World Rugby Regulation 18 (Misconduct and Code of Conduct) and will now be considered by an independent disciplinary panel. The date and panel will be confirmed in due course.</i></p> <p><i>World Rugby has reminded the management of both teams of the importance of this area and their obligations regarding the values of the sport. In order to protect the integrity of the sport and its values, World Rugby will also undertake a review of its Code of Conduct relating to incidents of this nature with a view to strengthening scope, rules and sanctions.</i></p> <p><i>As with any test series, South Africa versus the British and Irish Lions is a showcase of rugby that generates great excitement and interest, even more so at this challenging time for sport and society. It is an opportunity for both teams and their management to set a positive example and concentrate on the spectacle and a wonderful example of rugby and its values at their best.”</i></p>
93.	Tuesday 03 August 2021	BIL Press Conference	<p>Warren Gatland comments regarding World Rugby’s media statement:</p> <p><i>“The only thing I am disappointed in World Rugby’s statement is that I felt they have inadvertently dragged us into it.</i></p> <p><i>We have tried to maintain as much integrity as we can in terms of we haven’t been commenting on refereeing, we never questioned the integrity of the TMO. The only question we asked is why hadn’t World Rugby put a contingency plan in place if people couldn’t travel or if people had got sick.</i></p> <p><i>That was the only question that we had asked. So yeah, really, really disappointed with a part of the statement where they said both sides have been making comments and been critical of the officials. I’d like someone to show me where we have done that because we have looked through everything and we can’t see any instances where we have been critical of the officials. In fact, I think we gave praised the officials.”</i></p>

APPENDIX 3

2021 / 2022 / 2023 – Preliminary Fixture List – SA Rugby

National Senior Representative Teams (Men and Women) and Next Senior National Representative Teams (Men and Women)

SA Rugby notes that this is a preliminary list of the applicable fixtures and includes the best available information at the time of compilation. Fixtures are subject to change at the behest of World Rugby or the individual competition / tour organisers, and / or for other reasons including travel and related restrictions due to Covid-19.

	Month / Year	SA Rugby Team	Opposition	Competition
1	20 Nov 2021	SA Men	England	Autumn Internationals
2	27 Nov 2021	SA Women	Barbarian Women	Outbound Tour
3	5 Mar 2022	SA Women	TBD	Africa Cup
4	12 Mar 2022	SA Women	TBD	Africa Cup
5	19 Mar 2022	SA Women	TBD	Africa Cup
6	9 Jul 2022	SA Men	Wales	Inbound Tour
7	13 Jul 2022	SA 'A' Men	TBD	Inbound Tour
8	16 Jul 2022	SA Men	Wales	Inbound Tour
9	20 Jul 2022	SA 'A' Men	TBD	Inbound Tour
10	23 Jul 2022	SA Men	Wales	Inbound Tour
11	6 Aug 2022	SA Men	New Zealand	Rugby Championship
12	13 Aug 2022	SA Men	New Zealand	Rugby Championship
13	20 Aug 2022	SA Men	Argentina	Rugby Championship
14	3 Sep 2022	SA Men	Argentina	Rugby Championship
15	10 Sep 2022	SA Men	Australia	Rugby Championship
16	24 Sep 2022	SA Men	Australia	Rugby Championship
17	Sep 2022	SA Women	TBD	N/A
18	1 Oct 2022	SA Women	TBD	N/A
19	8 Oct 2022	SA Women	France	Rugby World Cup
20	16 Oct 2022	SA Women	Fiji	Rugby World Cup
21	23 Oct 2022	SA Women	England	Rugby World Cup
22	5 Nov 2022	SA Men	Ireland	Autumn Internationals
23	12 Nov 2022	SA Men	France	Autumn Internationals
24	19 Nov 2022	SA Men	Italy	Autumn Internationals
25	26 Nov 2022	SA Men	Wales	Outbound Tour
26	Mar 2023	SA Women	TBD	Africa Cup
27	Mar 2023	SA Women	TBD	Africa Cup
28	Mar 2023	SA Women	TBD	Africa Cup
29	Jun 2023	SA Men	TBD – Tier 1 / 2	Inbound Tour
30	Jun 2023	SA Men	TBD – Tier 2	Inbound Tour
31	2023	SA Men	Argentina	Rugby Championship
32	2023	SA Men	New Zealand	Rugby Championship
33	2023	SA Men	Australia	Rugby Championship
34	10 Sep 2023	SA Men	Scotland	Rugby World Cup
35	17 Sep 2023	SA Men	Europe 2	Rugby World Cup
36	23 Sep 2023	SA Men	Ireland	Rugby World Cup
37	1 Oct 2023	SA Men	Asia/Pacific 1	Rugby World Cup
38	TBD - 2023	SA Men	TBD	Rugby World Cup (Q-Final)
39	TBD - 2023	SA Men	TBD	Rugby World Cup (S-Final)
40	TBD - 2023	SA Men	TBD	Rugby World Cup (Final)