

DECISION ON APPEAL (MORGAN RIELLY)

The National Hockey League Players' Association ("NHLPA"), on behalf of Morgan Rielly, has appealed from a February 13, 2024 supplementary discipline decision suspending Mr. Rielly for five (5) games. This shall constitute my determination of Mr. Rielly's appeal. For the reasons described herein, I find that the decision suspending Mr. Rielly for five (5) games was supported by clear and convincing evidence and is, therefore, affirmed.

I.

SUMMARY OF FACTS

This appeal arises out of an incident involving Toronto Maple Leafs' defenseman Morgan Rielly in the closing seconds of the third period of a game between Toronto and the Ottawa Senators at the Canadian Tire Centre in Ottawa on February 10, 2024. I have closely reviewed the video footage of the incident, as captured on the suspension video prepared by the NHL Department of Player Safety ("DPS").

With approximately five seconds left in the third period, with Ottawa ahead by a score of 4-3, Ottawa forward Ridly Greig chased a loose puck into the Toronto zone with a clear path to the net and with only Mr. Rielly trailing on the backcheck. Toronto had previously pulled its goaltender in favor of an extra attacker. Mr. Greig took a slapshot within close range of the Toronto goal, scoring an empty net goal, making the score 5-3 with just a few seconds remaining in the game. Mr. Greig turned to his left and skated up ice and along the boards to celebrate the goal. Despite the fact that play had ended and the game was effectively over, Mr. Rielly changed his course and skated toward Mr. Greig with purpose. Covering some distance, Mr. Rielly approached Mr. Greig, raised his stick high and intentionally used the shaft to strike the left side of Mr. Greig's head with substantial force, also making glancing contact with Mr. Greig's hand

and shoulder. The hit caused Mr. Greig to fall to the ice, and the on-ice official restrained Mr. Rielly. As earlier indicated, the entire incident occurred after the goal was scored and game play had effectively ended.

The Official's Report of Match Penalty states:

Greig #71 of Ottawa is on a breakaway to an empty net at the end of the game, he then takes a slap shot from 10 feet away to score the final goal with 5 seconds left. Reilly [*sic*] #44 of Toronto takes exception to this play and violently cross checks Greig in the face. This action takes place Toronto D-zone at the hash marks players bench side of the ice.

II.

PROCEDURAL HISTORY

On February 13, 2024, George Parros (Senior Vice President, DPS) held an in-person supplementary discipline hearing (via Zoom videoconference) relating to this incident. Following the hearing, Mr. Parros issued a decision suspending Mr. Rielly for five (5) games. The analysis underlying the suspension assessed to Mr. Rielly was explained in the DPS video produced and made publicly available in conjunction with the announcement of Mr. Parros' decision. As of the date of this decision, Mr. Rielly has served four (4) games.

By email to Deputy Commissioner Bill Daly, dated February 14, 2024, the NHLPA gave notice of an appeal on behalf of Mr. Rielly pursuant to Section 18.12 of the NHL/NHLPA Collective Bargaining Agreement ("CBA").

III.

THE FEBRUARY 16 HEARING

As set forth in CBA Section 18.12, for suspensions of five (5) NHL games or less, I am not required to hold a telephonic or in-person hearing, but I agreed to do so at the request of the

Player and the NHLPA. The hearing took place on February 16, 2024, at the League offices in New York, with some attendees joining via Zoom videoconference. In attendance at the hearing (remotely or in person) in addition to and on behalf of Mr. Rielly were his agent, J.P. Barry, and John Gerba, Don Zavelo, Ron Hainsey, Maria Dennis, David Sinclair and Gideon Martin from the NHLPA. General Manager Brad Treliving and President and Alternate Governor Brendan Shanahan attended on behalf of the Toronto Maple Leafs. Bill Daly, David Zimmerman, Tom Ferree, Jamie Hacker, and Daniel Ages attended the hearing on behalf of the League. George Parros, from DPS, appeared at the hearing and he, as well as Mr. Rielly, Mr. Treliving, and Mr. Shanahan testified. Also in attendance on behalf of the League were counsel from Proskauer Rose LLP, Joseph Baumgarten and Thomas Fiascone.

The hearing began at approximately 12:30 p.m. and concluded at 2:15 p.m. All parties were given a full and fair opportunity to be heard and no objection to the proceeding was raised. The record was closed at the conclusion of the hearing. The transcript of the hearing was received by email on February 17, 2024.

IV.

STANDARD OF REVIEW

Section 18.12 of the CBA provides for the right to appeal to the Commissioner any decision regarding Supplementary Discipline for On-Ice Conduct. The CBA directs, in connection with any such appeal, that I determine whether the supplementary discipline decision was supported by clear and convincing evidence.

V.

THE NHLPA'S CONTENTIONS

The NHLPA acknowledged at the hearing that the Player's conduct constituted an illegal cross-check but claimed that the five (5) game suspension imposed by DPS was excessive, acknowledging that a suspension of up to three (3) games would have been appropriate. The NHLPA argued that:

1. The conduct did not involve an intentional cross-check to the head because: (a) Mr. Rielly intended to strike Mr. Greig's body; (b) the primary point of contact was, in fact, Mr. Greig's body; (c) Mr. Rielly's stick rode up from the arm to make contact with Mr. Greig's head; and (d) once Mr. Rielly realized he had contacted Mr. Greig's head, he released one hand from his stick to mitigate the force of the blow being delivered.
2. Mr. Rielly has no history of supplementary discipline.
3. Mr. Greig was not injured.
4. The five (5) game suspension imposed by DPS was excessive in light of supplementary discipline imposed for similar infractions by other Players in the past.

VI.

ANALYSIS

Because the NHLPA and Mr. Rielly do not contest that the conduct in question violated the League Playing Rules, my analysis is limited to whether the five (5) game suspension imposed by DPS is appropriate, *i.e.*, supported by clear and convincing evidence. For the reasons that follow, I find that it is.

As I have noted in prior supplementary discipline opinions, the CBA does not prescribe a formulaic basis for the determination of appropriate supplementary discipline. To the contrary, Article 18 embodies a recognition that each case is unique and must be decided on the basis of its own particular facts and circumstances.

The framework for my inquiry as to the appropriate level of discipline for on-ice conduct in violation of League Playing Rules involves a review of the following factors set forth in Section 18.2 of the CBA:

- (a) The type of conduct involved: conduct in violation of League Playing Rules, and whether the conduct is intentional or reckless, and involves the use of excessive and unnecessary force. Players are responsible for the consequences of their actions.
- (b) Injury to the opposing Player(s) involved in the incident.
- (c) The status of the offender and, specifically, whether the Player has a history of being subject to Supplementary Discipline for On-Ice Conduct. Players who repeatedly violate League Playing Rules will be more severely punished for each new violation. (Emphasis in original.)
- (d) The situation of the game in which the incident occurred, for example: late in the game, lopsided score, prior events in the game.
- (e) Such other factors as may be appropriate in the circumstances.

I review these factors below.

The Type of Conduct Involved (Section 18.2(a))

There is no question (and no dispute) that Mr. Rielly's conduct involved a serious cross-checking infraction in violation of League Playing Rules. His conduct clearly did not involve a hockey play. Based on my review of the video, I find that Mr. Rielly's actions were not merely careless or reckless, they were intentional. After Mr. Greig had scored and the play was dead, Mr. Rielly skated from just in front of the goal to engage Mr. Greig near the side boards. Mr. Rielly then delivered a high, forceful cross-check to Mr. Greig, making significant and dangerous contact to his head. Mr. Rielly had an abundance of time with which to consider his actions and could have engaged Mr. Greig in any number of different, less dangerous ways.

Injury to The Opposing Player (Section 18.2(b))

Mr. Greig was not injured as a result of Mr. Rielly's actions.

The Status of The Offender (Section 18.2(c))

Mr. Rielly has been neither fined nor suspended previously in his 819 game NHL career.

The Situation of The Game (Section 18.2(d))

Section 18.2(d) calls for consideration of the situation of the game, and provides by way of example whether the conduct occurs "late in the game, lopsided score, prior events in the game." Such circumstances may render penalties called by the on-ice officials meaningless, and supplementary discipline may be particularly important in some situations so as to effectively deter future violations.

The situation in this case checks two of the three boxes in the language quoted above. Mr. Rielly illegally cross-checked Mr. Greig with approximately 5 seconds left in the game, and when the opposing team was all but assured victory. Moreover, the conduct occurred after active

play had ended following Mr. Greig's goal. This was not a case where Mr. Rielly and Mr. Greig had been engaging with one another, nor was this an inadvertent high stick during the course of play. Rather, as Mr. Rielly himself acknowledged, he sought retribution for what he perceived to be a "disrespectful" act that he believed was intended to embarrass Toronto. (Tr. 14)

Other Factors As May Be Appropriate (Section 18.2(e))

As noted in the suspension video, this is not a case where two Players had been jousting or where Mr. Greig might have otherwise had reason and opportunity to expect or prepare for a forceful blow to his head. Moreover, it appears from the video that after the goal was scored, and as he was moving back up the ice celebrating a game deciding goal, there is no indication that Mr. Greig expected any confrontation at all, much less a cross-check to the side of his head.

* * *

Weighing the factors described above, I find that a five (5) game suspension is appropriate. I reach this conclusion for the following reasons:

1. I find based on my review of the video that the cross-check was delivered high and forcefully. As noted in the suspension video, Mr. Rielly pursued Mr. Greig for some time and had sufficient opportunity to engage him in a different manner, *e.g.*, with a push or a shove or even by dropping his gloves to fight. Had he done so, there likely would have been no need for supplementary discipline. Mr. Rielly himself testified that he could have engaged Mr. Greig in another manner and that he intended to engage Mr. Greig verbally. (Tr. 15) Yet, instead of doing so, he chose to cross-check him in the head.

2. Mr. Rielly admitted that his cross-check was intentional. (Tr. 25-26) While I accept Mr. Rielly's contention that he did not "aim" for Mr. Greig's head, the fact remains that

Mr. Rielly raised his stick to the level of Mr. Greig's head and neck and drove it forcefully and intentionally into Mr. Greig as Mr. Rielly skated into Mr. Greig. This is not a case where Mr. Rielly's stick was delivered to the midsection or shoulder and "rode up" to Mr. Greig's head. Although it appears that the stick made initial contact with Mr. Greig's hand, that is only because Mr. Greig appears to have seen Mr. Rielly approaching him at the last moment¹ and raised his hand in an unsuccessful attempt to ward off the oncoming blow. The incidental contact with Mr. Greig's hand did not alter the trajectory of the cross-check to Mr. Greig's head.

3. I also do not credit the contention that Mr. Rielly attempted to mitigate the force of the cross-check by removing one hand from his stick. (Tr. 38) Mr. Rielly did not simply extend his arms to deliver the cross-check; after skating for several seconds, he leaned into the check with his body, adding force to the blow. The fact that one hand came off the stick – after the blow to Mr. Greig's head – does not appear to have mitigated the force of the blow.

4. The cross-check was delivered as retribution for an unnecessary and seldom seen play that Mr. Rielly believed may have been intended to embarrass Toronto. Although much of the testimony offered by Messrs. Rielly, Treiving and Shanahan at the hearing concerned whether Mr. Greig's slap shot was provocative, that discussion is utterly irrelevant. Mr. Rielly's actions were not undertaken in self-defense. They were not accidental and they were not reflexive. They were not simply careless or merely reckless. With plenty of time to think about what he was going to do next, Mr. Rielly approached Mr. Greig from the side then used his stick

¹ A good deal of testimony was offered on whether Mr. Greig was in fact an "unsuspecting" victim. I find that he was. The fact that he saw Mr. Rielly at the last second does not change my conclusion, as Mr. Greig clearly had no meaningful opportunity to protect or defend himself.

as a weapon to deliver the kind of blow to the head that the League has repeatedly made clear will not be tolerated.

I acknowledge that Mr. Rielly does not have a history of supplementary discipline and that Mr. Greig did not suffer an injury. As the DPS video makes clear, these facts were already taken into consideration when determining that a five (5) game suspension was appropriate. Given the nature of the conduct, Mr. Rielly's suspension almost certainly would have been considerably longer if he did not have a clean record or if there had been an injury.

The NHLPA contended that the "comparator" evidence it presented at the hearing compels a suspension of no more than three (3) games. The four primary suspensions cited by the NHLPA involved suspensions of Alex Chiasson (one (1) game), Jeff Skinner (three (3) games), Blake Lizotte (one (1) game) and Evander Kane (one (1) playoff game). The NHLPA acknowledged that the acts leading to those suspensions were not "identical" to each other or to the conduct here. (Tr. 52) I have considered the argument that a five (5) game suspension is disproportionate to Mr. Rielly's conduct in light of those suspensions and I disagree. None of those suspensions involved anything like the level of force that was applied here and none of them involved the same kind of predatory behavior as was exhibited by Mr. Rielly. Of the four cited cases, the most forceful cross-check was the one delivered by Mr. Skinner (which resulted in a three (3) game suspension). The conduct here was considerably more forceful and premeditated. A suspension of five (5) games is well within the range of appropriate discipline for this conduct.

I note that during the course of the hearing the NHLPA argued that the recent six (6) game suspension of David Perron should not be considered as a "comparator" because of the pending appeal from my decision in that case. I disagree with that argument as well, and note

that the NHLPA (which argued for a four (4) game suspension in the Perron case) did not offer any argument distinguishing the conduct in the Perron case from the conduct here. Mr. Shanahan referred to what he characterized as “small but significant differences between this particular hit” and the Perron cross-check (Tr. 94), but he did not elaborate.² In any event, the applicability of Perron is irrelevant. With or without consideration of Mr. Perron’s suspension, a suspension of at least five (5) games for Mr. Rielly was appropriate. Indeed, given the four (4) game suspension that I imposed on conduct of a less serious nature by another Player who engaged in reckless (but not intentional) conduct (Jason Spezza), the suspension here could well have been higher.

Finally, I commend Mr. Rielly for forthrightly disavowing suggestions that have been made publicly by others that his actions were somehow appropriate. Certainly, the conduct leading to this suspension is out of character with his long record of clean play in the NHL. It is my hope and expectation that the events leading to this suspension were an aberration that will not be repeated.

² Mr. Treiving testified that he previously saw footage of the Perron incident, though he had not seen the DPS suspension video. Based on his review, Mr. Treiving said that he thought the Perron cross-check was delivered with greater force than Mr. Rielly’s cross check and that Mr. Greig was not an unsuspecting victim, as was the Player in the Perron case. (Tr. 42) As discussed above, I find that Mr. Greig was an unsuspecting victim. To the extent that Mr. Rielly’s cross-check was not as forceful as Mr. Perron’s cross-check, it is accounted for in the fact that his suspension is one (1) game shorter.

VII.

CONCLUSION

For the foregoing reasons, the decision of the Department of Player Safety suspending Morgan Rielly for five (5) games is hereby affirmed.



Gary B. Bettman

Dated: February 20, 2024