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Robert D. Manfred Jr.

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*Robert D. Manfred, Jr.**

I. INTRODUCTION

In general, rules that have developed under the labor laws should be applicable to all types of employees, including professional athletes. There is obviously no statutory basis under the National Labor Relations Act ("NLRA")[1] to treat professional athletes any different than any other type of employee. Furthermore, the United States Supreme Court in *Brown v. Pro Football, Inc.*[2] has rejected the notion that professional athletes are somehow entitled to different treatment under the labor laws.

In *Brown*, the Supreme Court was asked to address the scope of the non-statutory exemption from anti-trust laws.[3] One of the more interesting arguments, made from the union side, addressed the treatment of professional athletes. The union asserted that whatever the law is with respect to employees in general, professional athletes should be treated differently because of the unique context in which they work.[4]

The Court responded to this argument by stating:

> We can understand how professional sports may be special in terms of, say, interest, excitement, or concern. But we do not understand how they are special in respect to labor law's anti-trust exemption. . . .

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* Executive Vice President, Major League Baseball. Mr. Manfred has been involved in professional sports for the last ten years. Prior to joining Major League Baseball, he was a partner at the law firm of Morgan, Lewis & Bockius, LLP in Washington, D.C., and had a general labor relations law practice. This essay is adapted from Mr. Manfred's address at the 1999 New York State Bar Association's Labor and Employment Law Section's Meeting held in Cooperstown, New York.

1. 29 U.S.C. §§ 151-167 (1994).
2. 518 U.S. 231 (1996).
3. *See id.* at 234.
4. *See id.* at 249.

> . . . Indeed, it would be odd to fashion an antitrust exemption that gave additional advantages to professional football players (by virtue of their superior bargaining power) that transport workers, coal miners, or meat packers would not enjoy. . . .
>
> . . . Ultimately, we cannot find a satisfactory basis for distinguishing football players from other organized workers.[5]

This is a strong argument for applying the same statutory presumption to labor issues that arise in the context of professional sports. Obviously, however, discipline in professional sports, like in most employment settings, is largely a matter of contract law.[6] Additionally, the interpretation of those contracts are submitted to arbitrators.[7] In arbitration, it is appropriate, as the Supreme Court recognized in the Steelworkers Trilogy,[8] for arbitrators to interpret contract language against the backdrop of the unique circumstances of the particular industry.[9] There is no doubt that in professional sports there are unique characteristics that color what transpires in player discipline cases.

II. SPECIAL CHARACTERISTICS INVOLVED IN SPORTS DISCIPLINE CASES

There are several characteristics present in sports discipline cases that are unlike discipline cases in more traditional settings. First, unlike traditional employees who are generally subject to discipline by their employer, the professional athlete is subject to discipline from a variety of sources.[10] For example, the collective bargaining agreement in baseball expressly recognizes that a player may be subjected to disciplinary action for just cause by the club (his employer), the league and the Commissioner.[11] Thus, there are at least three different sources of dis-

5. *Id.* at 248-50.

6. *See* Dr. Richard L. Irwin, *A Historical Review of Litigation In Baseball*, 1 MARQ. SPORTS L.J. 283 (1991).

7. *See* Gil Fried & Michael Hiller, *ADR in Youth and Intercollegiate Athletics*, 1997 BYU L. REV. 631, 638.

8. *See* United Steelworkers v. American Mfg., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf, 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car, 363 U.S. 593 (1960).

9. *See* Carie Fox & Brian Gruhn, *Toward a Principled Public Policy Standard: Judicial Review of Arbitrators' Decisions*, 1989 DET. C.L. REV. 863, 868.

10. *See* Jan Stiglitz, *Player Discipline in Team Sports*, 5 MARQ. SPORTS L.J. 167 (1995).

11. *See id.* at 179.

ciplinary action for professional athletes because there are different interests at work. It should be recognized that the club has a set of interests, the Commissioner has a set of interests, and until recently, the league had a distinct set of interests.[12]

The second unique feature in sports that permeates discipline cases is that the ultimate penalty for most employees is discharge.[13] Unfortunately, in professional sports, discharge results in the ultimate privilege of free agency.[14] Therefore, tension is inevitably created because the penalty of discharge can actually become a benefit to individuals who are disciplined.[15]

With these differences in mind, there are two high profile sports discipline cases that merit discussion. The first case involves professional baseball and a pitcher named Lamarr Hoyt.[16] Lamarr Hoyt pitched for the San Diego Padres in the 1980s, and at one point in his career was arrested while attempting to cross the border from Mexico into the United States with controlled substances concealed in his pants.[17] He received a forty-five day prison sentence as part of a plea bargain, and shortly thereafter went to jail.[18] The Padres, his club, advised him that they were going to terminate his contract.[19] Ultimately, the Commissioner also suspended Hoyt from baseball for a period of one year.[20] One of the arguments made by the Players Association in support of the grievance they filed on Hoyt's behalf was that the discipline imposed

12. *See id.* at 179-80.

13. *See Giants Sign Strawberry For Remainder of Season*, COURIER J., June 20, 1994, at 1D (stating that Darryl Strawberry signed with the San Francisco Giants after being released by the Los Angeles Dodgers).

14. *See Bere Released After Failing as Reliever*, CHI. TRIB. Aug. 5, 1999, at 6 (explaining that after an athlete is released, he has the right to seek a new team through the free agent market); *see also* Susan H. Seabury, *The Development and Role of Free Agency in Major League Baseball*, 15 GA. ST. U. L. REV. 335, 352 (1998) (discussing how free agency allows a professional athlete to negotiate with any professional sports team and allows an athlete to sign with the highest bidder).

15. *See* Richard Hoffer, *Money Pitchers Randy Johnson of the Diamondbacks and Kevin Brown of the Dodgers, Two Fireballs Worth $157 Million Combined, Went Wallet-to-Wallet on Opening Day in L.A., But It Was the Hitters Who Cashed In*, SPORTS ILLUSTRATED, Apr. 12, 1999, at 36 (stating that Kevin Brown received over $105 million in free agency and Randy Johnson received over $52 million).

16. *See In re* Arbitration Between Major League Baseball Players Ass'n v. San Diego Padres Baseball Club, Panel Decision No. 74, 548 PLI/PAT 623 (1987) (Nicolau, Arb.) [hereinafter *Hoyt* Arbitration].

17. *See id.* at 639.

18. *See id.* at 640.

19. *See id.* at 643.

20. *See id.*

was in fact duplicative; Hoyt had essentially been disciplined twice for his misconduct.[21]

The opinion of George Nicolau, the arbitrator in *In re Major League Baseball Players Ass'n et al., Panel Decision No. 74* ("*Hoyt* Arbitration"), characterized the duplicative discipline argument as an "intriguing issue," but declined to rule on it.[22] He instead analyzed the two penalties that were imposed, decided there was no just cause for either of the penalties prescribed, reinstated Hoyt's contract, and reduced the suspension to sixty days without pay.[23]

In most industries, the duplicative discipline argument would have carried the day. Arbitrator Nicolau's decision to avoid that issue is recognition of a unique setting in professional sports, in which there are two sets of interests: the interests of the club, which are largely economic (i.e. not wanting to pay a player when he is unable to perform) and the distinct interest of the Commissioner, who is concerned about the integrity of the game.[24]

A second and more recent sports discipline case involved Latrell Sprewell.[25] Sprewell had an altercation with his coach.[26] Following the altercation, the Warriors, the team for which Sprewell played, terminated his multi-year contract, and Commissioner David Stern's office performed an independent investigation into the incident.[27] At the conclusion of the investigation, Sprewell was suspended from the NBA for one year.[28]

Those with knowledge of sports recognize, that once Sprewell's contract was terminated, it was clear that there were teams interested in signing him. In other words, his discharge from the Warriors made him a free agent.[29] While he was in that status, no matter what problems he had, teams, for competitive reasons, are driven by their interest in signing a good player. Cognizant of the possibility that a "discharge" can create this type of strange result, the arbitrator in the *Sprewell* case reinstated Sprewell's contract and limited the suspension to sixty-eight

21. *See Hoyt* Arbitration, *supra* note 16, at 650.
22. *See id.* at 661.
23. *See id.* at 669-70.
24. *See id.* at 651.
25. *See In re* National Basketball Players Ass'n et al., Opinion and Award 11-12, 548 PLI/PAT 429 (1998) (Feerick, Arb.) [hereinafter *Sprewell* Arbitration].
26. *See id.* at 448-49.
27. *See id.* at 513-14.
28. *See id.* at 515.
29. *See id.* at 536. *See generally supra* note 14 and accompanying text.

games or the remainder of the season.[30]

Interestingly, there was also a duplicative discipline argument in *Sprewell*.[31] The arbitrator, John D. Feerick, handled it differently from the arbitrator in the *Hoyt* case.[32] Mr. Feerick decided that the collective bargaining agreement did not bar duplicative discipline.[33] He decided this on the basis of the language of the contract, which stated that a player may be subjected to disciplinary action for just cause by his team or by the Commissioner.[34] The arbitrator explained that the disjunctive language used in the contract was not in fact a disjunctive.[35] It can be presumed that the arbitrator was motivated to engage in this unusual bit of interpretation by his recognition that there are distinct sets of interests that are served in professional sports by allowing two different types of discipline to be imposed.

III. CONCLUSION

Based on the foregoing cases, the lessons learned are basic and important. First, when a disciplinary issue is submitted in professional sports, just like under any collective bargaining agreement, it is appropriate for that arbitrator to look at the unique setting of professional sports when interpreting the contract language.[36]

Second, in both *Hoyt* and *Sprewell*, the arbitrators attempted to circumvent a discussion on the issue of duplicative discipline, which, in the ordinary industrial setting, would have been outcome-determinative.[37] The arbitrators avoided the issue or engaged in a "tortured" contract construction because they recognized that in sports, there may be a need to recognize two separate disciplinary interests, at least in some cases.[38] The remedy that resulted in both cases protected two interests in the sports industry because a suspension without pay serves to protect the club's economic interests in not having to pay a player when he is unavailable to perform, and it also prevents a player

30. *See Sprewell* Arbitration, *supra* note 25, at 536.
31. *See id.* at 523-24.
32. *See id.* at 523-25.
33. *See id.* at 525.
34. *See id.* at 523-24.
35. *See Sprewell* Arbitration, *supra* note 25, at 523-25.
36. *See, e.g., Hoyt* Arbitration, *supra* note 16, at 654.
37. *See id.* at 661; *see also Sprewell* Arbitration, *supra* note 25, at 523-25.
38. *See Sprewell* Arbitration, *supra* note 25, at 525; *see also Hoyt* Arbitration, *supra* note 16, at 661.

from achieving the type of windfall that sometimes can be available if he is discharged and made a free agent.