Employment Arbitration in the Wide, Wide World of Sports

BY MARK C. TRAVIS

There has been significant activity in the field of employment arbitration in sports over the past several months, both at the collegiate and professional levels. From the collegiate ranks, one decision was rendered earlier this year, while other much-publicized cases in professional football are just getting started.

At the college level, an arbitration award was issued in favor of Kevin Ollie, head men's basketball coach at the University of Connecticut. *The University of Connecticut Chapter of the American Association of University Professors, for Kevin Ollie, and The Board of Trustees of the University of Connecticut*. The case presented an interesting threshold issue and was also noteworthy in its decision on the merits. Ollie was hired by the University in 2012 under an individual employment agreement ("the IEA"). An alumnus of the University, Ollie led his team to victory in the NCAA Championship two years later. The University was also party to a collective bargaining agreement ("the CBA") with the local chapter of the American Association of University Professors ("the AAUP"). Members of the University's Athletic Department were included in the bargaining unit, including Ollie. Ollie was notified of his termination by the University on March 10, 2018, for violations of NCAA rules, and the University issued a press release announcing the termination that day. Olllie's replacement was hired on March 22 and a post-termination administrative hearing was conducted on April 10. The NCAA issued its Notice of Allegations in September 2018, and the NCAA Committee on Infractions issued its findings on July 2, 2019. The NCAA cited the University for a series of Level II and II violations, and came down harder on Ollie with a Level I violation.

The threshold issue arose over the conflicting terms in the IEA and the CBA. The standard of "just cause" for termination under the CBA required "**serious noncompliance** . . . with the NCAA rules or regulations," while the IEA authorized termination upon a showing of "**[a] violation** by the Coach" of NCAA rules or regulations (emphasis added). Thus, the IEA provided less protection from termination than did the CBA. In the arbitrator's threshold ruling, she concluded that the CBA controlled. In reaching this conclusion, she first observed that the IEA had incorporated the CBA in its terms, so to apply the IEA's lower standard would render the CBA null and void. The arbitrator also noted that the CBA stated that its terms were the minimum employment terms, unless waived in writing by the Coach and the AAUP, and courts favor the terms in a CBA over conflicting terms in individual employment contracts. *J.I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944). Although the Executive Director of the local AAUP chapter had signed the IEA, the arbitrator found that signature did not evidence a specific written waiver of the terms of the CBA.

The case proceeded to hearing, which covered 33 days over a period of several months. (After the hearing, the initial arbitrator passed away and a second arbitrator issued the award upon the record.) Applying the CBA's just-cause standard, the arbitrator found in Ollie's favor on January 20, 2022. Initially, the arbitrator found numerous due process deficiencies in the University's actions. First, the arbitrator found issues with the timing of the termination. The arbitrator noted that the NCAA's conclusions did not become final until 16 months after the termination, which represented a fundamental breach of due process. The arbitrator further found significant issues with both the NCAA's and the University's investigations of Ollie, which failed to show any semblance of an impartial adjudicatory process. Those issues included the lack of witness testimony under oath (which was often inconsistent), analysis of any animus on the part of witnesses whom Ollie had terminated, and the exploration of any exculpatory evidence. Additionally, contrary to the University's assertion, the arbitrator concluded that under the IEA, Ollie had a property right in his continued employment and therefore a right to a pre-discharge hearing under *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). The arbitrator found the notice which Ollie was given in advance of the April 10 hearing was vague and incomplete as to the charges against him, and, when weighed against the press release and hiring of Ollie's replacement, rendered the meeting an exercise in futility and the termination a *fait accompli*. Although the arbitrator found that these violations were

independently sufficient to find in Ollie's favor, he went on to address the case on its merits.

After exhaustively examining the evidence, the arbitrator determined that at worst, Ollie's conduct could have amounted to three or four minor Level III NCAA violations, which could have been addressed through progressive discipline. These issues, the arbitrator found, did not rise to the level of "serious misconduct" as required by the CBA. The arbitrator also criticized the punishment of Ollie as arbitrary, capricious and disparate. In so finding, the arbitrator cited previous similar (or worse) NCAA violations by the University's football, men's basketball and women's basketball coaches–none of which resulted in termination. The arbitrator awarded Ollie a total of $11,157,032.92, consisting of the remaining base compensation, deferred compensation and media fees. On February 1, 2022, the University announced that it had paid Ollie as ordered.

There are two other potential arbitration cases involving head coaches pending at the professional level in the National Football League, both of which are in early stages of pleading. *Gruden v. Nat'l Football League*, No. A-21-844043-B (Clark County Dist. Ct., Nev.); *Flores v. Nat'l Football League*, No. 1-22-cv-00871 (S.D.N.Y). Both involve the coaches' separation from employment, and their contracts call for binding arbitration under the NFL Constitution before Commissioner Roger Goodell. Similarly, both coaches have publicly objected to the arbitration process for their cases. Time will tell how these cases will proceed. •

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