

BEFORE THE CBA APPEALS PANEL

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NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION,

Appellant,

In the Matter of New Orleans Saints
"Pay-for-Performance/Bounty" Program

v.

SUMMARY DECISION

NATIONAL FOOTBALL LEAGUE,

Appellee

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This is an appeal by the National Football League Players Association ("NFLPA") from the decision of the System Arbitrator (Burbank, June 4, 2012) ("Opinion") dismissing for want of jurisdiction the NFLPA's demand for arbitration of a dispute with the National Football League ("NFL") filed pursuant to the Collective Bargaining Agreement between the parties dated August 11, 2011 ("CBA"). This Panel has appellate jurisdiction over the System Arbitrator's decision under Article 15, Sections 7 and 8 of the CBA.

The underlying dispute concerns the authority of the Commissioner of the NFL ("Commissioner") to impose discipline upon four current and former New Orleans Saints players (Scott Fujita, Anthony Hargrove, Will Smith and Jonathan Vilma) (the "Players") under Article 46, Section 1(a) of the CBA for "conduct detrimental to the integrity of, or public confidence in, the game of professional football" That conduct was alleged by the NFL and the Commissioner to be the Players' participation in a so-called "pay-for-performance/bounty program" wherein players and coaches put

money into a pool to reward players for legitimate plays such as interceptions and fumble recoveries as well as plays that injured opposing players ('cart-offs' and 'knockouts').

In the proceedings before the System Arbitrator, the NFL contended that the System Arbitrator had no jurisdiction as the Players' discipline (suspensions of varying length) was a matter within the Commissioner's exclusive jurisdiction under the 'conduct detrimental' language of Article 46. The NFLPA argued, however, that the conduct for which the Players were disciplined was within the exclusive discipline of the System Arbitrator under Articles 14 and 15 of the CBA. Article 14, Section 1 prohibits a player or club from entering into undisclosed agreements of any kind involving consideration to be made available to the player. According to the NFLPA the alleged bounty program was just such an undisclosed compensation agreement which could only be addressed by the System Arbitrator, and further that under Section 6 of Article 14 suspensions were not a permitted form of discipline.

The System Arbitrator acknowledged that he had exclusive jurisdiction over undisclosed compensation agreements prohibited by Article 14 but concluded that the conduct in question was not covered by Article 14 and was properly subject to the Commissioner's exclusive jurisdiction for 'conduct detrimental' under Article 46. Critical to this decision was the distinction he drew between a player's contribution of funds to the pool and the receipt (or agreement to receive) funds from the pool. While the receipt (or agreement to receive) money from the pool may have been within his exclusive jurisdiction under Article 14, the System Arbitrator read the Commissioner's disciplinary letters to have imposed suspensions for the players' roles in establishing and funding the pool, not for receiving (or agreeing to receive) money from the pool.

We agree with the System Arbitrator that "the same nucleus of operative facts"—here, the bounty program—may give rise both to conduct that violates the Article 14 prohibition on individual compensation agreements and to conduct that may reasonably be judged to be 'conduct detrimental' in violation of Article 46. Opinion at 7. Indeed, the NFLPA appears to agree this is conceptually correct

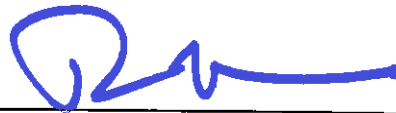
and, in such a case, concedes that the Commissioner could exercise his exclusive jurisdiction to discipline that conduct which is “conduct detrimental,” while the System Arbitrator could exercise his exclusive jurisdiction to impose penalties for that conduct which violates the prohibition on undisclosed compensation agreement found in Article 14. (Transcript of August 30, 2012 at 157-59) We think, however, that the distinction drawn by the System Arbitrator between the funding of a pool and the receipt of (or agreement to receive) monies from the pool is not the appropriate boundary line dividing the exclusive jurisdictions of the Commissioner and the System Arbitrator in this case. In our view, the alleged bounty program was both an undisclosed agreement to provide compensation to players and an agreement to cause, or attempt to cause injury to opposing players. Therefore, the System Arbitrator would have exclusive jurisdiction to impose penalties for the undisclosed compensation terms of the bounty program. And the Commissioner would have exclusive jurisdiction to impose penalties for the players’ agreement to seek to injure opposing players.

The NFLPA contends that there is a single agreement/program at issue and that the Players’ conduct cannot be so easily bifurcated. *See, id.* We disagree. When a single agreement contains multiple terms that run afoul of different provisions of the CBA, we see nothing in the language of the CBA that precludes both the Commissioner and the System Arbitrator from operating in their respective, exclusive spheres. This is not concurrent jurisdiction, as different facts establish the jurisdiction of each: an agreement to injure in one case (whether disclosed or undisclosed, whether for consideration or not); and an agreement to receive (and possibly fund) payments from the pool in the other (whether for licit or illicit behavior).

While we agree, then, that the Commissioner had jurisdiction to discipline the Players in this case, we are uncertain that the discipline handed down was attributable, in any part, to that aspect of the Program which lies within the exclusive jurisdiction of the System Arbitrator. While we could speculate, it is not clear from the record before us whether the Commissioner had the distinction we

draw in mind at the time he disciplined the players. This, of course, would be understandable as the relationship of Article 14 jurisdiction to Article 46 jurisdiction has not previously been explicated. In light of the serious nature of the penalties imposed, we believe caution is appropriate. Therefore we vacate the Players' discipline and remand the matter directly to the Commissioner for expeditious redetermination. To the extent that any portion of the discipline previously imposed was ascribed to the undisclosed compensation aspects of the program, any re-imposed discipline should be adjusted accordingly. The Panel recognizes that this procedure is perhaps cumbersome but believes that it is dictated by the architecture of the CBA which creates a variety of exclusive jurisdictions.

This opinion is provided in summary form in light of the parties' joint request for a decision prior to the first weekend of play. A full opinion will follow.



Richard J. Holwell
On Behalf of the Unanimous Panel