

Aspects of Sports Arbitration



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Kellogg Honors College Capstone 2012



Collective Bargaining Agreements

Each of the early major professional sports in America – baseball, basketball, hockey and football – have all gone through a history of disputes amongst their players, coaches, managers, owners, leagues, and other people associated with each sport's team. In order for arbitration to come into play, there must be a contract that identifies it as the means of resolving a dispute – one that would arise between players and owners for instance. Since it would be difficult for each individual player to stand up for and fight for the same rights, protections, and salaries as each other individual player would against their owners, players in their respective professional sports created unions, called players associations. They act as one body in labor relations with their management, as employees would with their businesses.

In Major League Baseball, the players union is called the Major League Baseball Players' Association (MLBPA). They were the first players union to form of the professional sports. In 1968, the MLBPA obtained the first collective bargaining agreement with the various major team leagues. The first CBA included:

- Raising the minimum salary
- Providing for arbitration of grievances
- Calling for an examination of the reserve clause (Berry, 1986)

In the National Football League, a CBA was reached a few months after the MLBPA's new CBA, which was similarly significant in its agreements between the NFL and its players association, the NFLPA. In the 1973 CBA between the MLB and the MLBPA, salary arbitration was first introduced. A distinguishable feature of baseball arbitration for salaries is that the arbitrator is required to choose either the player's demand or the ballclub's offer, with no compromise between the two positions (Staudohar, 1989).

This type of "final-offer" salary arbitration is still used today in the MLB's CBA. A recent article from ESPN's MLB website covered the results from salary arbitration between the Baltimore Orioles and their player Brad Bergesen. "Bergesen will receive an \$800,000 salary this year rather than his request for \$1.2 million. Arbitrators Robert Herzog, Mark Burstein and Elizabeth Neumeier made their decision Thursday" (ESPN Assoc. Press, 2012).

The NBA also has a CBA. In the summer of 2011, both the NFL and the NBA revised their CBA's after extended periods of lockouts. Parties first tried negotiations, but when neither side budged from their proposal, the matters threatened to go to court. The NBA's CBA did go to court and the owners and players finally ratified an agreement.

Article 43 of the 2011 NFL CBA:

The decision of the arbitrator will constitute full, final, and complete disposition of the grievance, and will be binding upon the player(s) and club(s) involved and the parties to this Agreement. The determination of the Impartial Arbitrator shall be final and binding upon all parties. (NFLPA, 2011)



What is Arbitration

There are two steps to defining arbitration – first and foremost being arbitration itself. Arbitration is a formal method of alternative dispute resolution in which a neutral third party, known as an arbitrator or arbitration panel, hears both sides of a dispute and imposes a binding resolution on the parties (Clarkson, 2009; Jasper, 2000). To understand this, we need to examine alternative dispute resolution (ADR), the second step of defining arbitration. ADR is a way for parties to resolve their dispute outside of the courtroom in a quicker and cheaper manner. There are three main types of alternative dispute resolution – negotiation, mediation, and arbitration.

Court of Arbitration for Sport

Internationally, there are also lots of disputes related to professional sports. Beginning in the 1980s, there was a regular increase in the number of international sports-related disputes and there was an absence of an independent authority that specialized in sports dispute resolution to make binding decisions.

In 1982, a judge from the International Court of Justice in The Hague, Keba Mbaye, started a group with the task of preparing the statutes of what would become the "Court of Arbitration for Sport" (CAS, 2012). This international sports arbitration court was created to resolve disputes that were directly or indirectly related to sports. The Court of Arbitration for Sport opened officially in 1984. The two types of dispute cases that the CAS rules on are commercial disputes and disciplinary disputes. Commercial disputes are those that involve athlete contracts and salaries whereas disciplinary disputes are those that involve doping and substance abuse claims.

One case that the CAS has recently decided on was regarding a Spanish cyclist and two-time Tour de France winner in 2007 and 2009, Alberto Contador. Contador had just won his 3rd Tour de France in 2010, but a drug test came back positive for a banned substance. The case went to the CAS and after hearing both sides' lawyers with evidence and witnesses, the CAS rendered a decision against Contador, stripping him of his 2010 Tour de France title and banning him from competitive cycling until August, 2012.

