IV. BASEBALL AND GRIEVANCE ARBITRATION

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We Americans, from both the United States and Canada, tend to take our professional sports teams very seriously. Seldom, however, do we look at professional sports industries in traditional industrial terms, especially with regard to labor-management relations.

For the public, the strikes and threatened strikes and lockouts by players and club owners in the past few years have been portrayed as contests of greed between well-paid, selfish players and egomaniacal, wealthy owners. Little attention and, indeed, little concern is focused on issues and the legitimate interests of the parties. Fans seem to regard the entire subject matter as nonsense, inconvenience, and interference with the truly important life-drama of playing the game.

Not many of us discern important developments in the arena of player-management relationships and, I suspect, even most of you in this relatively sophisticated audience are here, on this Friday afternoon, at the end of a thoughtful and most professional Academy meeting, for a little light entertainment. Unfortunately, Jack Donlan, who was scheduled in order to satisfy that expectation, begged off, presumably because of the pressure, so the rest of us will just have to do the best we can.

My remarks will be confined to baseball, the sports industry with which I have been involved professionally for the past 17 years. My theme is this. In the relatively new relationship between the players' union and management, in the relationship between players and club officials, and in the relationship among the players themselves, the impartial grievance arbitration process has been of enormous significance. In fact, I know of no industry where arbitration has played as important a role in the development of more stable and dignified understandings. Moreover, within baseball, the very way business is done has been changed appreciably as a result of arbitration decisions.

I plan to discuss briefly three cases decided in the early and

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mid-1970s, but first, a little background. It has been only since 1966 that baseball players have had a union and effective collective bargaining. It has been only since 1970 that impartial grievance arbitration has been a part of the collective bargaining agreement. Baseball players do not have a long history in the affairs in which all of you are expert, and, at the time of these cases, were not entirely comfortable, as a group, with the issues or the procedures involved. And if players were ill at ease, you can imagine the degree of discomfort felt by traditional baseball management personnel.

In that climate, an issue arose in the 1971 season involving Alex Johnson, an outfielder with the California Angels. One of the finest hitters in the game, Johnson in the previous year had been the American League batting champion.

Alex Johnson had always been considered as a "loner," a private man, but as the 1971 season progressed, his behavior became peculiar. On the field, he failed to run out ground balls, tried to catch only some foul balls, refused to take fielding practice and otherwise was defiant and uncooperative. Off the field, he became extremely withdrawn.

The club's general manager reacted by repeatedly fining Alex for his acts or omissions on the field, by publicly accusing him of malingering and being irresponsible, and by pursuing other "remedial" courses, such as often telephoning Alex's pregnant wife to report his shortcomings and demand that she do something about it. All of this, of course, had the effect of exacerbating the situation.

As the haranguing and publicity increased, Alex became more suspicious of, and closed-off to, all those around him. Finally, in late June, the club, in effect, imposed a disciplinary suspension for the remainder of the year, without pay, for "failure to give your best efforts."

A grievance was filed by the union, the theory of which was that Johnson was obviously suffering from emotional distress and should be treated in the same manner as one who has a physical injury or illness—that is, be placed on the disabled list, not disciplined.

That may not sound like an extraordinary grievance, but at the time it was met with outrage and expressions of horror. Club officials throughout baseball were quoted as saying, it challenges the right of management to discipline players, it tells

players they need not hustle, it is an affront to the fans who pay good money to see quality performance, it interferes with the integrity of the game and, if successful, the case will destroy baseball. Many sports writers and columnists wrote in a similar fashion, as did many authors of letters to sports editors.

But perhaps most disturbing was the reaction of the players. Even though only a few expressed opinions for quotation, most felt that Johnson's behavior was a contradiction to all they believed and learned in terms of how to perform, that there was no excuse for his actions, and that the grievance was an attempt to get Alex off on a technicality. At the hearing, three of Johnson's teammates were called by and testified for management. Only one, a young player on the team who came to the hearing and sat next to Alex, offered him any support.

The case was tried before Lew Gill, who was the first impartial chairman of baseball's tripartite arbitration panel. With all deference to Lew, it was an easy case for him to decide in favor of the grievant.[1] When Alex was suspended, he came under the care of a psychiatrist who, at the hearing, testified that Alex was suffering from an emotional illness, rendering him unable, temporarily, to perform as a baseball player. A psychiatrist retained by management to examine Alex and testify, agreed in every respect.

While the case was easy to decide, it was difficult to hear because of the emotionalism involved. The club's general manager displayed the style and thought processes of a stereotyped Marine drill sergeant. And Alex, when he was asked at the outset of his direct testimony a preliminary, neutral question for the purpose of putting him more at ease, answered nonstop for an hour and a half, detailing events, suspected events, and the reasons for each of the things he had done. The hearing, which Gill conducted in a gentle and compassionate manner, lasted for three days.

The importance of the case was that everyone, even the old-time baseball people, soon came to realize it was not a catastrophe. Obviously, baseball survived. Players felt they had jumped to premature conclusions without understanding. Man-

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[1]American and National Leagues of Professional Baseball Clubs and Major League Baseball Players Association, Arbitration Panel Decision No. 6 (Gill, September 28, 1971), not reported.

agement, with responsible leadership from the Player Relations Committee, the labor relations arm of the clubs, also was able to put the matter in context.

On the day the award was issued, John Gaherin, then the director of the PRC, sent out to the clubs copies of the decision under the cover of a memorandum, which began: "Because of the publicity, and the mass of misinformation which has been circulated in this case, it is important that those charged with responsibility for player personnel matters be furnished copies of this Decision and become familiar with it." He then described the facts as they came out at the hearing, and the basis for the decision. He ended by quoting the last paragraph of the Gill opinion:

> "Finally, it should be said with emphasis that this ruling is not intended to suggest that players may now avoid disciplinary action simply by asserting their conduct (whatever it may be) is due to emotional stress or mental illness. All that is actually decided here is that where highly-qualified and respected psychiatrists retained by both sides have agreed that the player was and is unable to perform because of a mental condition, he should be placed on the disabled list rather than disciplined. It seems safe to predict that very few players will be tempted to try to place themselves in that category, and to go through the shattering emotional experience which this whole case has represented for Johnson, along with the others involved in it."

Three years later, another case arose which also was perceived by some as an attack on the viability of the game, and the business. In 1974, a dispute occurred between Jim Hunter, better known as "Catfish," and Charles O. Finley, the owner, president, and general manager of the Oakland Athletics. Hunter was the ace of the pitching staff of the world champion "A's", a Cy Young award recipient, and a perennial 20-game winner. He was one of the brightest and best paid stars in baseball.

Prior to the 1974 season, Hunter and his personal attorney, an elderly gentleman from Ahoskie, N.C., negotiated a player contract with Mr. Finley. It covered two years, 1974 and 1975, and provided for payment of $100,000 for each year. In a special covenant attached to the contract, it was stated that Hunter would be paid $50,000 current salary in each year, the remaining $50,000 per year to be paid by the club "to any person, firm or corporation designated by said Player . . . for the duration of this contract to be deferred compensation, same to be paid during the season as earned."

Those of you who have some familiarity with United States income tax law might properly raise a question of constructive receipt from this language, but it is nevertheless as the parties agreed. Subsequently, during the season, Hunter's lawyer requested Finley to pay the "deferred" salary over to a certain insurance company, and asked him to sign an "investment agreement" establishing an annuity to be administrated by the insurance company.

Finley refused, first on the ground that he thought he had agreed to pay Hunter the $50,000 deferred only after Hunter retired from baseball, and later on the ground that his wife, Shirley, the treasurer of the Oakland Athletics, was in the process of obtaining an extremely unfriendly divorce and would not agree to affix her signature, which Finley believed to be necessary, to the papers. Still later, Finley refused to pay over the $50,000 because his lawyers had just advised him that he could not take a current tax deduction for that amount if he did, and, therefore, it was not in his interests to do so. With this last communication, he also informed Hunter's lawyer that not only did he refuse to sign the papers, he had torn them up and thrown the pieces away.

The standard form player contract which Hunter and Finley had signed contained a little-used provision allowing a player to terminate the contract upon 10 days prior written notice in the event of a club default which is not corrected during the 10-day period. Hunter's lawyer wrote a letter to Finley, which served as a default notice. At the end of the season, the union, on Hunter's behalf, filed a notice terminating the contract. The commissioner, as the agent of the clubs, was asked to advise all the clubs that Hunter was a free agent and could negotiate with any of them. He refused to do so, thereby joining the issue, and a grievance was filed.

The grievance and arbitration case which followed were accompanied by wide publicity in the sports media. Management dismay, which was incorporated by many commentators, was generally expressed in terms of indignation over the concept of a club losing a player it owns, regardless of what happened. Again, questions were raised concerning the integrity of the game and the impending death of baseball. The reaction was consistent with the history of the club owners always having treated their own internal rules as living documents, to be interpreted and ignored as pragmatism might dictate. The stated

remedy was perceived as being too harsh, so, it was argued, it should not be applied, especially since Finley was now willing to pay anybody almost anything on direction.

Harsh it may have been, but applied it was.[2] Peter Seitz, who by that time had become the impartial chairman of the arbitration panel, wrote a terse, 40-page opinion in which he found the contract language to be "pellucidly clear" and the relevant evidence undisputed. He declared Catfish Hunter a free agent.

Although surprised by the result, the reaction generally among baseball management was subdued, for two reasons. First, Finley was not particularly esteemed by his peers, to say the least, and, second, most club officials were in wonder with the prospect of signing Hunter to play with their team.

Finley, however, was offended and enraged. Within three days of the Seitz decision, his attorneys filed an action in the Superior Court of Alameda County, Calif., to have the award vacated. In the course of that litigation with the union, Finley was not supported by the other club owners.

California law is similar to the federal law with regard to the enforceability of labor arbitration awards. In simple terms, an award will not be vacated unless it is proved that either (1) it has no grounding in the provisions of the collective bargaining agreement, (2) the arbitrator was bribed or otherwise was improperly or illegally influenced, or (3) the arbitrator was in a very poor state of mental health. Seitz met the test at the trial court level, and the union's countermotion to confirm the award was granted.[3]

Finley appealed the decision, but the California Court of Appeals refused to reverse the lower court, thereby reaffirming Peter's competence, morality, and sanity, by a vote of 2-1.[4]

The teaching of *Hunter* was that contract language means what it says, four law firms to the contrary notwithstanding. The aftermath of the case was also instructive. Catfish Hunter, a superstar who had been among the highest paid players at $100,000 a year, became the subject of a bidding war among

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[2]American and National Leagues of Professional Baseball Clubs and Major League Baseball Players Association, Arbitration Panel Decision No. 23 (Seitz, December 11, 1974), not reported.

[3]*American and National Leagues of Professional Baseball Clubs* v. *Major League Baseball Players Association,* No. 4584764, Superior Ct. of Alameda County, (Cal.) (1975), not reported.

[4]*American and National Leagues of Professional Baseball Clubs* v. *Major League Baseball Players Association,* 59 Cal. App. 3d 493 (1976).

the clubs, finally signing a five-year contract with the New York Yankees guaranteeing him in excess of $2½ million. It was becoming more generally understood that because of the historic inability of players to negotiate for their services with more than one club, they were being paid something considerably less than their value to their employers. Which brings us to the *Messersmith* case.

Most of you, I am certain, are aware of Peter Seitz's decision in 1975 which had the effect of ending baseball's reserve system as it was commonly understood. *Messersmith* is, in the context of the industry in which it was decided, the most important and the most revolutionizing labor arbitration case I know of. It caused a change in the way teams are assembled, maintained, and improved. It resulted in providing winters of activity, and publicity, for the sport. Its effect on player salaries since 1976 is conservatively estimated at more than a billion dollars. But perhaps most important, it brought home to management in the baseball industry the lesson that most of you were taught early in your careers: the lesson that collectively bargained solutions to problems are the best solutions.

Prior to the *Messersmith* case, collective bargaining on the subject of baseball's extremely restrictive reserve system was nonexistent. Management refused to agree to any changes, stoically voicing the conclusion at the bargaining table that the system was perfect in every way. At one bargaining session in the early 1970s, Jim Bouton, an author of some repute, who was then an active player and a member of the union's negotiating team, asked out of frustration whether the owners would be willing to permit players to become free agents upon reaching social security retirement age. "No," replied the chief lawyer on the management team, "We can't do that; it would give you a foot in the door."

The essence of the reserve system consisted of a combination of internal rules giving clubs exclusive rights to reserve players as among themselves, and paragraph 10(a) of the form player contract, which stated that if a new contract is not agreed upon, "the Club shall have the right by written notice to the Player . . . to renew this contract for the period of one year on the same terms. . . ."

In 1975, Andy Messersmith's contract was renewed under paragraph 10(a) by the Los Angeles Dodgers. At the end of the season, Messersmith and the union took the position that, hav-

ing completed the one-year renewal period, the contract term was ended and Messersmith was a free agent, able to negotiate with any club for his future services. The clubs' position was, first, that the renewal right was perpetual in that renewing the contract brought back into full force all of its provisions, including the renewal clause. Second, they argued, in any event the Dodgers could continue to reserve the player as against other clubs. On the second point, the union maintained that the provisions relating to reservation rights were, by their terms and their 104-year history, contingent upon the existence of a valid contractual relationship. The issues, of course, had many other facets, but for present purposes, this description will suffice.[5]

During the processing of the grievance, another great hue and cry ensued and was aired in the press. This time there was no holding back. The club owner involved was not the maverick Charley Finley, but was the industry's leader, Walter O'Malley. The issue affected all the players, not just one. The same old plaints of destroying the integrity of the game, competitive balance, and baseball itself were heard. Even Walter Alston, the low-keyed, usually silent manager of the Dodgers, was called upon to issue a statement saying, "If Messersmith wins, baseball is dead." But there was another cry that even the union agreed had substance. It was clear that if the grievance was sustained, salaries would rise appreciably because players would be able to function in a much more free marketplace.

The Player Relations Committee, which had acted responsibly in the *Johnson* case and with restraint in *Hunter,* also became frantic. Assured by their lawyers that they would win on the merits, and further, that the case could be prevented from going to arbitration on a jurisdictional theory the lawyers had concocted (essentially that the application of the reserve system was a management prerogative), the PRC shunned continued overtures to negotiate revisions in the system. Instead, they sought a friendly judicial forum to air their theories, and, on the eve of arbitration, brought an action to enjoin the proceedings. They selected the conservative heartland of America for safety, and filed the club owners' action in the name of the Kansas City Royals in

[5]A second grievance, concerning David McNally of the Montreal Expos, was involved in the arbitration case. The facts were the same as in the Messersmith case, except that McNally left the team in mid-season and returned to his home. Seitz did not distinguish between "playing out" and "sitting out" the renewal year and awarded both players free agency.

the Federal District Court for the Western District of Missouri. Consistent with the owners' run of bad luck, or the quality of the advice they were receiving, if you prefer, the matter was assigned to John Oliver, a judicial activist, who was not at all concerned with, let alone awed by, baseball myth and fables.

The court, without great delay, indicated to the parties that it found little appeal in the owners' jurisdictional argument. Judge Oliver supervised the signing of a stipulation which provided that (1) the arbitration hearing would go forward, (2) the arbitrator would rule on the jurisdictional matter and then on the merits, and (3) the court would retain jurisdiction over the case to hear any further arguments and motions following the arbitrator's decision.

Seitz then scheduled and conducted a lengthy hearing, following which, on December 23, 1975, he ruled in favor of the union.[6] Simultaneously, he was advised by the management member of the panel that he was no longer the permanent impartial chairman. Part of Peter's opinion, which this time ran 64 pages, I will treat with in closing, but first, back to Missouri for a moment.

The clubs returned to the district court in Kansas City, now to ask Judge Oliver to vacate the award. A four-day evidentiary hearing was held, after which the court refused to vacate and instead confirmed the award.[7] An appeal was taken to the Eighth Circuit which, in the spring of 1976, also found Peter to be O.K., again by a vote of 2-1.[8]

Before rendering his decision, Peter Seitz met with and tried to convince the parties that they, not he, should resolve the matter and should do so with a negotiated result. Although the union was amenable to the effort, management refused, still believing they would prevail, even at that late date.

In his decision, Seitz, after reviewing a litany of dire consequences management argued would flow from an adverse award, stated:

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[6]The Twelve Clubs Comprising the National League of Professional Baseball Clubs and the Twelve Clubs Comprising the American League of Professional Baseball Clubs and the Major League Baseball Players Association, Arbitration Panel Decision No. 29, 66 LA 101 (Seitz 1975).

[7]*Kansas City Royals Baseball Corp.* v. *Major League Baseball Players Association,* 409 F.Supp. 233 (W.D. Mo. 1976).

[8]*Kansas City Royals Baseball Corp.* v. *Major League Baseball Players Association,* 532 F.2d 615 (8th Cir. 1976).

"I do not purport to appraise these apprehensions. They are all based on speculation as to what may ensue. Some of the fears may be imaginary or exaggerated; but some may be reasonable, realistic and sound. After all, they were voiced by distinguished baseball officials with long experience in the sport and a background for judgment in such matters much superior to my own. However, as stated above, at length, it is not for the Panel (and especially the writer) to determine what, if anything, is good or bad about the reserve system. The Panel's sole duty is to interpret and apply the agreements and undertakings of the parties. If any of the expressed apprehensions and fears are soundly based, I am confident that the dislocations and damage to the reserve system can be avoided or minimized through good faith collective bargaining between the parties. There are numerous expedients available and arrangements that can be made that will soften the blow—if this decision, indeed, should be regarded as a blow. This decision is not the end of the line by any means. The parties, jointly, are free to agree to disregard it and compose their differences as to the reserve system in any way they see fit.

"In fact, on December 8, 1975, on my own initiative (but in my capacity as Chairman of the Arbitration Panel) I issued a statement to the parties in which I pointed out that, in a relatively short period of their relationship, due to a series of supervening circumstances, they had never accomplished full collective bargaining on their differences with respect to the historic reserve system that had long antedated their relationship; that these grievances in arbitration, important as they are, resulted from singular and special fact situations relating to only one aspect of a complicated system; that a composition and resolution by them of their larger differences as to the extent and impact of the reserve system was a matter of paramount importance; that it was more desirable that those differences (and the issues in current litigation before the Panel) be resolved by the parties themselves, in collective bargaining, than by a quasi-judicial arbitration tribunal, such as the Panel, in adversary proceedings; and that I was concerned that a decision by this Arbitration Panel might even create new barriers to the accommodation of interests in full collective bargaining on the reserve system."

In his opinion, Peter then observed that the parties "have not been successful in achieving the objectives I had in mind," referred to his contractual duty to render a written decision promptly, and issued his award.

From my partisan standpoint, I always thought it fortuitous that Peter's wise counsel was not followed when given. When the parties eventually did negotiate a new system, the union was in a far better position to meet the needs and desires of the players.

One further observation: At the time, it seemed a bit strange

that Peter was honestly surprised when he was fired. Politically, it was inevitable. In retrospect, I think I now understand why he was shocked. Peter knew, better than anyone else, how responsibly he had acted.

I would like to be able to report that the point Peter tried to make has been appreciated and that, since *Messersmith,* the parties have found ways to honorably accommodate each other. That would, however, belie the fact that in 1981 a 50-day strike occurred because of the club owners' clumsy attempt to impose additional player restrictions in the newly negotiated reserve system. It would also ignore the fact that the parties presently are engaged in litigation over the issue of television rights where, once again, all the lawyers involved are extremely confident, while finding new and ingenuous ways to busy themselves.

Alas, arbitration cannot solve all problems. But in baseball, at least, it has helped light the way.