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THE HISTORICAL ORIGINS OF PROFESSIONAL BASEBALL GRIEVANCE ARBITRATION

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If nothing else, the Rocker episode has reminded the sports world of the importance of grievance arbitration. Because of his right to plead his case before a neutral arbitrator, Atlanta pitcher John Rocker was able to win a substantial reduction of the penalty imposed upon him by the Commissioner of Baseball. As a consequence, he was able to begin the 2000 baseball season more or less on schedule, and his on-field performance did not suffer as it probably would have had he been forced to bear the full brunt of the original penalty.¹

Although grievance arbitration has a lower profile than salary arbitration on the modern baseball landscape, the right to grievance arbitration was a concern of baseball players long before anyone realized that it might be possible to convince team owners to allow salary determinations to be made by third parties.² The desire for some form of grievance arbitration began as a reaction to the management practice of blacklisting players who engaged in unapproved conduct.

The blacklist as a labor control device in professional baseball dates from the nineteenth century. Its operation was simple. Any player who was believed to have thrown ball games, breached the terms of his contract, or failed to comply with his team's rules was barred from signing with any team in the league, and any team that ignored this restriction was subject to expulsion.³ Although it appears that many of the original advocates of the blacklist expected it to be used only for players who took money to throw games, team owners quickly learned to use the device for excessive drinking and disobedience, or "dissipation" and "insubordination" in the parlance of the time.⁴ The latter charge often in-

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1. Gerry Fraley, *Top 10 National Stories*, DALLAS MORNING NEWS, Dec. 25, 2000, at 12B. (The full text of the arbitrator's decision has apparently not been made public.)

2. ROGER ABRAMS, *THE MONEY PITCH: BASEBALL FREE AGENCY AND SALARY ARBITRATION* 58, 93-94 (2000).

3. CONST. OF THE NATIONAL LEAGUE, art. V, §1 (1876) (prohibition against the use of suspended or expelled players). See, e.g., SPALDING'S OFFICIAL BASEBALL GUIDE 11 (1876).

4. The original Constitution of the National League gave clubs the power "to discipline and punish its own players" and recognized that expulsion could be a possible punishment. However, it did not discuss the grounds upon which a player could be expelled or suspended.

volved disagreements over contractual matters. Players who found themselves in this situation had only a few options, even if their names had been placed on the blacklist for purely arbitrary reasons. They could look for work with a team not affiliated with organized baseball; they could beg for mercy from their employers (and for their name to be removed from the list); or they could go to court.

While the courts provided one avenue of redress, and early baseball players resorted to legal proceedings more frequently than most followers of the sport realize, a lawsuit was a costly and time-consuming way for a player to obtain a remedy, and given the limited protections afforded to workers by American law in the pre-New Deal period, the judicial avenue was by no means a guarantee of success.

The situation facing nineteenth century major league outfielder Charles Wesley Jones illustrates the problems confronted by a player who had been blacklisted. Jones began his "major league" career in 1875 as an outfielder for Keokuk and Hartford during the final year of the National Association (now generally recognized as the first major league).⁵ From 1876 to 1878, he was a member of Cincinnati's team in the new National League.⁶ In 1879, Boston (also of the National League) acquired him, and he responded with the best season of his career, leading the league in home runs, runs scored, runs batted in, walks, and fielding average. His superior play continued the following season - in June he became the first player ever to hit two home runs in one

SPALDING'S OFFICIAL BASEBALL GUIDE 11 (1877). However, by 1878, the constitution was amended to clarify that, while players could be punished for "dishonest play or open insubordination," the power to punish also extended to "all questions of carelessness, indifference, or other conduct of the player that may be regarded by the club as prejudicial to its interests." SPALDING'S OFFICIAL BASEBALL GUIDE, PART SECOND 6 (1878). For a contemporary criticism of the use of the blacklist for these purposes, see sportswriter Henry Chadwick's observations in DEWITT'S BASEBALL GUIDE (1879) at 44-46, 53-54, cited in DAVID QUENTIN VOIGT, AMERICAN BASEBALL: FROM THE GENTLEMAN'S SPORT TO THE COMMISSIONER SYSTEM 75 (1983 ed.).

5. Jones' actual name was Benjamin Wesley Rippay. Information on Jones' playing career is taken from: Jim Sumner, *Charles Wesley Jones*, in NINETEENTH CENTURY STARS 68 (Robert Tiemann & Mark Rucker, eds., 1989); THE BASEBALL CHRONOLOGY 41-42 (James Charlton, ed., 1991). Unless otherwise noted, the account of Jones' struggle with the Boston team and the National League is based on PRESTON OREM, BASEBALL, 1845-1881, at 332-34, 346 (1961) and SPALDING'S OFFICIAL BASEBALL GUIDE (1881). Orem's book is a collection of summaries of contemporary newspaper articles. Previous accounts of the Jones episode are either incomplete or inaccurate. See e.g., ROBERT F. BURK, NEVER JUST A GAME: PLAYERS, OWNERS & AMERICAN BASEBALL TO 1920, at 64, 96 (1994) and Harold Seymour's usually exemplary, BASEBALL: THE EARLY YEARS 89, 127 (1960).

6. Jones played two games for the National League team in Chicago during the middle of the 1877 season but was subsequently returned to Cincinnati where he finished the season.

inning - until he became embroiled in a dispute with his team over unpaid salary.

On September 2, following a 10-8 defeat at the hands of Cleveland in Cleveland, Jones demanded that he be paid the \$128.00 still owed to him for the month of July as well as his August salary of \$378.00. (Under the terms of Jones' contract, his salary was due at the end of each month.) When Boston manager Harry Wright refused to meet Jones' demand, Jones refused to play in that day's game. When Boston owner Arthur H. Soden was informed of Jones' actions, he ordered him suspended and fined him \$100.00 "for asking for his salary when it was not due under the custom of the League; for poor play and insubordination."⁷ According to Soden, Jones' performance on the diamond had been "unsatisfactory to the management and his conduct in Boston aggravating beyond the patience of most people."⁸ Although Jones was known to be a heavy drinker and a lavish spender on clothing, the "poor play" accusation certainly rang hollow as he was then batting .297 (fifty-two points above the league average) with a circuit leading five home runs and thirty-seven RBI's in sixty-six games. Upon learning of his suspension, Jones immediately went home to Cincinnati.

On September 4, the treasurer of the Boston club wrote to Jones, asking him to compute what was owed to him by the team. However, before Jones could respond, the team declared him expelled from the league under Section 5 of Article V of the Constitution of the National League, which forbade players from leaving the service of their clubs without written permission.

At this point, Jones had only a limited number of options. He could give up his claim for unpaid salary and plead with his team to reinstate him; under Article VIII, Section 3 of the National League Constitution, he could appeal to the League's executive committee (composed of the representatives of five teams); or he could file a lawsuit against his employer. Jones was unwilling to relinquish his claim and he did file a formal appeal to the Executive Committee. Unfortunately for Jones, his appeal did not reach the Executive Committee in time for the 1880 Annual Meeting, which began in New York City on December 8th.⁹ (Under the league constitution, the aggrieved party was to appear at this meeting to argue his case.) When Jones' appeal was presented at a spe-

7. Boston, and perhaps other teams as well, apparently did not issue paychecks when the team was on the road.

8. Sumner, *supra* note 5, at 68.

9. SPALDING OFFICIAL BASEBALL GUIDE, *supra* note 3, at 89-92.

cial meeting held in Buffalo on March 8, 1881, the Directors ruled that Jones had forfeited his right to appeal by not filing it prior to the next annual meeting as prescribed by the league constitution.¹⁰ Even so, at the same meeting a new rule was adopted which prohibited players from filing grievances against their teams except when the team was at home, a rule clearly prompted by the Jones incident.¹¹

With Jones barred from any further participation in the National League, the Boston club apparently took the position that it was not obligated to pay him any further salary, including his income for the month prior to his suspension. Left with no other recourse, Jones filed suit against the Boston team in Cincinnati where he was awarded a judgment for his unpaid salary prior to September 1, 1880. Although Cincinnati was no longer in the National League - it had been forced out because of its insistence on selling alcoholic beverages at games and on scheduling games on Sundays, both prohibited by League rules - Jones was able to enforce his judgment by travelling to Cleveland and attaching Boston's share of the gate receipts when his former team played in that city.¹² In the meantime, Jones operated a laundry in Cincinnati and played semi-professional baseball. Having missed the entire 1881 season, he renewed his request for reinstatement in December 1881, but his application was again denied on the grounds that he had not complied with the original requirements for an appeal.¹³

In the fall of 1881, Jones had also signed to play for the Cincinnati team in the new American Association and spent much of the winter recruiting players for the team.¹⁴ However, he was ultimately prevented from playing during the 1882 season when the American Association decided to honor the National League blacklist. In light of this decision, the new Cincinnati team did not honor the terms of its contract with Jones, prompting Jones to file suit against his new club for breach of contract. The American Association's inaugural season was completed before this lawsuit was resolved, and in October, the new league voted to admit every blacklisted player from the National League except for four who had pled guilty to fixing games.¹⁵ All remaining impediments to Jones' career were removed the following March 5th, when the National

10. *Id.* at 94-95.

11. *Id.* at 93.

12. OREM, *supra* note 5, at 353-54.

13. *Id.* at 355-56.

14. DAVID NEMEC, *THE BEER AND WHISKEY LEAGUE* 23-24 (1994).

15. *Id.* at 39.

League removed his name from the blacklist.¹⁶ Although Jones played until 1888, he spent the remainder of his career in the American Association. Altogether, his insistence on being paid on time cost him more than two seasons of his career.

Jones' experiences and those of other players were at least partially responsible for the 1885 organization of the Baseball Players Brotherhood, the nation's first professional sports union. (In fact, when the Brotherhood organized the ill-fated Players League in 1890, it hired the now retired Jones as one of its umpires.)¹⁷ Although the Brotherhood never put forward a proposal for grievance arbitration - the concept of labor arbitration was not widely known in the United States until near the end of the nineteenth century - it did attempt to negotiate with team owners on behalf of players who ran afoul of disciplinary rules. Brotherhood organizer and leader John Montgomery Ward, for example, convinced Washington owner Jack Gaffney (who once fined a player for missing a game on his wedding day) to reimburse player Cliff Carroll \$100.00 which Gaffney had imposed as a penalty when Carroll refused to accept a pay cut.¹⁸

The first actual proposal for grievance arbitration in baseball came in the fall of 1900. Harry Leonard Taylor, lawyer for the Players Protective Association, which had been organized earlier that year, introduced it. The Protective Association, the first players' organization since the collapse of the Brotherhood following the 1890 season, had the support of the American Federation of Labor but went out of its way to disassociate itself with its predecessor, the Brotherhood.¹⁹ Taylor, age thirty-four, had played in the American Association and National League from 1890 to 1893 before beginning a legal career in Buffalo.²⁰ At the December 1900 National League meeting, Taylor requested a number of changes in the labor-management relations in baseball, including the creation of a three-man Committee on Arbitration. One member was to be chosen by the owners, a second by the players, and the third by the two other committee members. The Committee was to have the authority to "pass on all differences between players and owners."²¹

16. SPALDING'S OFFICIAL BASEBALL GUIDE 102 (1883).

17. NEMEC, *supra* note 14, at 207.

18. This event is described, without citation, in BURK, *supra* note 5, at 97.

19. LEE LOWENFISH, *THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS* 57-72 (Lee Lowenfish ed., rev. ed. 1991) (regarding the Protective Association).

20. *Id.* at 62.

21. REACH'S OFFICIAL BASEBALL GUIDE 14 (1901).

Perhaps ironically, the chair of the owner's committee appointed to negotiate with Taylor was Arthur Soden, who twenty years earlier had refused to pay Charley Jones his back wages. Not surprisingly, the owners showed no real enthusiasm for any of Taylor's proposals at the December meeting. A subsequent meeting of the Protective Association membership produced a decision to scale back its requests to the abolition of all forms of "farming" (i.e., assigning major league players to minor league teams), the prohibition of player sales without the consent of the players, and, significantly, the use of temporary boards of arbitration to settle disputes between teams and players with a \$100.00 penalty for any party which refused to accept the ruling of the arbitrators. To the surprise of many, the National League, embroiled in a battle for players with the upstart American League, agreed to the first two requests, so long as the Association dropped its requests for arbitration panels and agreed to expel any member who "jumped" to the American League.²² Unfortunately, the Protective Association proved to be a casualty of the war between the National and American Leagues, and by the end of 1902, the organization had disappeared along with Taylor's proposal for an arbitration board. (Four years later, Taylor served a one-year stint as president of the Eastern - now International-League.)

Unlike the Protective Association, the next effort at creating a players organization, the Professional Players Fraternity of 1912-18, focused not on independent arbitration boards but on securing player representation on the National Commission, which then governed professional baseball. By having player representatives on the board that resolved grievances, and by requiring the board to articulate its reasons for rejecting a particular claim, players would be protected against unfair and arbitrary actions on the part of their employers.²³ In 1917, Players Fraternity leader David Fultz, a former major league outfielder, threatened to lead his members out on strike over the issue of rights for minor leaguers. However, when the leaders of organized baseball refused to meet with Fultz to discuss his demands, player support for the association began to disappear. Fultz entered the military as an aviator later that year, and when he returned in 1918, the Protective Association was dead.

The appointment of federal judge Kenesaw Mountain Landis as independent Commissioner of Baseball in 1921 appears to have affected the campaign for grievance arbitration. Although Landis was highly auto-

22. *Id.* at 16-17.

23. LOWENFISH, *supra* note 19, at 73-96.

cratic and quite willing to suspend players for life if he felt their conduct reflected badly on the game - witness his handling of the Black Sox scandal-his legendary independence from the owners allowed some players to envision him as the kind of independent arbitrator that Henry Taylor and his allies had sought two decades earlier.²⁴ (In fact, Landis' little known first act as Commissioner was to rule that first baseman Phil Todt was free to sign with another team because his current employer, the St. Louis Cardinals, had signed him as a seventeen year old minor and had "covered him up" for two seasons by secretly assigning his contract to minor league teams.)²⁵

Nevertheless, there were also players who showed no great faith in Landis' ability to represent their interests. In 1922, in Landis' second year of office, a new players union known as the National Baseball Players Association of the United States was organized under the leadership of future Wisconsin congressman Raymond J. Cannon, a lawyer and former minor league player who had represented Shoeless Joe Jackson and others during the Black Sox scandal. This organization, which was reported to include 225 of the less than 400 major league players, demanded representation on the decision-making councils of major league baseball rather than arbitration rights, but its efforts were no more successful than those of its predecessors and by 1923, it too had disappeared.²⁶

Cannon's efforts ended the campaign for an independent arbitrator for the remainder of the 1920's. Nor were there any efforts to revive the arbitration issue in the next decade. The revival finally came after the Second World War on the West Coast where a group of players from the minor league Pacific Coast League sought to form a Players Guild. Prominent among the proposals contained in their "model agreement" was a provision for the use of outside arbitrators to resolve player grievances.²⁷ In April of 1946, the newly established American Baseball Guild, organized by Robert Murphy, echoed these sentiments by calling for impartial arbitration of salary disputes and "other conditions of employment."²⁸ Although Murphy's organization threw a scare into organized baseball when it came close to establishing itself as the bargaining unit for the Pittsburgh Pirates, it was ultimately unsuccessful in establish-

24. DAVID PIETRUSZA, *JUDGE AND JURY: THE LIFE AND TIMES OF JUDGE KENESAW MOUNTAIN LANDIS* (1998) (discussing Landis' performance as commissioner generally).

25. *Id.* at 176.

26. HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE* 355-56 (1971).

27. LOWENFISH, *supra* note 19, at 138.

28. *Id.* at 141.

ing itself as a players union, and, like its predecessors, soon collapsed without having secured the right to arbitration.²⁹

It would not be until the late 1960's when Marvin Miller assumed the reins of the Major League Baseball Players Association (organized, 1954) that the campaign for grievance arbitration would achieve success. Miller, a former official of the United Steelworkers Union, assumed the leadership of the Players Association in 1966 and quickly made grievance arbitration, by this time a staple of union contracts in the United States, one of his primary objectives.³⁰

Miller's initial efforts on behalf of grievance arbitration were unsuccessful. During the negotiations over what would become the Basic Agreement of 1968 (the first formal agreement between the owners and the Players Association), Miller proposed the use of an independent arbitrator to resolve routine grievances. While John J. Gaherin, the owners' chief negotiator and the head of the Major League Baseball Player Relations Committee, endorsed the idea, the owners were adamantly opposed to the proposal.³¹ As a compromise, a formal grievance procedure for player complaints was incorporated into the new agreement, but it was one that designated the Commissioner as the arbitrator.³²

Two years later, when the Second Basic Agreement was adopted, players finally achieved their long sought after independent grievance arbitration. Relying upon concerns over the ongoing Curt Flood litigation and the owners' desire to look fair and even-handed, Miller and Gaherin (who continued to support the idea of grievance arbitration) were able to convince the owners and Commissioner Bowie Kuhn that transferring authority to resolve "nickel and dime" matters to an independent arbitrator would be in the best interests of everyone. In the name of labor harmony and as an effort to minimize the bad publicity attending the Flood litigation, the same owners who had so stridently opposed grievance arbitration in 1968 accepted it without public complaint just two years later. Although the Commissioner retained final authority over cases that involved "the integrity of the game" and "public confidence," the goal of Harry Taylor and David Fultz was finally

29. For the story of Murphy's efforts, see generally WILLIAM J. MARSHALL, *BASEBALL'S PIVOTAL ERA, 1945-51*, at 64-82 (1999).

30. JOHN HELYAR, *LORDS OF THE REALM: THE REAL HISTORY OF BASEBALL* 36-39 (1994); MARVIN MILLER, *A WHOLE DIFFERENT BALL GAME: THE SPORT AND BUSINESS OF BASEBALL* 164-65 (1991).

31. HELYAR, *supra* note 30, at 336-39.

32. LOWENFISH, *supra* note 19, at 203; MILLER, *supra* note 30, at 164.

realized in the 1970 Basic Agreement.³³ In 1970, in accordance with the new agreement, Lewis Gill was appointed baseball's first independent arbitrator.³⁴

While most of the initial grievances did involve "nickel and dime" matters - many of the first cases dealt with the quality of hotel rooms and travel expenses - the true significance of grievance arbitration for players subject to disciplinary proceedings were revealed in 1971 in a matter involving California Angels outfielder Alex Johnson. Johnson had won the American League batting championship in 1970 with a batting average of .329, but the following season his behavior on and off the field became increasingly erratic. He routinely ignored team rules; he failed to run out ground balls; his throws from the outfield were often lackadaisical; he occasionally made no effort to catch batted balls while in the field; and he accused his teammates of threatening him. Throughout spring training and the early months of the season, he was repeatedly fined by Manager Lefty Phillips for his failure to hustle, receiving a record twenty-five fines totaling \$3,750.00. He was benched on numerous occasions, and while batting only .260, Johnson appeared sullen and uninterested and was on generally poor terms with all his teammates. Finally, on June 16, he was placed on the 30-day "suspended list" without pay for "failure to give his best efforts toward the winning of the club's baseball games."³⁵

The Players Association filed an appeal on Johnson's behalf, arguing that his bizarre behavior was the result of an emotional illness and insisting that he should have been placed on the disabled list where he would have continued to draw his salary. An arbitration hearing was scheduled, and a psychiatrist was retained to examine Johnson. When Johnson's thirty-day suspension expired before the hearing, Commissioner Bowie Kuhn, at the request of the Angels, placed Johnson on the "restricted list," a category normally reserved for those who had been banned from baseball for life. Being placed on the restricted list meant that Johnson was ineligible to play, received no salary, and accumulated no time toward a pension.

After an arbitration hearing at the end of August, arbitrator Gill overturned Kuhn's decision and ordered Johnson placed on the disabled

33. HELYAR, *supra* note 30, at 83, 109-14.

34. LOWENFISH, *supra* note 19, at 21.

35. For Johnson's actions in 1971, see generally DAVID S. NEFT, ET AL., *THE SPORTS ENCYCLOPEDIA OF BASEBALL* 398, 400 (19th ed. 1999), and MILLER, *supra* note 30, at 108, 131-41.

list with full pay and full credit for major league service retroactive to the date of his original suspension. However, his earlier fines were upheld, much to the dismay of the Players Association. Johnson was subsequently traded to Cleveland where he was able to resume his major league career. Although he never returned to his pre-1971 form, he played in the Major Leagues through the 1976 season.³⁶

Since 1970, for better or for worse, the right to grievance arbitration has been a major source of power for baseball players in their dealings with team owners and the Commissioner's Office. When Charlie Jones disagreed with the penalty meted out to him, his only recourse was to sit out the next season and file suit against his employers. In Jones' case, his career was saved by the fortuitous arrival of a new major league. Thanks to grievance arbitration, John Rocker didn't have to wait for such an extraordinary event.

36. Of course, the greatest impact of grievance arbitration came in November 1975 when arbitrator Peter Seitz ruled that the reserve clause contained in § 10(a) of the uniform baseball contract created only a one-year right of renewal and not the perpetual right claimed by owners.