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Has the Legal Tide Turned Against Retired Professional Athletes Seeking California Workers' Compensation Benefits?

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This past January, in *Cincinnati Bengals, Inc. v. Abdullah* ("*Abdullah II*"),[1] a federal district court in Ohio confirmed an arbitration decision holding that certain retired Bengals players were barred from pursuing workers' compensation benefits in California based on the Ohio choice of law and forum clauses in their player contracts. The decision itself was hardly groundbreaking. Under similar choice of forum and law provisions, NFL arbitrators and federal courts already had barred other retired NFL players from the California workers' compensation system.[2] Historically, however, the *Abdullah* case is a bellwether in the jurisprudence that has developed in connection with the pursuit of California workers' compensation benefits by retired athletes. Indeed, the Bengals' aggressive legal strategy, which at one point looked like a loser, helped set the stage for significant change in favor of teams at this unique and complicated intersection of professional sports and the California workers' compensation system.

For the past two decades, thousands of retired professional athletes — many of whom never played for a team based in California — have flocked to the California workers' compensation system seeking payment of benefits and medical expenses for alleged work-related injuries incurred over the course of their careers, which, for some, may date back nearly forty years. The payout is not insubstantial, as a retired player alleging such cumulative work-related injuries might receive a lump sum benefit payment of up to $250,000 based solely on the fact that he played just a handful of games in California more than 25 years ago.[3]

Three key components of California law have effectively converted the state's workers' compensation system into a pension/retirement fund for retired players: (1) compensable injuries include not only specific injury, but cumulative injury, which occurs over time and may not be discovered until after a player's career ends; (2) the applicable limitations period for benefit claims is tolled if the team-employer fails to provide the player-employee with specific notice of his workers' compensation rights under California law (which is a duty a team based outside of California is not likely ever to consider, much less exercise); and (3) the jurisdictional reach of the system broadly extends to employees injured while working in the state temporarily, which the California workers' compensation board ("WCAB") has construed to include retired players who played but a single game in California.[4]

By the mid-2000s, there seemed little hope for teams to curtail or defeat the swelling number of player claims or the related and rising costs. Then, in June 2008, the Cincinnati Bengals brought a lawsuit in Ohio state court seeking an injunction to stop Khalid Abdullah and several other former Bengals players from pursuing their then-pending workers' compensation claims in California. The team asserted that, by taking their benefit claims to California, the players had breached the Ohio choice of law and forum provisions in their player contracts, which provided, specifically, that any workers' compensation claim relating to the their employment with the Bengals would be "subject to the workers' compensation laws of Ohio exclusively and not the workers' compensation laws of any other state" and must be brought "solely and exclusively with the courts of Ohio, the

1 *Cincinnati Bengals, Inc. v. Abdullah*, 2013 U.S. Dist. LEXIS 5910 (S.D. Ohio Jan. 15, 2013) ("*Abdullah II*").

2 *See infra* at nn. 8 & 9.

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3 Jonathan L. Israel, *Developments in Workers' Compensation Law Cloud Future for Retired Professional Athletes*, Vol. 7, Issue 12, Sports Litigation Alert (July 2, 2010).

4 *Id.*

Industrial Commission of Ohio, or such other Ohio tribunal that has jurisdiction over the matter."[5]

From the outset, the team's Ohio litigation gambit seemed pure folly, because even if successful, it was improbable that the California courts or WCAB would ever recognize an Ohio state court injunction (or the underlying Ohio law and forum clauses) as a legitimate, legal basis to deny the players any right to benefits under California law. Presumably confident that any success in Ohio would be meaningless for the team in California, the players chose not to appear or contest the action, and the Ohio court subsequently issued the requested injunction, entered default judgments against the players, and later held one player, Reinard Wilson, in contempt for his continued receipt of benefits in California.[6]

By early 2009, with *Abdullah*, it appeared that the Bengals had opened a successful new litigation front for teams based outside of California. Then, in August 2009, everything changed. The Bengals amended their state court complaint to include additional players who also had filed for California benefits, but this time the players, with the help of the NFL Players Association ("NFLPA"), responded by removing the case to federal district court and moving to vacate the default judgments and to compel arbitration of the team's claims under the NFL's collective bargaining agreement. Ultimately, the district court sided with the players, holding that the benefit claims belonged in the California system on the merits, and any breach of the player contracts should be resolved in arbitration. In April 2010, the district court issued its decision ("*Abdullah I*") staying the action and sending the parties to arbitration.[7]

Thus, after nearly two years of litigation, and stripped of the Ohio court's injunction, the Bengals had seemingly won little for its efforts. The team's case took a place on the NFL arbitration docket along side several similar grievances filed by other NFL teams against their retired players who also had filed for benefits in California in violation of choice of law and forum provisions in their respective player contracts. At the time, *Abdullah I* may have felt like a loss for the Bengals, but the result — arbitration — would ultimately become an unexpected blessing in disguise for the team.

Over the course of the next two years, in connection with separate grievances involving several NFL teams, including the Bengals, NFL arbitrators would issue a series of decisions (i) holding that the choice of law and forum provisions NFL player contracts were enforceable, and as a consequence, (ii) directing the retired players to cease and desist from the pursuit of workers' compensation benefits in California.[8] In each instance, the NFLPA vehemently argued that teams could not contract around the California system and their attempts to do so violated California public policy, which required that any employee injured while at work in the state would be entitled to workers' compensation benefits under the California system. The NFL arbitrators found no such clear, well-defined California policy and consequently enforced the contractual choice of law and forum provisions.

Several of these arbitration decisions were reviewed and affirmed in the federal courts, including for the Bengals in *Abdullah II*.[9] That these cases were decided in arbitration may have proved critical for the teams because of the deferential standard that federal courts apply when reviewing arbitration awards. For example, in *Abdullah*, when considering the arbitrator's assessment of California public policy, the federal court's review was not *de novo*, but was limited only to whether the arbitrator's interpretation of the contract "jeopardize[d] a well-defined and dominant public policy, taking the facts as found by the arbitrator."[10] Thus, the value of arbitration on such key points of contention should not be underestimated; it is conceivable that these cases might have ended differently had the reviewing tribunals been allowed to review the determinations of California public policy *de novo*.

Such are the vagaries of litigation, and with *Abdullah II*, the Bengals' earlier loss was converted to a win. Still, while these decisions collectively suggested a shift in momentum in favor of the teams, two critical questions naturally followed: (i) Would the decisions offer any hope to teams that

5 *Abdullah II* at *5.

6 Cincinnati Bengals, Inc. v. Abdullah, 2010 U.S. Dist. LEXIS 54102, at *2 (S.D. Ohio Apr. 28, 2010) ("*Abdullah I*").

7 *See generally id*.

8 *NFL Mgmt. Council/Tennessee Titans and NFLPA/Bruce Matthews* (Sharpe, Arb., Aug. 5, 2010); *Chicago Bears and NFL Mgmt. Council and Michael Haynes and the NFLPA* (Townley, Arb., Apr. 21, 2011); *NFL Mgmt. Council/New Orleans Saints and NFLPA/Cameron Cleeland* (Beck, Arb., Aug. 23, 2011); *NFL Mgmt. Council/Atlanta Falcons and NFLPA/Roderick Coleman* (Beck, Arb., Feb. 23, 2012); *NFL Mgmt. Council/Kansas City Chiefs and NFLPA/Taje Allen* (Beck, Arb., Feb. 23, 2012); *NFL Mgmt. Council/Cincinnati Bengals and NFLPA/Kahlid Abdullah* (Beck, Arb., May 4, 2012).

9 *See* NFLPA v. NFL Mgmt. Council, 2011 U.S. Dist. LEXIS 865 (S.D. Cal. Jan. 5, 2011), *aff'd*, Matthews v. NFL Mgmt. Council, 688 F.3d 1107 (9th Cir. 2012) ("*Matthews*"); *The Chicago Bears Football Club v. Haynes*, 816 F. Supp. 2d 534 (N.D. Ill. 2011); Atlanta Falcons Football Club LLC v. NFLPA, 2012 U.S. Dist. LEXIS 158057 (N.D. Ga. Nov. 5, 2012)

10 *Abdullah II* at *10 (quoting *Board of County Comm'rs of Lawrence County v. L. Robert Kimball & Assocs.*, 860 F.2d 683, 686 (6th Cir. 1988)).

had no such choice of law and forum clauses in their player contracts; and (ii) would the California courts and WCAB utilize these collateral decisions as a means to curtail retired player claims directly within the system, particularly those claims involving limited player activity in California for teams based outside of California. Recent decisions indicate that teams have reason to hope on both of these points.

Based on *Matthews*, which the NFLPA appealed to the Ninth Circuit, the recent NFL grievance decisions may apply more generally beyond circumstances involving waiver or choice of law and forum clauses. Before the Ninth Circuit, the NFLPA continued to assert that California public policy barred contractual waivers of a player's right to California workers' compensation benefits. In response, the Ninth Circuit concluded that there may well be such a public policy in California, but it could only apply if the employee is covered by the California workers' compensation law in the first instance.[11] In other words, the player, Bruce Matthews, could not even challenge the validity of the arbitration decision (or the underlying choice of law and forum provisions) on public policy grounds if he could not first establish that he was covered (*i.e.*, had any rights to waive) under the California statute. The Ninth Circuit held that such coverage might extend to "an employee who suffers a discrete injury in California," but not to Matthews, who had played 13 games in California over his 19-year career and had alleged generally that he had suffered cumulative injuries at various locations over the course of his pro football career.[12] Thus, after *Matthews*, the presence of choice of law and forum clauses or waivers now seemed secondary to the threshold question of whether a player or his alleged injury was sufficiently linked California to trigger the right to benefits under the state's law.

This jurisprudential evolution in favor of the teams did not end with *Matthews*; it has extended into the California system itself. Indeed, while the Bengals were winning, losing, and then winning again in *Abdullah* on the Ohio front, it also was contesting — and ultimately defeating — the benefit claims of some of those same players out in California, including *Abdullah* co-defendant Vaughn Booker, whose claim for benefits was denied by the California WCAB on a variety of grounds, including the choice of law and forum provisions in his player contract.[13] The WCAB interestingly noted that, with respect to Mr. Booker, "California ha[d] no significant interest in the workers' compensation claim of an employee . . . who worked in California for one day in three years, and who otherwise had no significant connection to California."[14]

More recently, in *McKinley v. Arizona Cardinals*, the rationales of *Matthews/Titans* and *Booker* came together in an *en banc* decision of the California WCAB, which declined jurisdiction over McKinley's claims based not only on the Arizona choice of law and forum provisions in his player contract, but also on the "limited connection with California and with regard to [his] employment by the [team] and his claimed cumulative injury."[15] The WCAB expressly acknowledged the substantial burden that the retired player claims were placing on the California system and suggested that over-inclusive jurisdictional standards would only cause further strain by inviting players from teams outside California to claim that they incurred some portion of cumulative injury in California because they played one or more games in the state.[16]

Looking back, as recently as 2007/2008, it would have seemed inconceivable that the California WCAB would ever rule as it in did in *McKinley* on the nexus between player/injury and California, or make such pointed statements about the glut of workers' compensation claims in California from retired professional athletes, especially those with little connection to the state. From *Matthews* to *Abdullah* and *McKinley*, the litigation landscape clearly has changed in favor of the teams. These decisions not only confirm that choice of law and forum provisions in player contracts may reduce team exposure to the California system, but also portend opportunity to challenge claims based solely on player and injury nexus to California — a jurisdictional defense that was long considered dead, but which now may be viably resurrected in the next chapter of this ongoing saga between teams and their retired players.

11 *Matthews*, 688 F.3d at 1111-12.

12 *Id.* at 1113.

13 *Booker v. Cincinnati Bengals*, 2012 Cal. Wrk. Comp. P.D. LEXIS 114 (W.C.A.B. May 1, 2012).

14 *Booker v. Cincinnati Bengals,* 2012 Cal. Wrk. Comp. P.D. LEXIS 113, at *24 (W.C.A.B. Feb. 8, 2012).

15 *McKinley v. Arizona Cardinals*, 78 Cal. Comp. Cases 23, 2013 Cal. Wrk. Comp. LEXIS 2, at *30-32, 37 (W.C.A.B. 2013) (*en banc*).

16 *Id.* (*see* WCAB file copy of *McKinley* decision, 2013 Cal Wrk. Comp., Case No. ADJ7460656, at 19-20 (W.C.A.B. Jan. 15, 2013)).