

AFTERNOON SESSION

2:00 p.m.

THE COURT: I express appreciation for this enlargement of the Major League agreement. I must say that possibly the other side should be given a copy of it, too. It is handsome.

(Plaintiff's Exhibit 6 marked for identification.)

M A R V I N J. M I L L E R, resumed.

MR. HUGHES: Your Honor, Mr. Hadden will conduct the cross examination.

THE COURT: Very well.

MR. HADDEN: Will you mark this, please.

(Defendant Feeney et al Exhibit F marked for identification.)

CROSS EXAMINATION BY MR. HADDEN:

Q Mr. Miller, I hand you what has been identified and marked as Exhibit F, and I will ask you, sir, is that not the basic agreement between the major league bbaseball players' association effective January 1, 1968, to which reference has been made, I believe, in your direct examination?

A Yes.

MR. HADDEN: Would the Court care to have a copy

of this?

THE COURT: I would appreciate it. Will you hand it to the clerk.

Q Mr. Miller, you were present, I believe, the day before yesterday, when in the course of Mr. Flood's testimony there was read into the record by Justice Goldberg a number of provisions of the Uniform Player's Contract, which were characterized by him as being provisions which in their totality amounted to the reserve system, were you not?

A Yes.

Q All right. And referring to the transcript of that proceeding, the day before yesterday, the first provision which was referred to by Justice Goldberg in that connection was Paragraph 5(a) of the Uniform Player Contract which in general terms and in substance and among other things prohibits a player upon signing a contract -- he promises that he will not play otherwise than for the club with whom he is under contract.

Now, is it not a fact, Mr. Miller, that in the course of the negotiations leading to the basic agreement, Exhibit F, the players' association proposed no changes in that contract clause?

A I believe that's true.

Q And is it not also a fact, Mr. Miller, that there

1 have been since the expiration of that basic agreement ad-
2 ditional negotiations looking towards an extension of the
3 basic agreement or a new basic agreement?
4

5 A I'm sorry. Would you repeat that?

6 THE COURT: Mr. Court Reporter, will you read that,
7 please.

8 (Question read.)

9 A Yes.

10 Q And by those negotiations, I take it you mean the
11 negotiations between the association, of which you are
12 executive director, and the major league clubs, collectively
13 through their negotiating committee?

14 A Yes.

15 Q And is it not a fact that no changes have been
16 proposed by the players' association in Paragraph 5(a) in
17 the more recent negotiations, to which I have referred?

18 A If I may, I cannot answer that yes or no. May I
19 enlarge upon that?

20 Q Qualify your answer.

21 A There has been no proposal to change Paragraph
22 5(a) as such.

23 Q Now, Mr. Miller, I think that is --

24 MR. TOPKIS: May the witness finish his answer?

25 THE COURT: What do you say, counsel?

MR. HADDEN: I thought that was a full answer to my question.

THE COURT: I will allow him to answer.

A But in proposing to revise the entire reserve rule system, it would be incorrect to conclude that Paragraph 5(a) was satisfactory.

Q You have made no specific proposal, have you, for a specific revision of Paragraph 5(a)?

A That is true.

Q I refer you now to Paragraph 5(b), which in substance is a provision which commits the player not to engage in certain other sports.

A Yes.

Q Is it not the fact, Mr. Miller, that in the more recent negotiations -- and, by the way, are they still continuing?

A Yes.

Q But in the more recent negotiations certain changes in language of that provision have been negotiated and have been tentatively agreed to by the parties subject to collective bargaining agreement on the entire proposal?

A Yes.

Q Would you now please refer to the assignment provisions of Paragraph 6(a), which were referred to by Judge

Goldberg the day before yesterday.

Let me summarize what the provision is. It is a provision under which the player agrees that the contract may be assigned by the club and reassigned by any assignee club to any other club in accordance with the rules.

Now, is it not a fact, Mr. Miller, that there have been no proposals for the change of that provision, no specific proposals for changes in that provision made either in the course of the original basic agreement negotiations or currently?

A No. That is not true.

Q I beg your pardon?

A That is not true.

Q Would you refer to Paragraph 7, please, which was referred to by Judge Goldberg yesterday.

That is a somewhat lengthy paragraph, which I won't read, but it is one which provides for termination of the contractual relationship between the player and his club and tells how it comes about, what the incidents of it are; is that correct?

A Yes.

Q And is it not a fact that in the recent negotiations which are continuing currently, there has been discussion and negotiation concerning changes in Paragraph 7 and

1
2 particularly with reference to increases in termination pay
3 payable to a player on his retirement from baseball?

4 A Yes.

5 Q In the next contract provision, which was referred
6 to by Justice Goldberg as a part of the reserve clause,
7 was Paragraph 8, which is a very brief provision, which says
8 simply that the player accepts as part of his contract the
9 regulations printed on the fourth page thereof.

10 In the course of the negotiations between the
11 parties, has any specific proposal for change in that provision
12 been advanced by the players' association?

13 A No, but we have made proposals for changes in the
14 regulations to which it refers.
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1 THE COURT: That is Page 4?

2 THE WITNESS: Yes, sir.

3 MR. HADDEN: It is Page 3 of the Uniform Player's
4 Contract, and I guess Page 4 of the basic agreement.

5 Your Honor, it appears at Page 11 of the brown
6 pamphlet.

7 THE COURT: Thank you.

8 MR. HADDEN: Mr. Reporter, would you read the
9 answer?

10 THE COURT: Yes, would you please read the answer
11 of Mr. Miller, the last answer.

12 (Answer read.)

13 Q Not, however, in the provision itself?

14 A Well, if you mean by "the provision itself" --

15 Q The language that appears before you on the
16 printed page.

17 A That's right.

18 THE COURT: That is just an acknowledgment by
19 the witness that it so appears. So you had better reframe
20 your question.

21 MR. HADDEN: I misunderstood him.

22 THE COURT: I just have to do these things once
23 in a while, counsel, to show that I was here.

24 MR. HADDEN: It is of great assistance to counsel
25

1 too, your Honor.

2 THE COURT: Thank you, Mr. Hadden.

3 Q The sentence which I read, Mr. Miller, the
4 quoted sentence, which is the language of Paragraph 8, I will
5 ask you have specific proposals ever been made by the
6 Players Association for change in that language?
7

8 A No.

9 THE COURT: That is the answer.

10 Q The next provision referred to by Mr. Justice
11 Goldberg was Paragraph 9(a), also appearing on Page 11 of
12 the brown pamphlet, Exhibit F, which is a provision which
13 in substance commits the club and the player to accept,
14 abide by and comply with all of the provisions of major
15 league rules, etc.

16 Now, is it not a fact, Mr. Miller, that in the
17 original negotiations leading to the adoption of the
18 basic agreement and again recently there have been changes
19 negotiated in that provision, and the more recent of them hav-
20 ing resulted in a tentative agreement on what the changes
21 should be?

22 A Yes.

23 Q The next clause was the third paragraph, 10(a),
24 of the player contract, which is the renewal clause.

25 Would you please refer to that, Mr. Miller, which

1 appears on Page 11, going over to Page 12, and I will
2 ask you is it not a fact that the last sentence or last
3 proviso of that paragraph which appears at the top of
4 Page 12 was changed pursuant to the negotiations in 1967
5 leading to the basic agreement?
6

7 THE COURT: May I interrupt, Mr. Hadden? Your
8 questions are succinct and right to the point. May I
9 suggest, though, that this last question departed from the
10 form you employed before where you gave the essence of
11 the provision. I wish you would do that again.

12 MR. HADDEN: Very well, your Honor.

13 Q The proviso of that clause, Mr. Miller, in its
14 original form as printed here in the basic agreement provided,
15 did it not, for a maximum salary reduction in the event
16 of unilateral renewal of the contract by the ball club
17 of 25 per cent? I am stating it the other way around,
18 but that is the sense of it, is it not?

19 A Yes.

20 Q Is it not a fact that that figure was renegotiated
21 in connection with the adoption of the basic agreement to
22 the effect that the maximum salary reduction was made 20
23 per cent?

24 A Yes.

25 Q Is it not also a fact, Mr. Miller, that in the

1 course of the negotiations which are now under way certain
2 additional changes in that percentage figure have been
3 tentatively agreed upon?
4

5 A One change.

6 Q One change beneficial to the players, is that
7 not correct?

8 A I trust so.

9 Q I hope so, too. Mr. Justice Goldberg's final
10 reference to the contract provisions as such was the closing
11 clause of the contract itself, which in substance says that
12 this agreement constitutes the entire agreement between
13 the parties.

14 Has any change ever been proposed by the Players
15 Association in that clause?

16 A Not as such.

17 Q Turning now to the regulations portion of the
18 paragraph which appears at Page 13 of Exhibit F, Justice
19 Goldberg referred to Regulation 5, which in substance
20 permits a club, for violation by a player of the contract
21 provision, to impose a reasonable fine.

22 Is it not a fact that in the negotiations leading
23 to the first basic agreement a change was negotiated in that
24 clause which in effect required the -- excuse me, your
25 Honor.

1 THE COURT: Certainly. Take your time.

2 (Pause.)

3 Q Let me rephrase the question, if I may, and
4 withdraw the original form of the question.

5 There was a change negotiated in that provision,
6 Mr. Miller, it was not a very important change, however;
7 would you agree with that characterization?
8

9 A I would disagree with that characterization.

10 Q Would you state what the change was?

11 A The change was to strike out the words "At the
12 discretion of the club." That is, without that language
13 or with the language it clearly meant that the fine was
14 unchallengeable. By taking out "at the discretion" --

15 Q I simply asked what the change was.

16 MR. GOLDBERG: Your Honor --

17 THE COURT: I will allow him to finish. Go on.

18 A By taking out the language "at the discretion
19 of the club," and by virtue of an accompanying change in
20 another provision which said that fines and suspensions can
21 only be made for just cause, I consider it an important
22 change.

23 Q You are correct. The last provision which the
24 record shows was referred to two days ago by Mr. Justice
25 Goldberg was in Regulation 7, which is the regulation

1 gwb-6
2 which requires the player to report promptly on assignment
3 by one club to another. The Players Association, Mr.
4 Miller, has never proposed any change in that provision,
5 has it?

6 A No.

7 Q In your direct testimony, Mr. Miller, you referred
8 to the fact -- to paraphrase your testimony, which you
9 can correct if it is not correct -- you said that with
10 reference to the free agent draft all young players who come
11 into baseball do so through the mechanism of the free
12 agent draft, is that not correct?

13 A I don't think I said all. I certainly didn't
14 mean to. The overwhelming majority.

15 Q The overwhelming majority?

16 A Yes.

17 Q Have you statistics on that, sir?

18 A No. It is an impression.

19 Q It is a fact, however, is it not, that players
20 who are not selected at any of the selection meetings remain
21 free agents and may be signed by any club through free
22 negotiation?

23 A Yes.

24 Q Mr. Miller, there has been reference in the
25 testimony here to the contention that young players, players

1 in general, occupy a position of disproportionate bargain-
2 ing ability in reference to salary negotiations.
3

4 Is it not a fact, Mr. Miller, that in the course
5 of the current negotiations with respect to the amendment
6 of the basic agreement, it has been tentatively agreed
7 upon between the clubs and the Players Association that
8 the players, each player, will have a right to have a repre-
9 sentative of his choice accompany him in his salary negotia-
10 tions?

11 A Yes, that provision, though, Mr. Hadden --

12 Q Is the answer yes, Mr. Miller, or no?

13 A I am sorry, because you introduced it by saying
14 with respect to new players. That provision only refers
15 to major league players, not new players coming into base-
16 ball.

17 Q If I referred to players coming into baseball
18 it was an error on my part.

19 A Yes, you did.

20 Q In your direct testimony you have also referred
21 to a progressive salary level as being a possible alternative
22 or possible modification of the reserve system. Is it a
23 fair conclusion, Mr. Miller, that you regard minimum
24 salaries as being an aspect of the reserve system?

25 A I am not sure I really understand that, Mr. Hadden.

1
2 In what way?

3 Q In your answer, which was an answer, as I under-
4 stood it, in which you were summarizing what the proposals
5 were which the Association had advanced for alteration
6 or modification of the reserve system, you referred to
7 minimum salary progression, did you not?

8 A By years.

9 Q By years. So that is it not a fair conclusion
10 that you do agree that minimum salary in its first level
11 or any subsequent levels is a protective feature with
12 regard to the reserve system?

13 MR. TOPKIS: Objection, your Honor. I don't
14 understand the question.

15 THE COURT: We have an intelligent witness here
16 and when that is the case I always allow the witness to
17 take care of himself until he cries for help.

18 What do you want to say to that?

19 THE WITNESS: I truly don't understand what Mr.
20 Hadden is driving at.

21 THE COURT: All right, you don't understand the
22 question. Will you reframe it, Mr. Hadden.

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24
25
End 2 p22

2 MR. HADDEN: I will pass to another subject,
3 your Honor.

4 THE COURT: Certainly.

5 Q Reference was made in your direct testimony to
6 the circumstance of players being required to move, move
7 their families on assignment from one club to another.
8 Now, is it not a fact, Mr. Miller, that the Uniform Player's
9 Contract makes provision for payment to a player of a
10 moving allowance in that event?

11 A For household goods and transportation, yes.

12 Q And is it not a fact that a change in that
13 contract clause, improvement in that contract clause from
14 the point of view of the players, had been tentatively
15 agreed upon in the course of the current negotiations?

16 A Yes.

17 MR. HADDEN: I have no further questions.

18 MR. TOPKIS: Just a couple, if I may, your Honor.

19 MR. KRAMER: I have no questions.

20 MR. TOPKIS: Oh, I beg your pardon, Mr. Kramer.

21 THE COURT: Isn't it so, Mr. Kramer, every
22 time an advocate decides that he doesn't need to ask anything,
23 he gets punished by just being overlooked!

24 MR. KRAMER: That is right, your Honor.

25 THE COURT: And I am not going to permit that.