

MR. KRAMER: Thank you v ery much.

MR. TOPKIS: I would find it difficult to overlook Mr. Kramer.

THE COURT: All right, Mr. Topkis.

REDIRECT EXAMINATION BY MR. TOPKIS:

Q Mr. Miller, you have been taken point by point through various provisions of the contract, the agreement, and the regulations. Let me ask you a general question, if I may. Have you sought in your negotiations to make changes in the reserve system?

A Yes, for three years.

Q Have you made the slightest progress?

A None.

Q Have you made a variety of proposals?

A Yes.

Q Have the owners made one proposal?

A No.

Q Has there ever been any doubt about your interest in modifying the reserve system?

A On whose part?

Q I meant --

THE COURT: That's a good question.

Q -- on the owners' part as to your interest.

A I don't think so.

Q If the English language can communicate thought, there wouldn't be any room for doubt, would there?

MR. HUGHES: Your Honor, I object to that.

THE COURT: Objection sustained.

Q Mr. Miller, has there been on the subject of the reserve system what you would denominate collective bargaining?

MR. HADDEN: Objection, your Honor.

MR. HUGHES: Objection.

MR. HADDEN: I think an objection is appropriate at this time on the ground that whether there is or is not collective bargaining on an issue is a question of law for which the National Labor Relations Board has exclusive jurisdiction. I don't think it is an appropriate question to put to this witness in this form.

THE COURT: I am inclined to agree. What do you say, Mr. Topkis?

MR. TOPKIS: I had thought, your Honor, that the purpose of the questioning of Mr. Miller by my friends was to establish that there had been collective bargaining so as to lay the predicate for their assertion that this is within the jurisdiction and field of expertise of the Labor Board, but if they will agree with me that there has been none, I will press the point no further.

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1 But I think that they are asserting a defense and
2 stopping me from demonstrating or attempting to stop me,
3 subject to your Honor's ruling, from demonstrating that
4 the defense is tissue paper.
5

6 MR. HADDEN: Your Honor, obviously it is an issue
7 before this Court as to whether there has been bargaining.
8 Whether there has been good faith bargaining is a question
9 of law over which the NLRB has exclusive jurisdiction. I
10 think the witness can state facts, but the witness may not,
11 in my view of the rules of evidence, state his conclusion
12 on a matter of this sort.

13 MR. TOPKIS: May I add just one word, your Honor?

14 THE COURT: Yes.

15 MR. TOPKIS: Picking up from what Mr. Hadden
16 has said, it is not my contention here that there has not
17 been good faith bargaining. It is my contention that
18 there has been no bargaining, and that is the answer I
19 expect from the witness.

20 THE COURT: I will take your question provided
21 you reframe it and not let this witness decide so all-
22 embrative a legal proposition as collective bargaining.

23 MR. TOPKIS: All right.

24 THE COURT: I will take the facts relating to it.

25 Q Has there been any two-way discussion, Mr. Miller,

1 of possible changes in the reserve system between you and
2 the representatives of the owner, in which they said any-
3 thing of a positional nature other than to assert that
4 they wanted things the way they are today?
5

6 A No.

7 Q You were asked by Mr. Hadden whether ballplayers
8 are paid an allowance for moving expenses, and you responded,
9 I believe, for moving their household.

10 A And their transportation.

11 Q Is there any allowance for relocation expense,
12 the expense of changing dwellings or anything like that?

13 A No other allowance. I am sorry. It is supposed
14 to include up to one month's rent if there is such a
15 legal liability by the player.

16 MR. TOPKIS: No further questions. Thank you,
17 Mr. Miller.

18 THE COURT: Anything further by defense? And
19 by "defense" that means all the defendants.

20 Very well. Step down, Mr. Miller.

21 (Witness excused.)

22 THE COURT: Next witness.

23 MR. GOLDBERG: Your Honor, I have a matter to
24 discuss without reference to a witness --

25 THE COURT: Yes, sir.

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1
2 MR. GOLDBERG: -- which was raised this morning.

3 THE COURT: Just a moment. You are all welcome
4 and I want you to be comfortable, but will you wait -- there
5 is a little movement -- because I want to concentrate
6 on what is being said.

7 MR. GOLDBERG: This morning, as your Honor will
8 recall, when Mr. Hughes was examining Mr. Robinson, he asked
9 a question about a sentence or two in his testimony before
10 the Congress. He did not present to me the full testimony.

11 THE COURT: I recall it and I recall you said
12 that you would consent to the entire transcript recorded
13 before the subcommittee of the United States Senate.

14 MR. GOLDBERG: Yes. I have now the entire
15 testimony, and I would like to read the whole paragraph,
16 if I may, and ask a request of counsel that they stipulate
17 to the whole paragraph, and not that sentence alone.

18 THE COURT: I see.

19 MR. GOLDBERG: And that is a request. It is
20 a trial without a jury, and I think I have a right to make
21 that request.

22 THE COURT: Let's hear from Mr. Hughes. Mr.
23 Hughes only confronted the witness with one clear, unambiguous
24 sentence, and he asked the witness, "Did you say that," and
25 then we remember the witness's answer, and it was when he

1 asked that you stipulate that that sentence was in fact
2 uttered by the witness before the subcommittee of the United
3 States Senate, it was then that you said, yes; in addition
4 you were prepared to let the entire testimony on that
5 occasion go into evidence.
6

7 MR. HUGHES: Yes, and if this is an offer of the
8 entire transcript, I object to it.

9 THE COURT: Oh, I see.

10 MR. GOLDBERG: I am not at the moment offering
11 the entire transcript. I am asking whether it will be
12 agreed that the next two sentences be put in the record to
13 avoid my calling Mr. Robinson, so he can complete the
14 sentences that he gave.

15 THE COURT: Now let me take over. I don't like
16 to do it, because I have the finest counsel in the country
17 right here -- all of you. Don't take advantage of it,
18 though. Talk to Mr. Hughes quietly.

19 MR. GOLDBERG: I will be glad to.

20 THE COURT: A two or three minute recess. Keep
21 your seats.

22 (Recess.)

23 MR. HUGHES: Your Honor, as I understand --

24 THE COURT: Would you wait, Mr. Hughes.

25 MR. HUGHES: Yes, sir.

1
2 THE COURT: Now.

3 MR. HUGHES: I understand the posture of this
4 is that Mr. Justice Goldberg wants permission to read
5 the entire paragraph of the book concerning which I con-
6 fronted the witness Robinson, and referred him to the first
7 sentence. I have no objection to the reading of the entire
8 paragraph --

9 THE COURT: Very well.

10 MR. HUGHES: -- into the record.

11 MR. GOLDBERG: May I proceed, your Honor?

12 THE COURT: Please do.

13 And may I ask you to preface it by giving exactly
14 where it is found.

15 MR. GOLDBERG: It is found in the statement of
16 Jackie Robinson before the Senate Committee, and perhaps
17 I could give the reporter the official citation.

18 THE COURT: Thank you.

19 MR. GOLDBERG: The same testimony that Mr. Hughes
20 referred to --

21 THE COURT: Yes.

22 MR. GOLDBERG: -- this morning in cross-examination.
23 The paragraph I would like to read is this: "I
24 think they should in some way be able to express themselves" --

25 MR. HUGHES: The entire paragraph.

1 MR. GOLDBERG: I am starting.

2 "-- as to whether or not" --

3 THE COURT: Please start again. I have got
4 to follow this. I am sorry.

5 MR. GOLDBERG: "I think they should in some
6 way be able to express themselves as to whether or not they
7 do want to play for a certain ball club. I am highly in
8 favor of the reserve clause. I do not want this to get out
9 that I don't believe that there should be some control, but
10 on the other hand I don't think the owners should have all
11 of the control. I think that there should be something
12 that a ballplayer himself could say that would have some
13 effect upon his particular position with a ball club.
14 As it stands now, the players, in my opinion, don't really
15 have the opportunity to express themselves in a way they
16 should be able to." (Page 295, Hearings before the Sub-
17 committee on Antitrust and Monopoly of the Committee on the
18 Judiciary, U. S. Senate, 85th Congress, 2nd Session.)

19 Thank you, your Honor.

20 MR. HUGHES: Could I have the book, please.

21 Thank you.

22 MR. TOPKIS: Your Honor, the plaintiff calls
23 Mr. James Brosnan.
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25