

Judge Cooper

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CURTIS C. FLOOD,

Plaintiff,

vs.

BOWIE K. KUHN, individually and
Commissioner of Baseball, et al

Defendants.

: Before:

: HON. IRVING BEN COOPER,
: District Judge.

: 70 Civ. 202

595

New York, May 26, 1970

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

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Curtis C. Flood

vs.

70 Civ. 202

Bowie K. Kuhn

New York, New York.
May 26, 1970 - 10:00 A.M.

(Trial resumed.)

THE COURT: Good morning.

Won't you please proceed.

MR. TOPKIS: Yes, your Honor. If we may, the
plaintiff calls Walter Kennedy, president of the National
Basketball Association.

J. W A L T E R K E N N E D Y, called as a witness
by the plaintiff having been first duly sworn, testi-
fied as follows:

THE COURT: Mr. Kennedy, would you be good enough
to keep your voice up so we can hear you the first time
your answer is recorded, and will you please, wherever
possible, answer yes or no to a question if it is capable
of that kind of an answer.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION BY MR. TOPKIS:

Q Mr. Kennedy, you are Commissioner of the National
Basketball Association?

A No.

Q Have you made it part of your work during the years to make yourself familiar with the play of professional basketball around the country?

A Yes.

Q You have been good enough to bring with you this morning, sir, two documents which I will ask the clerk to mark for identification.

(Plaintiff's Exhibits 16 and 17 marked for identification.)

Q Plaintiff's Exhibit 16 for identification, Mr. Kennedy, is marked at the top "National Basketball Association Uniform Player Contract."

Is that the Uniform Player Contract used by the NBA?

A Yes.

Q Incidentally, the organization is referred to as the NBA, is it not?

A Yes.

MR. TOPKIS: I offer Plaintiff's Exhibit 16 for identification in evidence.

MR. HUGHES: No objection.

MR. KRAMER: No objection, your Honor.

THE COURT: Received. Mark it in evidence.

1 MR. HUGHES: No objection.

2 MR. KRAMER: No objection, your Honor.

3 THE COURT: Received. Mark it in evidence.

4 MR. HUGHES: Your Honor, I have a continuing
5 objection, of course, as to relevance of all of this area
6 of proof.
7

8 THE COURT: It is distinctly understood, and
9 the record should so reflect, that the defense takes the
10 unalterable position that any evidence relating to any sport
11 other than baseball, any attempt at analyzing or comparing,
12 rather, the conditions that prevail with respect to any
13 aspect of baseball with that in any other sport is objected
14 to.

15 MR. HUGHES: That includes testamentary evidence
16 as well as documentary evidence.

17 THE COURT: Of course, all kinds of evidence,
18 every kind of evidence of whatever description. That does
19 not prevent you from continuing to put your objections
20 on the record. Do not think that you are prohibited from
21 doing that because I have made this general statement. You
22 go on and do anything that you should.

23 (Plaintiff's Exhibit 16 received in evidence.)

24 Q Now, Mr. Kennedy, you have also brought with you
25 Plaintiff's Exhibit 17 for identification which appears

1 to be a Xeroxed copy of a document -- well, an unnumbered
2 number of pages, I think. No, I am sorry. It appears
3 to begin with certain Roman numbered pages to the number
4 of V, and then at the point marked "constitution," it
5 begins with Arabic numbers running from 1 -- no. I must
6 apologize. I am confounded by the numbering system.

7
8 In any event, Mr. Kennedy, this document is
9 marked "Constitution and bylaws of the National Basketball
10 Association as in effect January 1, 1967, and subsequently
11 amended."

12 Is it the complete constitution and bylaws of
13 the NBA, sir?

14 A Yes.

15 Q The omissions in pagination are irrelevant?

16 A I don't believe there are any omissions in
17 there, to the best of my knowledge.

18 MR. TOPKIS: May I confer for just a second?

19 THE COURT: Surely.

20 (Pause.)

21 MR. TOPKIS: I now proceed with the pagination,
22 your Honor. The documents are different and the constitution
23 is paginated consecutively and then the bylaws again begin
24 and are paginated consecutively.

25 Q In any event, this is the complete document?

1
2 A Yes.

3 MR. TOPKIS: I offer this in evidence.

4 MR. HUGHES: Only the objection of relevancy.

5 MR. KRAMER: No objection.

6 THE COURT: Received.

xxx 7 (Plaintiff's Exhibit 17 received in evidence.)

8 THE COURT: Counsel, would you please join us?

9 I don't like a lawyer to sit any place other than where he
10 is supposed to sit. I am a little old-fashioned.

11 MR. GALANDZ: I am a little old-fashioned myself.

12 MR. TOPKIS: I trust your Honor will forgive me
13 if I go slowly. This is the first time I have ever seen
14 these documents.

15 THE COURT: Of course. I understand perfectly.

16 Q Commissioner, I notice that in Paragraph 1 of the
17 Uniform Player's Contract -- forgive me. Let me begin with
18 a preliminary question. This Uniform Player's Contract, is
19 its form prescribed by the Commissioner's office?

20 A Yes.

21 Q And are all contracts between clubs and
22 players in the NBA required to be on this form?

23 A Yes, or riders thereof.

24 Q I notice that in Paragraph 1 it provides:

25 "The club hereby employs the player as a

skilled basketball player for the term of one year from the first day of October, 19__."

On occasion are there contracts for terms of more than one year?

A Yes.

Q Two years sometimes?

A Yes.

Q Three?

A Yes.

Q Four?

A Yes.

Q Five?

A Yes.

Q Any longer number of years?

A I recall no contracts longer than five years.

Q And do I understand and would I be correct in saying that contracts must be approved by the Commissioner's office before they become effective?

A Yes.

Q So that you have approved contracts with a duration of as much as five years?

A Yes.

Q Commissioner, I see in Paragraph 10 the following language:

"The Club shall have the right to sell, exchange, assign or transfer this contract to any other professional basketball club."

On occasion has that language been stricken and other language been written in the contract which you have approved?

A I don't recall any with any change in that paragraph.

Q There was a report in the press, as I recall it, a few months ago that Oscar Robertson had a contract giving him a veto over any assignment of his contract.

A That was contained in a rider in his basic contract at the time it was entered into.

Q I see. Have there been other instances of such riders?

A I don't recall any other than the Robertson case.

Q You, however, approved the Robertson contract with that rider?

A Yes.

Q And the existence of that rider in other contracts would not deter you from approving it?

MR. HUGHES: I object to that as hypothetical.

THE COURT: Yes, I think so. Objection sustained.

Q Is there any league or association policy
against such riders?

A No.

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Q Commissioner, I see in Paragraph 22 of the Uniform Player Contract, Plaintiff's Exhibit 16, a proviso which, if I may summarize it, gives the club the right to renew the contract for a further period of one year. Are you familiar with that language?

A Yes.

Q At the end of that year of renewal, as the contract is construed and interpreted by you in your capacity as Commissioner, is the player free to negotiate with any other club for his services as a professional basketball player?

A I have never been confronted with that decision.

Q And you would rather not decide a hypothetical question?

A Yes.

Q To your knowledge has any player ever signed with another club after playing out his option, as the term has it?

A We do not have a playing out the option clause in our contract.

Q Have you ever known a player at the end of the option year provided in the Uniform contract to negotiate with and sign with another club?

A Yes.

Q Would you tell the Court the circumstances?

1
2 A There have been several instances in the past two
3 or three years where a player signed to a National Basket-
4 ball Association contract has jumped the contract, to use
5 the common term, and signed a contract with teams in the
6 American Basketball Association.

7 Q The American Basketball Association is a competing
8 association of professional basketball teams?

9 A Yes.

10 Q Operating more or less throughout the country?

11 A Yes.

12 Q And do I understand your testimony to mean that at
13 the end of the option year of a player's contract, that is,
14 the second year, some players have jumped or have they jumped
15 before?

16 A They have jumped before.

17 Q During the initial year of their contract?

18 A And in one or two instances while the contract was
19 still in force under the basic terms of the contract.

20 Q But in most instances the jumping has taken place
21 after the expiration of the basic term?

22 A I would hesitate to say in most instances.

23 Q In a number of instances?

24 A Yes.

25 Q Commissioner, does your league conduct a player

1 jkbr 3

Kennedy-direct

2 draft?

3 A Yes.

4 Q When do you do that?

5 A Usually shortly after the termination of college
6 play each season.

7 Q Would you describe to his Honor how that player
8 draft works?

9 A The National Basketball Association teams draw in
10 inverse order of their standing during the previous standing
11 from the college players whose eligibility has been completed.

12 Q And do I understand that they draw the right to
13 negotiate with those players as opposed to any other team in
14 their league?

15 A Yes.

16 Q Does the ABA -- that is the term by which the
17 American Basketball Association is known, isn't it?

18 A Yes.

19 Q Does the ABA conduct such a player draft?

20 A Yes.

21 Q Does it thus happen that given players might be
22 drafted by teams from both leagues?

23 A Yes.

24 Q And do the two teams which have drafted the players
25 then compete for the players' services?

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1
2 A Yes.

3 Q Have you ever approved, Commissioner, a contract
4 with a player in which Paragraph 22, this option paragraph,
5 if I may so call it, was stricken?

6 A No.

7 Q So that even in the multi-year contracts, the
8 contracts of four or five years duration, all contracts in
9 the NBA which you have approved have contained this Paragraph
10 22?

11 A Yes.

12 Q Have you ever approved, Commissioner, contracts in
13 which the level of compensation stepped up from year to
14 year?

15 A Yes.

16 Q Now, you said before that you had seen only one
17 contract, Oscar Robertson's, which gave the player a veto
18 over a trade; that's right, isn't it?

19 A Yes.

20 Q Have you, however, on occasion, approved contracts
21 in which a player would receive a portion of any consider-
22 ation received for the assignment of his contract?

23 A I don't recall ever having approved such a con-
24 tract.

25 Q Have you approved any contracts or have there been

1 jkbr 5

Kennedy-direct

2 filed with you any contracts which provided that the player
3 would have some say of any kind as to the assignment of his
4 contract other than the Robertson contract?

5 A I don't recall ever having approved such contract.

6 Q Commissioner, would it be your opinion as a result
7 of your 8 years of jurisdiction over the activities of the
8 NBA that play in the NBA is characterized by a high order of
9 integrity on the part of the players and the teams?

10 A Yes.

11 Q Would you go so far as to say the highest?

12 A Between player and teams?

13 Q No. Is the play on the floor and the play as be-
14 tween teams characterized by the highest order of integrity?

15 A Oh, yes.
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MR. TOPKIS: Your Honor, the constitution and by-laws are a rather lengthy document, and I haven't had a chance, as I said, to peruse it. I don't want to take the time now. I know my friend, Mr. Hughes, is likely to wish a brief recess in which to prepare cross examination. Might I now recess the witness' examination for a few minutes to give me an opportunity to study this document and Mr. Hughes an opportunity to prepare his cross?

THE COURT: Of course. I will be very glad to oblige.

MR. TOPKIS: Thank you very much.

THE COURT: That means that you have nothing else to proceed with in the meantime?

MR. TOPKIS: As of this moment, your Honor, I have nothing further. I only wish to interrogate the witness in this area.

THE COURT: One thing at a time is best.

Mr. Clerk, will you announce a short recess.

(Short recess.)

MR. TOPKIS: Thank you, your Honor, for this courtesy.

THE COURT: Not at all. Not at all.

MR. TOPKIS: As a result, I have just a very few questions to put to Mr. Kennedy.

Q Mr. Kennedy, would you tell me, sir, during the

1 playing season is there any restriction under the constitution
2 and bylaws as to the number of players with which a club may
3 have exclusive negotiating rights except for those in the
4 armed forces? Do you understand my question?
5

6 A No. I am sorry.

7 Q Perhaps I can clarify it by rephrasing it.

8 There has been evidence here that in baseball a
9 club during the playing season may have 25 players on its
10 roster and may have an additional 15 players under reserve,
11 as the term has it. I want to know what the comparable
12 situation is in the NBA. Would you just tell us that?

13 A Yes. Our clubs are limited to 12 players on what
14 we term the active list. That is the team, the squad
15 playing each of the games during the championship season.
16 In addition to that, there is also what we call a negotiation
17 list, with a limit of five.

18 Now, those players on the negotiation list have --
19 are not signed to contracts. The team with the player on
20 the negotiation list has priority rights if those players
21 should wish to turn professional or to play in the National
22 Basketball Association.
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2 Q So that's before those players have signed any
3 contract?

4 A That is correct.

5 Q To play professional basketball?

6 A Yes.

7 Q Are there any players who are under contract
8 except for those in the military service or perhaps injured
9 and disabled as to whom a club may have exclusive negotiating
10 rights?

11 A No.

12 Q I noticed a provision in the bylaws, I believe
13 it was, Commissioner, Page 103, at any rate, to the effect
14 that a club may farm out not more than two players, and I am
15 referring to provision 1.18.

16 A Those players are included in the twelve on the
17 active list and are not in addition to.

18 Q I see. So that at any time during a season
19 a club may have not more than twelve players under con-
20 tract, is that right?

21 A Plus any that may be in military service.

22 Q Right. Commissioner, are there any minor
23 leagues in professional basketball?

24 A Not in the sense that there are minor baseball
25 leagues. There are other professional basketball leagues

not of the stature of the National Basketball Association.

Q How many of those are there around the country?

A To the best of my knowledge, two.

Q What are their names?

A One is the Eastern Basketball League and one is in the Midwest, and I believe last year it was called The Mid-American Conference.

Q And, in addition, are there industrial leagues or leagues made up of teams sponsored by industrial enterprises?

A Yes.

Q Do the players in such leagues receive compensation for playing basketball?

A For the most part, those organizations are part of the AAU structure, and the compensation that would be given to the player is part of his salary.

Q As an employee of the particular company concerned?

A Yes.

Q Do I recall that some years ago there was a team called Phillips Oilers --

A Yes.

Q -- sponsored by the Phillips Petroleum Company?

A Yes.

Q Was George Mikan a member of that team?

1 A I don't believe George Mikan ever played with
2 the Philadelphia Oilers.

3 Q Phillips Oilers.

4 A Phillips Oilers.

5 Q But it was a team of first-class quality?

6 A An amateur team.

7 Q Yes, as Paul Gallico said, "Amateurs, there ain't
8 no such thing." Strike that, please.

9 Commissioner, referring now to the Eastern League
10 and the Mid-American League --

11 A I believe it was the Mid-American Conference.

12 Q Mid-American Conference. -- do teams in the
13 NBA on occasion sign players from the Eastern League
14 or from the Mid-American Conference?

15 A Yes, I recall one or two instances.

16 Q There is no bar to any such signing, is that
17 right?

18 A Well, in signing them, they were signed after
19 the completion of the season. In other words, the NBA
20 signed those players between seasons. I don't ever
21 recall a player being signed during the course of a season.

22 Q They were rather signed after the season as to
23 which they had an operating contract expire?

24 A Yes.

1 Q So that there was no interference with a
2
3 contractual commitment, is that the point you are trying
4 to make?

5 A Yes.

6 Q But on occasion there have been instances where
7 NBA teams signed players from other leagues following the
8 expiration of their contract?

9 A Yes.

10 Q Has that happened also, Commissioner, with NBA
11 teams signing players who had been under ABA contracts?

12 A To the best of my knowledge, no NBA team has
13 ever signed a player under contract to an ABA team.

14 Q But following the expiration of a player's
15 contract with an ABA team, has a NBA team on occasion signed
16 such a player?

17 A Yes.

18 Q Commissioner, I notice in your bylaws or consti-
19 tution or player contract -- I can't recall which -- a
20 provision giving the club the right to discipline a player
21 for breaches of good standards of behavior. You are
22 familiar with that provision?

23 A Yes, I am.

24 Q And you have the right to review such disciplinary
25 action?

1
2 A Yes.

3 Q Tell me, Commissioner, have you ever approved
4 discipline of a player for talking with a girl in a hotel
5 lobby or is that not regarded as a disciplinary matter in
6 the NBA?

7 A I have never had occasion to discipline a player
8 for such action.

9 MR. TOPKIS: We have no further questions.

10 Thank you, Commissioner, for coming down.

11 MR. HUGHES: Could we have just a couple of
12 minutes.

13 THE COURT: Surely.

14 (Pause.)

End 4 15

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