

cross

would be certain matters determinable only by collective bargaining or legal action.

"See Attachment C for specific language."

That was all, your Honor.

THE COURT: Mr. Topkis.

MR. TOPKIS: Yes, your Honor. Thank you.

CROSS-EXAMINATION BY MR. TOPKIS:

Q Mr. Gaherin, you have read the complaint in this action?

A Yes, I think I did.

Q You are aware, then, that in the complaint the plaintiff, Curt Flood, charges organized baseball with having placed him in a condition of slavery in violation of the Thirteenth Amendment to the Constitution of the United States?

A I have heard the allegation.

Q And your response to it is that you want to negotiate in collective bargaining the terms and conditions of his slavery, is that right?

A No.

Q Has organized baseball at any time ever put forward orally or in writing or in any other means of human communication a proposal calling for the slightest modification in that aspect of the reserve system which

binds a player forever to the first employer who signed him to a contract?

A No.

Q So it is your position that if the player is willing forever to be bound by that or to that first employer or to whichever employer that first employer may sell, trade or otherwise assign him, then you are willing to negotiate the salary that he may received and the other conditions of his servitude, is that it?

A That is quite a dissertation, Judge. May I have it read, please?

THE COURT: Yes. Please repeat the question.

(Question read.)

A Except for the term "servitude" I would say to you I am willing or we are willing to negotiate the salary, the compensation, for which he is willing to perform his services.

Q And you are willing also to negotiate the meal money he will receive, aren't you?

A Yes.

Q But you take issue with me on the question of whether servitude is the correct term, is that right?

A I do.

Q And I ask you, sir, what other term would you

1
2 use for a system in which a man is bound forever once he
3 signs a contract for the first time?

4 A Oh, I would say it is a rather normal -- could
5 be a rather normal employment practice. A man --

6 Q Could --

7 A May I?

8 Q I didn't mean to interrupt.

9 A A man enters into a situation with his eyes
10 open. He understands the restrictions that are placed
11 on himself. I have restrictions placed on me in my contract.
12 I knew it when I signed it.

13 Q How old were you when you signed your contract?

14 A Over 21.

15 Q Were you possibly 52?

16 A Yes.

17 Q You were, then, more than three times as old
18 as ballplayers who sign their first professional baseball
19 contract, weren't you?

20 A The answer is yes.

21 Q Ballplayers regularly sign those contracts
22 at age 17, don't they?

23 A I would say yes.

24 Q And they are bound for the terms of their
25 natural lives by reason of having signed that contract

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Q Then why do you call it normal?

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2 A Because it is a question of degree. All per-
3 sonal service contracts have certain restrictions upon the
4 activity of the person who signs them, including the
5 professions. You, for example, can not practice before
6 a bar to which you are not admitted. It is a restriction.

7 Q But I can at least apply for admission to
8 other bars.

9 MR. KRAMER: We welcome you in the Washington
10 bar.

11 MR. TOPKIS: I have an application pending,
12 Mr. Kramer, and if you happen to be on the commission
13 charged with acceptance, why, I would be delighted.

14 THE COURT: If my task was as easy as your
15 getting admitted there, Mr. Topkis, I certainly wouldn't
16 have any real problem at all.

17 MR. TOPKIS: Thank you, your Honor.

18 THE COURT: I am sure they will be very glad
19 to have you.

20 MR. TOPKIS: Thank you.

21 Q Now, Mr. Witness, would you please tell me,
22 has it ever been proposed that this reserve system of
23 organized baseball let loose of a man when he reaches
24 age 65?

25 MR. HUGHES: Proposed by whom?

MR. TOPKIS: By anybody.

A Not in a collective bargaining session that I have known .

Q Didn't Mr. Miller and Mr. Moss propose that the reserve system terminate when a man reaches age 65?

A May I answer other than yes or no?

THE COURT: If you can answer yes or no, you should.

THE WITNESS: I really can't.

THE COURT: Then what is your answer?

A One day at the end of a session in the joking, friendly atmosphere that negotiators have with one another at times, somebody said across the table, would you let a man go at 65, laughingly, and the answer was: "That would be putting your foot in the door."

But it was not a serious consideration.

Q What gave you that idea?

A Well, I was there, you were not. This is not hearsay.

THE COURT: I don't think you can touch that answer.

Q It surely isn't hearsay, I would agree with you. I will defer to your ruling of law. But now would you tell me, please, what gave you the notion that that

1 was not a serious proposal?

2 A Because it has never appeared in any of the
3 formal proposals we have had from the Association.

4 Q Let me ask you this: You have never proposed
5 that the reserve system let a man loose at age 65, have
6 you?

7 A No.

8 Q You have never proposed that it let a man loose
9 at any time, have you?

10 A No.

11 Q And your response to this proposal, joking
12 or otherwise, that a man be let loose at age 65 was that that
13 would constitute a foot in the door and therefore no,
14 is that right?

15 A No.

16 Q What was the response?

17 A It was an attempt to be as humorous in reply
18 as the first person was in his statement, nothing more,
19 nothing less.

20 Q In fact, was the reply yours?

21 A No, it was not.

22 Q It was Mr. Carroll's, wasn't it?

23 A It was.

24 Q And he was, I suppose, joking as he said it?

1 A Yes.

2 Q Laughing?

3 A Yes.

4 Q You say, Mr. Gaherin, that all problems are
5 resolvable in collective bargaining provided the parties
6 come to them in good faith, is that right?

7 A That was the sense of what I said.

8 Q You have had some failures, haven't you?

9 A No.

10 Q Didn't you represent the World-Journal Tribune
11 in collective bargaining with the various representatives
12 of the trades involved?

13 A Yes.

14 Q And didn't the World-Journal Tribune go out
15 of business because, among other reasons, it was unable to
16 arrive at a satisfactory set of collective bargaining
17 agreements with its employees?

18 A No.

19 Q When it went out of business, a strike was going
20 on, isn't that right?

21 A No.

22 Q Was it publishing?

23 A Yes.

24 Q Under collective bargaining agreements?

A Yes.

Q And when were those signed?

A Several months before the death of the paper.

Q I see. But the newspaper did subsequently die?

A Yes.

Q Do you regard that as a satisfactory resolution?

A No.

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THE COURT: Let that be a lesson to you. You see how effective a yes or no answer can be. You don't have to make a speech every time. Wherever you can answer yes or no, please do so.

Q Tell me, Mr. Gaherin, how much money are you being paid today as consultant?

MR. HADDEN: Your Honor, may I ask, is this really a matter that has to be aired in open court?

THE COURT: I am going to appeal to the exceptionally sensitive sense of fair play --

MR. TOPKIS: I didn't know there was any secret about it.

THE COURT: May I be allowed to finish?

MR. TOPKIS: Excuse me, your Honor.

THE COURT: If you want that comment. I think the only way to handle it is, I strike the comment and we will let you try it out your own way.

But really, seriously, do we need that?

MR. TOPKIS: Your Honor, I had thought it a matter of public record. I would not have inquired into it otherwise.

THE COURT: You still press your objection?

MR. HADDEN: So far as I am aware, it is not a matter of public record.

THE COURT: Is it a matter of public record?

THE WITNESS: There has been speculation about it.
I have never seen the exact figure.

THE COURT: Sustained.

MR. TOPKIS: Then I don't press it, your Honor.

THE COURT: Withdrawn by Mr. Topkis.

Q Mr. Gaherin, has management, that is, the clubs,
ever proposed orally or in writing any change in the following
aspects of the reserve system: First, I think you have al-
ready told me that so far as that aspect of it which binds a
player to a club or its assignee, there had never been any
proposal as to that, is that right?

A I told you that.

Q Yes. Now, how about the provision or aspect of it
which bars any club from endeavoring to tamper, as I think
the expression is, with an employee of another club?

A Have we proposed any change in that?

Q Yes.

A No, we have not.

Q And how about in terms of a limit on the number of
players who could be reserved, have you ever proposed any
change in that?

A No, sir.

Q Have you ever proposed giving the player the slight-

est voice in whether he might be transferred without his consent?

A No, sir.

Q Have you ever proposed the slightest degree of salary arbitration?

A No, sir.

Q Have you ever proposed that at any time --

MR. TOPKIS: I am sorry, I think this has already been asked and answered. I retract it.

Q Mr. Gaherin, you negotiated the first basic agreement as to which the negotiations concluded in February of 1968. That was your testimony, wasn't it?

A The substance of it, yes, sir.

Q There were 22 player representatives involved in those negotiations, is that right?

A I don't understand your question, Mr. Topkis.

Q How many player reps, as they are called, of the different clubs signed that first basic agreement?

MR. HUGHES: We will stipulate whatever the fact is.

MR. TOPKIS: Right. I think it was 22. It is an introductory question.

A I think they all signed it, however many there were.

Q Do you want to count it up for me, if you would?

1 A Sure. I get 23, but I guess I counted -- oh, I
2 see -- 22.

3 Q 22 is correct?

4 A Plus Mr. -- well, no, 22 is the answer to the
5 question.

6 Q 22 players representing their own clubs, right,
7 or representing the players on their own clubs?

8 A Yes.

9 Q Now, according to my count, in the two years and
10 a couple of months since that time, 12 of those 22 player
11 representatives have been traded. Could you advise me as
12 to whether my count is correct?

13 A No, I could not.

14 MR. TOPKIS: I wonder whether I might call upon my
15 friends on the other side to advise me -- subsequently, of
16 course.

17 MR. HUGHES: Yes.

18 MR. TOPKIS: Thank you.

19 Q You testified, I think, Mr. Gaherin, that the clubs'
20 contributions to the benefit plan were 4.1 million under the
21 first plan, and by reason of the changes resulting from the
22 adoption of Exhibit M, the contribution was increased to
23 5,450,000; is that right?

24 A Yes.

Q Now, was part of that increase the result of four additional clubs participating?

A No.

Q That is the same number of clubs which had --

A No, I answered your question. You asked me if the increase in the amount of contribution was predicated on the addition of the four additional clubs and I said no.

Q In whole or in part?

A There is obviously some impact when you put more people in the plan, but I can't answer your question that that fact influenced the increase in this.

Q I am not calling for influence. I am just calling for simple arithmetic. There were four additional clubs participating. In your figure of 5,450,000, is their contribution included?

A Yes.

Q All right, fine. So that when you said that there was an increase of more than 33 per cent, or whatever your testimony was, you were saying there was such an increase, counting in the contributions of the four new expansion clubs?

A I said the difference between 5.450 and 4.1 was 1,350,000 and that I thought was about a 33 per cent mathematical increase.

Q All right, fine. Did you, during your negotiations

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Gaherin-cross

2 THE COURT: Do you have any objection to producing
3 such notes?

4 Let's resolve that in the first place.

5 MR.HADDEN: May we have a moment to consider the
6 question, your Honor?

7 THE COURT: Yes. I was wondering whether Mr. Topkis
8 would care to just leave that at this juncture and go to some-
9 thing else for the remaining time that we have before we
10 adjourn till Monday.

11 MR. TOPKIS: Your Honor, I can say in candor that
12 except for matters that I would want to inquire about in
13 connection with the notes, I am concluded.

14 THE COURT: Oh, fine. You just think about it and
15 I will await your pleasure.

16 MR. HADDEN: In the meantime, your Honor, may I
17 offer the missing exhibit? I now have a copy of one paper
18 which I was not able to lay my hand on in direct examination.

19 Do you have any objection?

20 MR. TOPKIS: No, of course not.

21 (Defendant Feeney et al. Exhibit R marked for
22 identification.)

23 DIRECT EXAMINATION BY MR. HADDEN (CONTINUED):

24 Q May I show you a document marked for identification
25 Exhibit R and ask you if that is the proposal received by