



Sport Update

Issue 20

February 2008

How to mend broken hearts

The Court of Arbitration in Sport (CAS) has ruled on the case of a soccer player who unilaterally terminated his contract in order to join another club. Andy Webster left Heart of Midlothian (Hearts) prior to the end of his contract in order to join Wigan Athletic (Wigan) in the FA Premier League (for more detail see Beauchamps Sport Update Volume 14). Webster has been ordered by CAS to pay Stg£150,000 in compensation, which is the equivalent of the amount he would have earned from Hearts for the unexpired part of his contract.

The new FIFA Transfer Regulations are a result of the landmark Bosman ruling and concerns raised by the European Commission in relation to freedom of movement of workers. In response to the Bosman ruling, clubs sought to sign players up to long term contracts in the expectation that they would be able to charge a larger transfer fee if the player wanted to leave before the contract expired.

Article 14 of the FIFA Transfer Regulations allows players and clubs to terminate contracts without sanctions in the case of “*just cause*”. It is not altogether clear what constitutes “*just cause*”, but one might suggest something like taking drugs or being convicted of an assault could constitute such a “*just cause*”. Article 15 introduces the concept of “*sporting just cause*” which comes into play where an established player has appeared in less than 10% of his club’s matches during a season. Due consideration is to be given to the players circumstances so as not to include games for which he is injured/unavailable. Where there is such “*sporting just cause*”, a player may terminate his contract in the period of 15 days following his club’s last match of a season, subject to the potential payment of compensation.

The FIFA Regulations also provide for the concept of a “*Protected Period*” which is the period of three seasons or three years (whichever comes first) following the coming into force of the player’s contract if the contract was signed before the player is 28. For contracts signed after a player is 28, the “*Protected Period*” is two years. Players must wait until after the expiration of the “*Protected Period*” before seeking to unilaterally terminate their contract. Article 17.3 provides that players outside the “*Protected Period*” are free to walk away from their clubs once they have given the requisite notice within 15 days of the end of a season, subject to the payment of compensation. The compensation is calculated “*with due consideration, for the law of the country concerned, the specificity of the sport and any other objective criteria*”, which include the player’s salary and the remaining period of his contract.

FIFA’s Dispute Resolution Chamber had rejected the idea that a player can “*buy out*” his contract and had ordered Webster and Wigan to pay Stg£625,000 in compensation to Hearts. Hearts had wanted at least Stg£4,000,000 to take account of the cost of developing Webster and subsequently replacing him and claims that CAS’s award did not take account of the circumstances of the breach and does not properly compensate the club.

The decision by CAS not only relates to whether players can unilaterally terminate their contract in this manner, but also on the calculation of transfer fees. It has decided that the compensation payable in the Webster case is simply the player’s salary for the unexpired period of his contract, whereas Hearts had wanted the compensation to take account of the costs of developing and replacing the player.



February 2008

TV listings

FIFA and UEFA have jointly submitted a legal challenge to the European Court of First Instance against the European Commission's recent decision to approve the UK's controversial 'listed events' legislation (for more detail see Beauchamps Sport Update Volume 13). The EU's Television without Frontiers Directive allows countries to compile a list of sporting events that are deemed to be of such public interest that they must be shown on free-to-air television.

When deciding whether to give its approval to a country's listed events, the European Commission states that the events must meet at least two of the following criteria:

1. A special resonance within the member state, and not simply a significance to those who ordinarily follow the sport concerned.
2. A generally recognised distinct cultural importance for the population in the member state, in particular, as a catalyst of cultural identities.
3. Involvement of the national team in the event concerned in the context of a competition or tournament of international importance.
4. The fact that the event had traditionally been broadcast on free-to-air television and has commanded large television audiences.

The UK and Belgium are the only countries in Europe to list the European Championships and World Cup competitions in their entirety. In many countries, such as Ireland, the protection is limited to matches of the national team, the opening match (although it is hard to see how such a match can be of national interest or importance), the semi-finals and the final of the tournament. UEFA also believes that the definition of a so called 'qualified broadcaster' in the UK is overly restrictive as it effectively means that the BBC and ITV are the only bidders and this often leads to a situation whereby they bid jointly and carve up the rights between them. FIFA and UEFA will argue that the legislation unfairly restricts their ability to create a competitive market for media rights for World Cups and European Championships.

In Ireland, the following events are designated under the Broadcasting (Major Events Television Coverage) Act 1999 (designation of Major Events) Order 2003 as free-to-air: the Summer Olympics, the All-Ireland football and hurling finals, Ireland's home and away qualifying games in the European Championship and World Cup and any of Ireland's games in the finals of those tournaments, the opening games, semi-finals and finals of the European Championships and World Cup, Ireland's games in the Rugby World Cup, the Irish Grand National and Irish Derby and the Nations Cup at the Dublin Horseshow. The Irish Rugby team's Six Nations games are only designated as free-to-air on a deferred, rather than on a live basis.

Rugby: how dangerous is it?

US research suggests high school rugby is no more dangerous than other contact sports. There are said to be 5.2 injuries per 1000 "athletic exposures". An "athletic exposure" apparently consists of one player participating in a match or training session. The research, carried out by the US Center for Injury Research and Policy, states that high school rugby players have similar injury rates to high school American Football players and wrestlers and lower rates than high school ice hockey players.

22% of injuries involved the head, with the ankle, shoulder and knee injuries making up another 13%, 13% and 11% respectively. Most injuries occurred while players were being tackled (31%) or tackling (29%). One wonders whether research in major rugby playing nations would lead to similar results.



February 2008

Are you doing enough to \$upport your team?

Recent weeks have seen a number of interesting approaches to investing in sports clubs. My Football Club is a website that was established with the aim of purchasing a football club. Over 20,000 subscribers to the website have paid a Stg£35 investment in order to purchase the club. In a revolutionary new departure, the “fans” will pick the team and also vote on tactics and formation and control the transfers in and out of the club. While the idea of fans getting a slice of the ownership of their club is to be welcomed, managers and coaches, whose tactics and team selections will be undermined, may not see this as a welcome development. Former Irish international Liam Daish is the manager of Ebbsfleet, the club which has been taken over by My Football Club for the princely sum of Stg£700,000.

The legal structure of the venture involves an industrial and provident society, My Football Club Society Limited (“the Society”) and a limited company, My Football Club Limited (“the Company”). Members pay the £35 subscription fee to become members of the Society, which is governed by rules similar to the articles of association of an ordinary limited company. There is an agreement in place between the Society and the Company whereby the Company runs the website and carries out certain other duties in relation to the club’s business. The Company utilises £7.50 of each member’s subscription fee for this purpose. The remaining £27.50 goes towards purchasing the club, buying new players and other club expenditure.

It is interesting to note that the members can derive no profits or dividends from the club and if the members decide to sell the club (which would require a 75% majority), any proceeds from the sale would not be shared among the members, but would be given to a charity with similar objects. The Society has no limit on the number of members and, accordingly, the club has the potential to invest millions of pounds in the club, if a large number of members subscribe.

In a similar development, Share Liverpool FC has presented plans to raise Stg£500,000,000 to acquire English Premier League side Liverpool from its current owners. Under the scheme, 100,000 fans would each invest Stg£5,000.

What’s in a name?

\$5 million – \$11 million annually apparently, depending on who you listen to. Naming rights for Chicago’s Wrigley Field could sell for in around this price range according to industry experts. The stadium is the home of the Chicago Cubs. Deals for re-naming an existing stadium tend to be lower than those for naming a new stadium, but the Chicago Cubs could do a deal similar to that made between the New York Yankees and Adidas in 1997. The ‘Yankees’ didn’t want to sell the naming rights to ‘Yankee’ Stadium and so agreed a deal whereby Adidas paid \$100 million over ten years for the right to put the Adidas brand at several key places in the stadium, to advertise during match broadcasts; and, most interestingly, to use the Yankees marks on its products.

Meanwhile, down under, Sydney’s Olympic stadium will be re-named ANZ Stadium next year after Australia’s largest ever naming rights deal. The seven year deal is worth AUS\$31.5 million (€19.5 million). Not to be outdone, South African rugby union team, the Lions (not to be confused with the British and Irish Lions), has signed a naming rights deal with insurer, Auto & General. The Lions compete in the Super 14 tournament which is made up of club sides from South Africa, Australia and New Zealand. The naming rights to teams, as distinct from stadiums is a potential new source of revenue for teams and a new form of sponsorship for companies.



February 2008

The AFL's ministry of information

An emerging issue for both sporting bodies and media organisations is the issue of press accreditation and the admission of the media to sporting events. The Australian Football League (AFL) is following hot on the heels of the International Rugby Board (IRB) and Cricket Australia in becoming involved in disputes with press/media representatives.

How can sports governing bodies seek to limit the 'freedom of the press' and to what extent do they 'own' a sporting event? There is no copyright or other intellectual property right to a sporting event or spectacle. Governing bodies/event organisers have the right to admit or refuse entry to a sporting event and this is the basis on which they sell broadcasting and other rights. The event organiser implements an accreditation procedure, whereby the non-rights holding broadcasters/media organisations sign up to terms and conditions.

At last year's Rugby World Cup, the IRB limited internet photo publication to five still photos per half. An issue also arose in relation to non-match day audio-visual content. These disputes lead to Reuters suspending its coverage of pre-tournament events and training.

The AFL prohibited international photographers from taking photos of any games during the 2007 AFL season by not providing them with accreditation. As the AFL is geographically localised within Australia, the international press were not in a strong bargaining position. Having refused to give accreditation to international photographers, picture rights were instead handed to its own in-house publisher. The World Association of Newspapers (WAN) is concerned that such a practice restricts the freedom of the press and limits editorial independence. For example, the AFL limited the availability of photos of an on-field brawl between Hawthorn and Fremantle during the 2007 season.

Press accreditation terms and conditions may appear restrictive, but sports governing bodies are seeking to legitimately expand revenue streams by selling rights to online and mobile phone broadcasting and reporting, SMS updates, online match tracking reports and audio and text based commentary services.

Why does it always rain on me?

Chinese scientists are attempting to ensure dry weather for the opening ceremony of this summer's Olympic Games in Beijing. Initial plans to build a sliding roof over the stadium were abandoned for cost reasons and the Beijing Meteorological Bureau now claims that while it can deal with light rain, heavy rain is proving more difficult. The techniques, involving the use of liquid nitrogen and silver iodite are being used in an attempt to suppress the formation of clouds. Irish Minister for the Weather, Ger Fleming, is expected to send his Special Envoy to China in order to copy the techniques!

Gary Rice

Head of Sport

Beauchamps Solicitors Riverside Two, Sir John Rogerson's Quay, Dublin 2

t: +353 (0)1 4180600 f: +353 (0)1 4180699

e: securemail@beauchamps.ie w: www.beauchamps.ie

This ezine is for general information purposes only and does not comprise legal advice on any particular matter. You should not rely on any of the material in this ezine without seeking appropriate legal or other professional advice. While every care has been taken in preparation of this ezine, we are not liable for any inaccuracies, errors, omissions or misleading information contained in it.