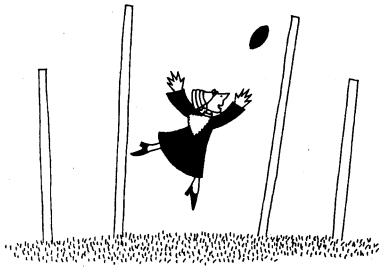
SPORT AND THE LAW

'Williams, c'est pour toi': Football and Contracts 101



Sport is often depicted as a substitute for war. Judging by headlines in Australia, sporting battles eclipse real battles. As July turned into August this year, international attention focused on the Russian-Georgian war. But here, a dispute involving Sonny Bill Williams, a young rugby league star, generated more fascination. That the dispute was played out in the courts, and not on field, reminds us how central commercial law has become not just to the professional sports industry, but the very spectacle and diversion that sport has become.

Williams is a Polynesian New Zealander, with an unusual footballing talent by virtue of his athleticism, strength and marketable persona. (Although, given the disproportionate numbers of Polynesian men playing high level rugby league, these gifts may not be that unusual). Recruited by the Canterbury Bulldogs at 16, within six years Williams' sign-on salary of $35 000 had risen to $400 000 per annum, plus sponsorships and representative payments, under a five-year contract which commenced in late 2007.

By mid-2008, Williams had determined to leave the Bulldogs' employ, to seek a more lucrative career in France with Rugby Club Toulonnais. It was estimated that the salary offered by Toulon was at least double that he enjoyed at the Bulldogs.[1] That Williams was not just breaking his contract with the Bulldogs, but jumping from rugby league to rugby union, rendered the move a provocation to league followers generally, and not just Bulldogs' fans. (The Bulldogs attract fierce loyalty from their south-western Sydney support base. However they normally attract little sympathy from rival fans, in part due to Anglocentric bias against the many Lebanese fans of the Bulldogs).

The dispute became a cause celebre for two reasons. One is that it was emblematic of the difficulties facing rugby league, in its centenary year, as football codes compete in an international market. Rugby league attracts strong adherence in only a handful of populations: NSW, Queensland, Lancashire/Yorkshire, some parts of working class New Zealand and PNG. Otherwise, it is a minority sport in a small number of jurisdictions.

Rugby union, from whose spare and amateur rib rugby league was formed in the early 1900s, is in the process of shaking its middle-class base. By comparison with league, union has claims to international appeal. As rugby has professionalised, it is no longer league teams — fat on poker machine revenue — who are poaching rugby players. On the contrary: the poached has become the poacher.

Here was a Polynesian Kiwi, making it good in Australian rugby league, before setting himself up on the French Mediterranean to pursue both wealth and a dream of playing rugby for the All Blacks. Williams' tale epitomises the internationalisation of even club football.

The second reason the Williams dispute became a celebrated case was its litigation. The otherwise impotent Bulldogs, backed by the NRL or National Rugby League (a consortium of News Ltd and the ARL sporting body) determined to enlist the law.

Williams' standard form employment contract contained several negative covenants. One required him to play in only rugby league games sanctioned by his club. A second explicitly forbade participation in any other football code without the NRL's consent.

Williams flew to France midway through the NRL season. The Bulldogs refused to accept this repudiation. Instead, they launched Supreme Court action, seeking declarations and injunctions to enforce the negative covenants. Further, the tort of inducing a breach of contract was alleged against the Toulonnais club and Williams' agent.

Equity will not specifically enforce an employment contract. So Williams could not be forced to play for the Bulldogs. (Even if it did, the order would be pyrrhic: what coach could rely on a disgruntled, court-ordered player?) But, in line with old authority concerning stars such as opera singers,[2] the Bulldogs were entitled to an injunction restraining Williams from playing for Toulon.

Justice Austin issued the injunction ex parte. Williams had so successfully engineered his escape that the Bulldogs had to resort, in effect, to service via the media — although the judge formally permitted substituted service of the initial application. These substitutes were an accumulation of service on Williams' Australian addresses, on the Toulon club and by text message to Williams and his agent. Comically, physical service was eventually achieved when a French process server threw the documents in Williams' direction during a Toulon training session. A trainer picked them up and naively passed them to the player, saying 'Williams, c'est pour toi.'[3] Literally, the law had invaded the sporting field.

The futility or impracticality of an injunction against a person outside the jurisdiction gave Austin J some cause for equivocation.[4] Williams, via his contract, had formally submitted to NSW jurisdiction. Since Williams owned real estate in NSW, a contempt order for

REFERENCES

1. Roy Masters, 'NRL Seeks Image Tax Breaks for all Players', *Sydney Morning-Herald* (Sydney), 30 July 2008, 40.
2. *Lumley v Wagner* (1852) 42 ER 687.
3. 'Williams, this is for you'.
4. On the bases of jurisdiction in international equitable claims, see Mary Keyes, *Jurisdiction in International Litigation* (2005) 48–50.

breaching the injunction could lead to sequestration of that property. An unexpressed assumption seemed to be that the property symbolised Williams' links with Australia and the likelihood that he would return, if only for pleasure.

The wisdom of litigating against an employee was also called into question when Willliams threatened to counter-sue against the salary cap. This system caps at $4.5 million per annum the amount an individual club can pay its top 25 players. Earlier attempts at restricting player movement through transfer approval processes or drafts have been struck down as restraints of trade.[5]

A bare cap, however, is likely to be upheld as reasonable. Whilst the amount of the cap is a topic for perennial debate, amongst both clubs and the player association, the concept is well supported. Without it, clubs would be unviable during lean periods and the security of the salaries of young and 'second-tier' players would be reduced.

Williams is hardly the first sportsperson to be enjoined from playing for a rival club or code. Hawthorn AFL club, in 1988, won injunctions against two players.[6] And, at the height of the 'SuperLeague' schism, Gorden Tallis chose to sit out the 1996 season rather than play for his existing club, St George, which had successfully sued him for signing an inconsistent contract with the Brisbane Broncos.[7]

Toulon got what it wanted when Labor party 'fixer', Graham Richardson, brokered a settlement. The Bulldogs dropped their action in return for $750 000. In effect, Williams bought out a couple of years of his contract. Toulon, however, did not admit to being the source of the payout. Rather, the vaudevillian nature of the case was completed when Aboriginal league-star-cum-boxer, Anthony Mundine, claimed he was paying the money to help out a 'brother'.

Is there any moral to Williams' case? Williams' supporters found it reprehensible that a player — an employee, with a limited time to make hay — would be dragged through the courts for merely pursuing a better offer elsewhere. His detractors saw his actions as at best precipitous and, at worst, a disloyalty to club and code.

Clubs, for all their financial exigencies, maintain both the practical and jurisprudential edge over even star players when disputes are played out in the courts. The clubs, after all, set the contracts, in standard form, and behind them stands their master, the News Ltd joint venture. The media in general — and pay television in particular — has reconstructed sport as a televisual spectacle, a medium of brands and high finance, rather than as a contest of organic entities such as people and communities. Given the settlement, in the end the only moral of Williams' case may be the amoral, that money trumps all.

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5. Antonio Buti, 'Salary Caps in Professional Team Sports: an Unreasonable Restraint of Trade' (1998) 14 *Journal of Contract Law* 25.

6. *Buckenara v Hawthorn Football Club* [1988] VR 39 and *Hawthorn Football Club v Harding* [1988] VR 49.

7. To avoid being in restraint of trade, a negative covenant can only cover 'special services' employees. Tallis' case suggests that an injunction will only lie against a player who is not 'satisfactorily replaceable'. Professional sportspersons less exalted than Williams may not fall into that category. *St George DRLFC v Tallis*, [1996] (Unreported, Supreme Court of NSW, Equity Division, Santow J, 28 June 1996).