Brady's Benching Gives Lesson in Court Review of Arbitration Decisions

Monday, May 2, 2016

Earlier this week, Bills and Jets fans (and at least one Packer fan) rejoiced as the Second Circuit Court of Appeals reinstated the NFL’s four-game suspension of New England Patriots quarterback Tom Brady based on a finding that Brady had participated in a scheme to deflate footballs and attempted to cover it up. In the days that have followed, the sports media offered countless analyses of the court’s decision with varying degrees of legal sophistication. Many of those analyses missed a fundamental point: the integrity of collective bargaining and agreed-upon arbitration processes demand that courts have very little ability to second-guess the conclusions reached by an arbitrator.

For many non-lawyers reviewing the appellate court’s ruling, the hardest aspect to understand was how it could reinstate the suspension without expressly deciding that Commissioner Roger Goodell’s decision was correct. But for labor lawyers – and for those employers who have ever tried to get the courts to overturn an arbitration award – the decision makes all the sense in the world.

This all goes back to the limited role that courts have in reviewing an arbitrator’s decision. As the court noted, its role was not to determine whether the Commissioner’s decision was “right” or “fair” or even “reasonable.” Instead, when
parties agree to submit a claim to arbitration, a court reviewing that decision is only looking to determine whether “the arbitrator was even arguably construing or applying the contract and acting within the scope of his authority.” Consequently, even if the court believed that the Commissioner’s decision was flawed or his decision-making process was less than perfect, the court could not vacate the decision unless the decision was “merely the arbitrator’s own brand of industrial justice.”

The reason for this limited review is that arbitration is a creature of consent. The arbitrator’s authority to resolve a dispute is premised on the parties’ agreeing that the arbitrator’s decision will be final and binding. In other words, the parties have bargained for the arbitrator to decide the case, not for the courts to do so, and the courts must therefore remain very careful about intervening so as to protect the integrity of the parties’ agreed-upon dispute resolution process. As a result, absent the most unusual circumstances, it is nearly impossible to reverse an arbitration award. In other words, if the NFL Players Association did not want Commissioner Goodell to be “judge, jury, and executioner” over discipline issues, they should not have signed a collective bargaining agreement giving him those exact powers. Whether the players and fans think the process and result were fair, the fact of the matter is the result based on the process followed emanates directly from agreements the players themselves made through their union.

What does this mean for employers deciding whether to arbitrate a claim? Tread carefully. Arbitration is a great tool for managing litigation costs and resolving a case quickly. But there are tradeoffs. One is that your entire case may be placed in the hands of a single arbitrator who can turn your (apologies for the mixed sports metaphors) slam-dunk case into a coin toss just because he or she has idiosyncratic views on a particular issue. And as the Brady case shows, once that award comes down, it is very difficult to set aside. For the complex reasons mentioned in this case, it is always prudent to discuss these issues with your attorney in-depth before sending a case to arbitration.

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