

ASSER International Sports Law Series

More information about this series at <http://www.springer.com/series/8858>

Leanne O'Leary

Employment and Labour Relations Law in the Premier League, NBA and International Rugby Union



ASSER PRESS



Springer

Leanne O'Leary
Faculty of Law and Criminology
Edge Hill University
Ormskirk
Lancashire, UK

ISSN 1874-6926 ISSN 2215-003X (electronic)
ASSER International Sports Law Series
ISBN 978-94-6265-158-6 ISBN 978-94-6265-159-3 (eBook)
DOI 10.1007/978-94-6265-159-3

Library of Congress Control Number: 2016954705

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS press by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the author 2017

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer Science+Business Media B.V.
The registered company address is: Van Godewijkstraat 30, 3311 GX Dordrecht, The Netherlands

*...that the law's chief concern about the use
of power is not who is exercising it but what
the power is and whom it affects.*

Stephen Sedley (2000) Public power and private power.
In: Forsythe C (ed) Judicial review and the constitution.
Hart Publishing, Oxford, p 306

Series Information

Books in the *ASSER International Sports Law Series* comprehensibly chart and analyse legal and policy developments in the emerging field of European and international sports law. Within scholarly publishing, the series is the most cited in its area and uniquely features contributions from the leading sports law scholars. It is a valuable resource for practitioners, academics, sports officials, and anyone interested in or impacted by sports and law.

This Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence, in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations and federations, the professional sports industry, etc.) on both a national and an international basis. As a pioneer in the field of European and international sports law, the Centre has established a worldwide network of academics and practitioners and cooperation agreements with various sports law institutes and centres in Europe and beyond.

Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*.

Editor-in-chief

Prof. Dr. Ben Van Rompuy
e-mail: b.van.rompuy@law.leidenuniv.nl

Series editor

Dr. Antoine Duval
e-mail: a.duval@asser.nl

Editorial Office

ASSER International Sports Law Centre
T.M.C. Asser Instituut
P.O. Box 30461
2500 GL The Hague
The Netherlands
www.sportslaw.nl



Acknowledgements

I would like to express my sincere gratitude to the following organizations for their time and valued assistance during the completion of this book: The Football Association, The Premier League, The Professional Footballers' Association, World Rugby and the International Rugby Players' Association. I would also like to thank the editors Prof. Dr. Ben Van Rompu and Dr. Antoine Duval for their invaluable comments and my colleagues, friends and family in New Zealand and elsewhere.

Contents

1	Introduction	1
1.1	Introduction	1
1.2	The Legal Status of an Athlete	3
1.3	The Special Nature of an Employment Contract	4
1.4	Employment and Labour Relations Law	7
1.5	Economic Characteristics of a Team Sports Competition	9
1.6	Regulation of Sport	12
1.7	Conclusion	15
	References	17
2	History of Labour Relations and Working Conditions in the Premier League, NBA and Rugby Union	19
2.1	Introduction	19
2.2	Premier League Football	20
2.3	National Basketball Association	35
2.4	International Rugby Union	42
2.5	Conclusion	50
	References	51
3	Organization and Regulation of the Premier League, NBA and Rugby Union	53
3.1	Introduction	54
3.2	Premier League	54
3.2.1	Premier League Clubs	57
3.2.2	Competition Format	58
3.2.3	Football League	58
3.2.4	Players and the Professional Footballers' Association	59
3.2.5	Regulatory Framework	61
3.3	National Basketball Association	68
3.3.1	The NBA	69
3.3.2	NBA Commissioner	71
3.3.3	NBA Teams	72

3.3.4	Competition Format	73
3.3.5	Players and the National Basketball Players' Association	74
3.3.6	Fédération Internationale de Basketball and USA Basketball	75
3.4	Rugby Union at an International Level	76
3.4.1	World Rugby	76
3.4.2	National Federations	81
3.4.3	Rugby Union Players and the International Rugby Players' Association	83
3.5	Conclusion	84
	References	85
4	Employment and Labour Relations Law in the United Kingdom and Professional Sport	87
4.1	Introduction	88
4.2	The Employment Contract	89
4.2.1	Concept of Worker	91
4.3	Labour Relations Law	94
4.3.1	Trade Union and Labour Relations (Consolidation) Act 1992	95
4.4	Common Law Doctrine of Restraint of Trade	104
4.5	Conclusion	111
	References	112
5	Free Movement of Athletes in the Sports Industry	115
5.1	Introduction	116
5.2	Free Movement of Workers	118
5.2.1	Direct Discrimination, Indirect Discrimination and Non-discriminatory Measures/Obstacles to Free Movement	120
5.2.2	Justification	120
5.2.3	Freedom of Movement in the Sports Industry	121
5.3	Free Movement of the Self-employed	129
5.3.1	Direct Discrimination, Indirect Discrimination and Non-discriminatory Measures/Obstacles and Justifications	130
5.3.2	Freedom to Provide Services in the Sports Industry	131
5.4	Conclusion	134
	References	135
6	Labour Relations Law at a European Level and Professional Sport	137
6.1	Introduction	138
6.2	Internal Market Law and Trade Union Activities	139

6.2.1	European Competition Law v Collective Agreements	141
6.2.2	Strike Action v Fundamental Freedoms	149
6.3	Social Dialogue	154
6.3.1	Sectoral Social Dialogue Committee for Professional Football	157
6.3.2	Sectoral Social Dialogue Committee in Sport and Active Leisure	161
6.4	European Convention on Human Rights	163
6.5	Conclusion	165
	References	166
7	Federal Labour Law in the USA and Professional Sport	169
7.1	Introduction	170
7.2	National Labor Relations Act of 1935	171
7.2.1	Recognition, Collective Bargaining and Decertification	172
7.2.2	Unfair Labour Practices, Right to Strike and Industrial Action	175
7.3	Statutory and Non-statutory Labour Exemptions	178
7.4	Antitrust Law	185
7.4.1	Contract, Combination or Conspiracy	186
7.4.2	Unreasonably Restains Trade	189
7.4.3	Exemption for the Business of Baseball	192
7.4.4	Antitrust Cases and Professional Players	193
7.5	Commissioner's Power	195
7.5.1	Federal Labour Law and Collective Bargaining	195
7.5.2	Exceeding Authority, Bad Faith and Procedural Unfairness	197
7.6	Conclusion	200
	References	201
8	The Premier League	203
8.1	Introduction	204
8.2	Role of Collective Bargaining	204
8.2.1	The Professional Football Negotiating and Consultative Committee	206
8.2.2	Bargaining Issues	207
8.2.3	Collective Agreements	208
8.2.4	Football Association Role	208
8.2.5	Trade Disputes	209
8.3	Standard Players' Contract	210
8.4	Wage Regulation	214
8.4.1	Short Term Cost Control Rules	216
8.5	Movement of Players	220
8.5.1	FA Rules: Registration and Transfer	221

8.5.2	Premier League Rules: Registration and Transfer	222
8.5.3	Transfer Fees	223
8.5.4	International Transfer System	224
8.6	Eligibility	227
8.6.1	National Immigration Law	229
8.6.2	Squad List System: Home Grown Players	230
8.7	Intellectual Property	234
8.7.1	Standard Players' Contract	235
8.7.2	Image Rights Contract	236
8.8	Conclusion	237
	References	239
9	The National Basketball Association	241
9.1	Introduction	242
9.2	Role of Collective Bargaining	242
9.2.1	Collective Agreement	243
9.2.2	Bargaining Issues and Trade Disputes	244
9.3	Uniform Players' Contract	245
9.4	Wage Regulation	246
9.5	Movement of Players	250
9.6	Eligibility	253
9.6.1	The Draft	254
9.6.2	International Transfer Rules	258
9.7	Intellectual Property	259
9.8	Conclusion	261
	References	262
10	International Rugby Union	265
10.1	Introduction	266
10.2	Role of Collective Bargaining	267
10.2.1	Consultation, Issues of Concern and Trade Disputes	270
10.2.2	The Rugby Athlete's Commission	273
10.3	RWC Participation Agreement	274
10.4	Wage Regulation	276
10.5	Movement of Players	276
10.6	Eligibility	278
10.7	Intellectual Property	285
10.8	Conclusion	286
	References	287
11	Decision-Making in a Professional Team Sports Competition	289
11.1	Introduction	290
11.2	Organization of the Premier League, the NBA and Rugby Union	292
11.3	Employment Arrangements	294
11.3.1	NBA	294

Contents	xv
11.3.2 Premier League	296
11.3.3 International Rugby Union.....	300
11.4 Decision-Making in Professional Sport.....	302
11.4.1 National Leagues	302
11.4.2 Competitions Organized at an International Level.....	309
11.5 Conclusion	313
References.....	314
Glossary of Acronyms and Terms	317
Index.....	323