Don’t Go Out Of Bounds! A Commentary On The Supreme Court Of Canada’s Decision In Bruce V. Cohon

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A recent decision Supreme Court of Canada decision highlights the weight attached to the collective bargaining relationship between union and employer representatives, and reaffirms that the "exclusive jurisdiction" model remains valid.

Background

Arland Bruce ("Bruce") is a former Canadian Football League ("CFL") player who, over his lengthy career, played with the Winnipeg Blue Bombers, Toronto Argonauts, Hamilton Tiger Cats, BC Lions and Montréal Alouettes.

During his time playing football in the CFL, Bruce was a member of, and was represented by, the Canadian Football League Players Association ("CFLPA"). The terms of Bruce’s employment were governed by a collective agreement concluded between the CFL and the CFLPA (the "Collective Agreement").

The Collective Agreement provided, in particular, that the CFLPA was the sole bargaining agent for all players in the CFL; that these players had access to grievance and arbitration procedures; and, importantly, established rules governing player safety and equipment.

In most collective agreements, the union and the employer will bargain collectively to determine the terms of employment for all employees that will be subject to the collective agreement. This will usually include all material terms of employment, including monetary compensation.

In this case, as with other unionized professional sports leagues, the Collective Agreement required players in the CFL to negotiate certain terms of their employment with their clubs directly, rather than through the collective bargaining process.

Following his playing career, Bruce commenced a civil action in the Supreme Court of British Columbia against the Commissioner of the CFL, all of its member clubs and others for: (i) withholding and downplaying the effects of repetitive head trauma; (ii)

negligent misrepresentation of player safety issues regarding concussions; and (iii) negligence regarding the technology available to protect players from head injuries. He asserted, for instance, that while playing in a game for the BC Lions in 2012 he suffered multiple sub-concussive and concussive hits. He also alleged that despite showing the ongoing effects of a concussion, he was permitted to play for the Montréal Alouettes in 2013.

Bruce's civil action was challenged on the basis that the Court did not have the necessary jurisdiction to hear the matter, as the allegations made by Bruce related solely to his employment with the Lions and the Alouettes. The defendants therefore argued that the dispute was subject to the grievance and arbitration process set out in the Collective Agreement and fell within the exclusive jurisdiction of the BC *Labour Relations Code* and the Québec *Labour Code*.

The Case Before the Courts

In its decision of March 2016, the Court agreed with the defendants and declined jurisdiction to hear the matter. The Court relied on the Supreme Court of Canada's 1995 decision in *Weber v. Ontario Hydro*, which confirmed that labour arbitrators have the "exclusive jurisdiction" to deal with disputes arising from a collective agreement. The Court found that since the essential character of the dispute was workplace health and safety, which was addressed by the Collective Agreement, and seeing that the grievance and arbitration provisions would have provided Bruce with a meaningful remedy to his complaints, the Court lacked jurisdiction to entertain the claim.

Bruce's appeal to the B.C. Court of Appeal ("BCCA") was dismissed on May 12, 2017. Following a detailed review of the Collective Agreement, the Standard Player Contracts that applied to CFL players and the legislative framework, the BCCA stated:

I am unable to say that the chambers judge erred in law in characterizing the essence of the action as it now stands as one about health and safety in the workplace, or more particularly, a workplace injury. That matter is dealt with by the Collective Agreement (including the Standard Player Contract) and may be said to 'arise under' it.

Consistent with the decision of the lower court, the BCCA found that the Collective Agreement, as unique as it might be, provided for the possibility of an effective remedy, namely the grievance procedure available to Bruce.

Bruce sought leave to appeal the BCCA's decision to the Supreme Court of Canada. By decision dated March 15, 2018; however, his application for leave to appeal was dismissed, without reasons.

Takeaway

The refusal of the Supreme Court of Canada to take on Bruce's appeal confirms that the "exclusive jurisdiction" model discussed in *Weber v. Ontario Hydro* and related cases, still applies. It reaffirms that courts are without jurisdiction to deal with disputes arising out of, or relating to a collective agreement, which provides for an effective remedy, be it in professional sports or in other industries.

This decision highlights the importance that is placed on the collective bargaining relationship between union and employer representatives. The courts have emphasized the role that arbitrators have in resolving work-related disputes for matters that are covered under the collective agreement. In this case, Bruce's civil action was filed in the wrong forum and his grievances should have been resolved through binding arbitration between the CFL and the CFLPA.

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