3-21-2012

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Cardozo Arts & Entertainment Law Journal

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Posted on March 21, 2012, by admin

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On Monday, March 12th, Commissioner of the National Football League, Roger Goodell, penalized the Washington Redskins and the Dallas Cowboys for "contract practices . . . during the 2010 league year [that] created an unacceptable risk to future competitive balance." This charge traces back to 2008, when the owners, in a move that eventually led to the 18-week lockout, opted out of the collective bargaining agreement. As a result the 2010–11 NFL season did not feature a salary cap.

The NFL, like the NBA and NHL operates under a salary cap, with the goal of promoting competitive balance in the League. By limiting the amount that each club may spend on salaries, the richer teams and poorer teams compete on an even playing field.

Which brings us to the 2010–11 NFL season. Dan Snyder and Jerry Jones, owners of the Washington Redskins and Dallas Cowboys, respectively, took advantage of the uncapped year, by front-loading player contracts. A front-loaded contract is one that pays substantially higher salaries in the early years of the contract and substantially lower salaries in the later years of the contract (cited as an example by the NFL is Cowboys' wide receiver Miles Austin, who received a base salary of $17 million in the uncapped year and $8.54 million in the following, capped year). This worked well for both the players and the owners. The players got more money upfront and the owners freed up cap space for their teams in future seasons by agreeing to spend wildly in the uncapped year in exchange for the players accepting reduced salaries in the subsequent, capped year.

The NFL came down harshly on these two teams. Washington and Dallas will lose $36 million and $10 million in cap space, respectively, over the next two seasons. But where does Goodell get the authority to punish these teams? The conduct of these two teams didn't violate anything in the opted out CBA, anything in the new CBA, and the 2010–11 season didn't operate under a salary cap, so they couldn't exceed the cap. Furthermore, all contracts must be approved by the Commissioner's office, meaning the League had earlier determined that these contracts were acceptable.

What appears to have happened is despite the lack of a salary cap in 2010–11, the League owners colluded to create their own unwritten rules on how much spending would be tolerated during the uncapped season. And when Snyder and Jones violated these rules, Goodell stepped in. "To remedy these effects and preserve competitive balance throughout the league, the parties to the CBA agreed to adjustments to team salary for the 2012 and 2013 seasons."

Despite the owners engaging in collusion, and in light of the *American Needle* decision, which rejected the NFL's single entity defense under §1 of the Sherman Antitrust Act and stated that the owners have the potential to collude, the Players' Association agreed to the penalties levied against the Redskins and Cowboys for three reasons. First, there will not be a net loss in salaries paid throughout the League, as the $46 million will be redistributed equally among the remaining teams (the New Orleans Saints and Oakland Raiders will not share in the cap redistribution after they were found guilty for similar violations, albeit to a lesser extent). Second, as part of the *Brady v. NFL* settlement, the Players' Association agreed to drop all pending legal action against the NFL, including charges of collusive activity that occurred in 2010. Third, and most important, the League was considering lowering the salary cap for the 2012–13 season. With this valuable chip in its pocket, the League was able to come to the bargaining table and told the Players' Association either accept these harsh penalties or the salary cap will be lowered, affecting all players. The League had the Players' Association over a barrel and it knew it.

It is unclear what if any recourse is available to Snyder and Jones. Traditionally, antitrust challenges are brought by players against the league and not by owners. Further, even assuming the Players' Association didn't agree to the punishment levied against Snyder and Jones, it's unclear what damages could be claimed. Since the League redistributed among the other teams all the cap space lost by the Redskins and Cowboys, there is no net loss of salary to the players, and therefore no damages to sue for. Perhaps the only claim that could be advanced by the Players' Association is that the League's actions against the Redskins and Cowboys have caused a chilling effect whereby owners in future uncapped seasons will not spend as freely for fear of League retribution. However, this claim is tenuous at best, as there is no guarantee that there will ever be another uncapped season.

What this means for Snyder and Jones is still unclear. Both the Redskins and Cowboys have disclaimed any wrongdoing. Despite being two of the more outspoken owners in the League, neither one is as litigious as Al Davis was. Whether either owner will rock the boat and challenge Goodell's ruling remains to be seen.
