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How the NBA Should Address Mental Health in its Next Collective Bargaining Agreement

By: Adam Brodsky



Professional North American sports leagues are not immune to intense labor disputes between billionaire owners and millionaire athletes.[1] In contrast to its major counterparts in Football and Baseball, the National Basketball Association, the premiere professional basketball league in the world, has cultivated a reputation as being mostly “player-friendly” over the last several years. Aside from the apparent economic gains that have come with improved labor relations, the NBA has been at the forefront of addressing the mental health concerns of its athletes. This issue had been previously ignored or diminished in cultural and professional settings.[2] High-profile players have openly detailed their mental health struggles, and Commissioner Adam Silver has publicly addressed concerns of “player unhappiness.”[3] In response, in conjunction with the National Basketball Players Association, the NBA has attempted to integrate mental health programs and wellness initiatives into its professional itinerary. Despite this momentum, or perhaps in light of it, the NBA will soon face its most challenging confrontation with players' mental health.

A central and nearly unmovable tenet of NBA player contract negotiation is the guaranteeing of players' base compensation even if the player is unable to play due to injury.[4] However, the Collective Bargaining Agreement between the NBA and NBPA has stipulated that “when a player fails or refuses, without proper and reasonable cause or excuse, to render the services required” by their contract, his team can withhold a portion of his salary.[5] Universally, legitimate physical injury is considered a “proper and reasonable cause” for which salary may not be denied. Considering the NBA's public stance on players' mental health and wellbeing, it would be quite cynical for the league to withhold payment if a player cannot play due to a mental illness or mental health episode. Recently, however, Ben Simmons, now a member of the

Brooklyn Nets, filed a grievance against his former team, the Philadelphia 76ers, to recover the nearly \$20 million it withheld due to his refusal to play or participate in team activities.[6] Simmons asserts that he was not mentally fit to return or play for the team and that the negative publicity he received exacerbated his mental condition.[7] Without further context, this should seemingly result in a clear victory for Simmons and the NBPA; however, Simmons only alerted the team of his mental health struggles several months after he had requested a trade. Cynical media members and fans allege that Simmons is disrespectfully augmenting a mental health problem to recover the money the 76ers denied him.

Furthermore, Simmons' demand to be traded from his team is part of a concerning trend in the NBA, in which players, obligated to perform under their contracts, engender organizational disharmony in the hope that they will be traded to a more desirable location.[8] Critics of Simmons are concerned that if he can recover his full \$20 million, a new template for disgruntled players will emerge: All a player must do is demonstrate a mental unfitness to play in order to recover monies withheld by the team, essentially leaving organizations with no leverage against a recalcitrant player. Furthermore, what if a player is able to demonstrate that being with his current team *causes* him mental anguish and renders him unfit to play for the team? Such a scenario would be entirely untenable and effectively neutralize any breach-of-contract recourse that a team would employ.

The expiration of the NBA's current CBA in 2023 will provide the opportunity to renegotiate this controversial issue so that disgruntled players will not be able to wield "mental health" as a contract-defeating sword. Perhaps the solution rests in adopting, to some extent, the minimally-unionized sports employment regime of the English Premier League, the top level of the English football league system. Some established standards guide player contracts in the Premier League; for instance, the contract must include provisions detailing the length of the contract, the compensation of the player, and the commercial use of the player's image.[9] However, within these minimal requirements, football clubs and players have total freedom to negotiate these provisions in any matter they please. Clubs and players have tremendous latitude in determining the structure of each contract, and the parties may tailor the contract to contemplate the potential risks and rewards as relevant to the individual player.[10]

Following the English Premier League template, the NBA should carve out mental health from serving as a "proper and reasonable cause" for a player's failure to render services. Under this rubric, Simmons and similarly situated players cannot unequivocally utilize mental illness to permissibly violate their player contracts. That is not to say that mental illness should have no application in determining whether a player should be financially penalized for an inability to render services. In this regard, players and their respective teams should have the freedom to privately negotiate the terms of any mental health provisions in a contract. Such a regime will allow the player and team to freely contemplate the likelihood and magnitude of a player's potential discontent and install provisions that individually address matters of mental health. This article is not meant to question the legitimacy of Simmons' mental health claims but rather to enshrine mental health and wellness as an institution that should not be the subject-matter of contractual and legal disputes. Mental health is an incredibly sensitive area that should not be left to speculation; excluding it from the CBA's "proper and reasonable cause" provision will preserve its sanctity.

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[1] Ian Kullgren, *Labor Dispute Upends MLB Season: Baseball Lockout Explained (I)*, Bloomberg L. (Mar. 1, 2022), <https://news.bloomberglaw.com/daily-labor-report/labor-dispute-upending-the-ballgame-baseball-lockout-explained>.

[2] Bruce Y. Lee, *NBA, NBPA Being Proactive About Mental Health, Especially with the Covid-19 Pandemic*, Forbes (Sept. 10, 2021), <https://www.forbes.com/sites/brucelee/2021/09/10/nba-nbpa-being-proactive-about-mental-health-especially-with-the-covid-19-pandemic/?sh=494c53576999>.

[3] Cindy Boren, *'Everything was Spinning': Kevin Love Opens Up About His In-Game Panic Attack*, Wash. Post (Mar. 6, 2018), <https://www.washingtonpost.com/news/early-lead/wp/2018/03/06/everything-was-spinning-kevin-love-opens-up-about-his-in-game-panic-attack/>.

[4] *Compensation*, CBA Breakdown, <https://cbabreakdown.com/compensation> (last visited Apr. 20, 2022).

[5] Collective Bargaining Agreement, Article VI Player Conduct (Jan. 19, 2017), <https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf>.

[6] Bryan Toporek, *Ben Simmons' Grievance Has Major Implications for Disgruntled NBA Stars*, Forbes (Apr. 3, 2022), <https://www.forbes.com/sites/bryantoporek/2022/04/03/ben-simmons-grievance-has-major-implications-for-disgruntled-nba-stars/?sh=11e2def74272>.

[7] *Id.*

[8] Howard Beck, *Superstar Empowerment Is Wreaking Havoc on the NBA*, Sports Illustrated (Feb. 20, 2022), <https://www.si.com/nba/2022/02/20/nba-superstar-empowerment-disruption-trades>.

[9] *Collective Bargaining Agreements in Sports: How do they work in the United States v. Europe*, Sports Fin. Literacy Acad. (Aug. 29, 2018), <https://moneysmartathlete.com/2018/08/29/collective-bargaining-agreements-in-sports-how-do-they-work-in-the-united-states-vs-europe/>.

[10] *Id.*