



CELTICS V. BRIAN SHAW

NBA CBA & UNIFORM PLAYER CONTRACTS (UPC)

Players are bound by both

1

The NBA CBA is a contractual agreement between the NBA and the NBA Players Association (NBAPA) that governs the league and all UPCs

2

The CBA outlines player contracts and only allows specific amendments to UPCs and will not enforce arrangements that part from what is permitted

3

All amendments to the standard UPC are limited to changes relating to compensation to be paid, specialized compensation arrangements, payment schedules, and payment protection

4

Teams have the authority to invoke expedited arbitration if a player "attempts or threatens" to not play

Exhibit A A-1



EXHIBIT A

NATIONAL BASKETBALL ASSOCIATION UNIFORM PLAYER CONTRACT

THIS AGREEMENT made this ____ day of _____, is by and between _____ (hereinafter called the "Team"), a member of the National Basketball Association (hereinafter called the "NBA" or "League") and _____, an individual whose address is shown below (hereinafter called the "Player"). In consideration of the mutual promises hereinafter contained, the parties hereto promise and agree as follows:

1. TERM.

The Team hereby employs the Player as a skilled basketball player for a term of ____ year(s) from the 1st day of September ____.

2. SERVICES.

The services to be rendered by the Player pursuant to this Contract shall include: (a) training camp, (b) practices, meetings, workouts, and skill or conditioning sessions conducted by the Team during the Season, (c) games scheduled for the Team during any Regular Season, (d) Exhibition games scheduled by the Team or the League during and prior to any Regular Season, (e) if the Player is invited to participate, the NBA's All-Star Game (including the Rookie-Sophomore Game) and every event conducted in association with such All-Star Game, but only in accordance with Article XXI of the Collective Bargaining Agreement currently in effect between the NBA and the National Basketball Players Association (hereinafter the "CBA"), (f) Playoff games scheduled by the League subsequent to any Regular Season, (g) promotional and commercial activities of the Team and the League as set forth in this Contract and the CBA, (h) any NBADL Work Assignment in accordance with Article XLI of the CBA, and (i) any service in the NBADL pursuant to a Two-Way Contract.

FACTUAL BACKGROUND

1988

Shaw signs a one-year contract to play for the Boston Celtics

1989

Shaw signs a two-year contract with an Italian team with a clause allowing Shaw to cancel the 2nd year if he chose to return to the NBA

1990

In January, Shaw signs a 5-year contract with the Celtics,. In the agreement, he promises to exercise the clause in his other contract cancelling the 2nd year

June 11

The Celtics invoke expedited arbitration allowed under the CBA because Shaw refuses to leave the Italian team

June 14

The arbitrator finds for the Celtics and the arbitrator's award is later enforced district court requiring Shaw go through with his promise, so Shaw appeals



AMENDED UPC: DOES THIS RELATE TO COMPENSATION?

"Player [i.e., Shaw] and Club [i.e., the Celtics] acknowledge that Player is currently under contract with Il Messaggero Roma (the "Messaggero Contract") for the 1989-90 & 1990-91 playing seasons. The Player represents that in accordance with the terms of the Messaggero Contract, the Player has the right to rescind that contract prior to the 1990-91 season and the player hereby agrees to exercise such right of rescission in the manner and at the time called for by the Messaggero Contract."

Article 1, Section 2 of the CBA permits UPC amendments relating to:(1) compensation to be paid, (2) specialized compensation arrangements, (3) payment schedules, and (4) payment protection.

Shaw claimed that the amendment that required he rescind his previous contract was null and void because it does not fall under any of the prohibited amendments listed in the CBA.

ARBITRATOR'S AWARD & ENFORCEABILITY

The Arbitrator awarded specific performance to the Celtics in the form of requiring Shaw to rescind his agreement with the Italian club as promised

Rule: Generally, courts will uphold an arbitrator's interpretation of a contract so long as their award (1) had a **plausible basis and** (2) was **within the scope of their authority**

1

Plausible basis: the court found that Shaw's promise of recission defined the beginning of the compensation relationship because it paved the way for him to earn the \$1.1 million outlined in the first year of his UPC with the Celtics

2

Within the Scope: Under Article XXVIII of the CBA, if a player "attempts or threatens" not to play, a club may demand "expedited arbitration." Shaw directly expressed to the Celtics his intent to refuse to play for the club, which invoked the club's right to demand arbitration

PRELIMINARY INJUNCTION REQUIREMENTS

Celtics had to show: (1) a likelihood of success on the merits (2) failure to issue the injunction would cause irreparable harm (3) the "balance of harms" favors the Celtics and (4) granting the injunction wouldn't harm public interest

1

Likelihood of Success: the Celtics showed a likelihood of success because the court found the arbitration award lawful at the district court level based on the arbitrator's interpretation of the CBA and the player contract

2

Irreparable Harm: there was irreparable harm because the Celtics would lose a star athlete for their roster next season that cannot be simply replaced by another player nor monetary damages

3

Balance of the Harms: balance of harms favored the Celtics because the Celtics would have issues relating to their roster building and team planning in short notice, while Shaw will merely be losing out on playing for the team that he wanted and will still have a \$5 million contract to fall back on

4

Not against public interest: the injunction would not harm public interest because it furthers the court's goal of encouraging parties, especially in a sports context ("sports are different"), to resolve their disputes through informal arbitration

HOW IT RELATES TO CLASS TOPICS

1

Drafting: (1) I think it would have made a lot more sense to tell Shaw to rescind his contract with the Italian club before issuing him a UPC, but I could see why he didn't, and (2) the NBA and NBAPA should have seen this coming and drafted more specific provisions relating to EuroLeague contracts

2

Interpretation: This dispute was heavy on interpretation and showcases the court's reluctance to stray from an arbitrator's determination, especially in the sports context.

3

Negotiation: it's interesting to consider the additional leverage Shaw had via his other contract. Perhaps the reason he did not rescind his deal before he signed the agreement with the Celtics is because he wanted the additional leverage

4

Ethics: I wonder if the arbitrator considered Shaw backing out of his promise behind his decision to permit the contract amendment that required Shaw to rescind his other contract

QUESTIONS



1

If a court is the first to decide whether the recission provision is related to the compensation amendments permitted under the CBA, do you think it would come to the same determination as the arbitrator?

2

Why do you think courts are so deferential to arbitrators in determining conflicts in the sports context?

CONTRACTS IN THE NEWS

FACTS

- In 1988, Brian Shaw signed a one-year contract to play for the Boston Celtics.
- In 1989, Shaw signed a two-year contract with the Italian team Il Messaggero Roma. The contract contained a clause allowing Shaw to cancel the second year (1990-91) if he returned to the United States to play with the NBA.
- At the end of January 1990, Shaw signed a five-year contract with the Celtics. As part of this contract with the Celtics, Shaw agreed to cancel his contract with Il Messaggero Roma. However, Shaw later decided that he wanted to play for the Italian team, potentially because he could earn a much higher salary after playing another year in Rome.
- On June 11, 1990, the Celtics invoked arbitration seeking specific performance that would require Shaw follow through with his promise to cancel his agreement with Il Messaggero Roma and play out his contract with Boston.
- On June 14, 1990, the arbitrator found in favor of the Celtics and ordered Shaw to rescind the Il Messaggero contract (on June 20) and not to play for any team other than the Celtics during the term of his Celtics contract. Shaw made it clear the following day they asked the federal district court to enforce the arbitrator's decision.
- The court found for the Celtics and ordered the enforcement of the Arbitrator's preliminary injunction.

DISCUSSION

This dispute involves three contracts, which made the determination a complex one. First and most important is the NBA Collective Bargaining Agreement (CBA). Second is the five-year Uniform Player Contract (UPC) between the Boston Celtics and Brian Shaw that was signed pursuant to

Exhibit 1 of the NBA CBA. Third is the two-year contract between the Italian team, Il Messaggero Roma and Brian Shaw.

First, the court had to determine whether the Arbitrator had the authority to issue the preliminary injunction requiring Shaw to follow through with his promise in his contract with the Celtics to rescind his agreement with the Italian club. The agreement with the Celtics states:

"Player [i.e., Shaw] and Club [i.e., the Celtics] acknowledge that Player is currently under contract with Il Messaggero Roma (the "Messaggero Contract") for the 1989-90 & 1990-91 playing seasons. The Player represents that in accordance with the terms of the Messaggero Contract, the Player has the right to rescind that contract prior to the 1990-91 season and the player hereby agrees to exercise such right of rescission in the manner and at the time called for by the Messaggero Contract."

Then, per the NBA CBA, the Celtics could seek arbitration for UPC disputes if they relate to compensation. Under Article XXVIII of the CBA, if a player "attempts or threatens" not to play, a club may demand "expedited arbitration" of the dispute where the arbitrator must convene a hearing no later than 24 hours following the demand for arbitration and must issue an award no later than 24 hours following the hearing. By agreeing to the UPC with the Celtics, Shaw bound himself to the NBA CBA, including the expedited arbitration provision.

Here, under the expedited arbitration in the CBA, the arbitrator awarded a preliminary injunction to the Celtics that required Shaw execute his promise to rescind his agreement with the Italian team. The Celtics had the power to invoke arbitration based on the NBA CBA and the UPC it agreed to with Shaw. The language in the CBA grants teams the power to demand expedited arbitration if a player "attempts or threatens" to not play. Additionally, the UPC Shaw signed with the Celtics gave the Celtics the authority to "obtain from any court or arbitrator ... such equitable relief as may be appropriate" if he was "attempting or threatening to play" for another team. Shaw directly told the Celtics on numerous occasions of his intent to play out his contract with Il Messaggero Roma

instead of honoring his agreement with the Celtics, so the court clearly found the arbitrator had the authority to hear the dispute and issue an award.

Shaw argued that the arbitrator's award was unlawful because the requirement in his UPC that he rescind his other player contract was "null and void" per the NBA CBA. Article 1, Section 2 of the CBA prohibits amendments to the standard UPC outside of the compensation to be paid, specialized compensation arrangements, payment schedules, and payment protection. Shaw claimed that the amendment to his UPC that required he rescind his previous contract with Il Messaggero Roma was null and void because it does not fall under any of the prohibited amendments listed in the CBA.

This issue is one of interpretation that came down to who had the authority to interpret the agreement. Generally, courts will uphold an arbitrator's interpretation of a contract so long as their award (1) had a plausible basis and (2) was within the scope of their authority. The arbitrator was within his scope granted by the CBA for reasons stated above regarding Shaw's threat and intent to refuse to play. As for whether there was a plausible basis for the arbitrator's award, the court found that Shaw's promise of rescission defined the beginning of the compensation relationship because it paved the way for him to earn the \$1.1 million outlined in the first year of his UPC with the Celtics. This basis confirmed the plausibility of the determination of the arbitrator.

Shaw further argued that the district court acted outside its powers in its determination, which included a preliminary injunction requiring he go through with his promise to rescind his contract with the Italian club per the arbitrator's award. The court looked to the following factors:

"(1) have the Celtics shown a likelihood of success on the merits? (2) have they shown that failure to issue the injunction would cause the Celtics "irreparable harm?" (3) does the "balance of harms" favor Shaw or the Celtics? and (4) will granting the injunction harm the "public interest?"

First, the Celtics showed a likelihood of success because the court found the arbitration award lawful as indicated above. Second, there was irreparable harm because the Celtics would lose a star athlete

for their roster next season that cannot be simply replaced by another player nor monetary damages. Third, the balance of harms favored the Celtics because the Celtics would have issues relating to their roster building and team planning in short notice, while Shaw will merely be losing out on playing for the team that he wanted and will still have a \$5 million contract to fall back on. Lastly, the court found issuing the injunction would not harm public interest because it furthers the court's goal of encouraging parties, especially in a sports context ("sports are different"), to resolve their disputes through informal arbitration.

HOW IT RELATES TO DRAFTING, INTERPRETATION, NEGOTIATION AND ETHICS

Drafting: I thought the most interesting aspect of this agreement is the determination to draft a provision requiring Shaw rescind another contract that is not governed by the CBA despite very strict contractual restraints for UPCs under the CBA. From a drafting perspective, it would have made a lot more sense to tell Shaw to rescind his contract with the Italian club before issuing him a UPC.

Interpretation: This dispute showcases the court's reluctance to stray from an arbitrator's determination, especially in the sports context. I believe that if the court was the first to address whether the provision to require a player opt out of a contract with another team in the current contract with the new team, there may have been a different outcome as to whether that was permitted under the CBA's permitted amendments to UPCs.

Negotiation: While we don't know much about the negotiation that led to this arrangement, it's interesting to consider the additional leverage Shaw had via his other contract. Perhaps the reason Shaw did not rescind his deal with Il Messaggero Roma before he signed the agreement with the Celtics is because he wanted the additional leverage.

Ethics: I wonder if the arbitrator considered Shaw backing out of his promise behind his decision to permit the contractual arrangement despite the CBA provisions indicating it might not be legal.

SOURCES

(1) Boston Celtics LP v. Shaw, 908 F.2d 1041 (1st Cir. 1990).

<https://law.justia.com/cases/federal/appellate-courts/F2/908/1041/169143/>.

(2) Boston Celtics Limited Partnership v. Shaw - AnyLaw. <https://www.anylaw.com/case/boston-celtics-limited-partnership-v-shaw/first-circuit/07-16-1990/Kn99PWYBTITomsSBKtWP>.

(3) Sports Arbitration and Enforcing Promises: Brian Shaw and Labor ... - SSRN.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2037964.

(4) Sports arbitration and enforcing promises: Brian Shaw and labor

<https://repository.library.northeastern.edu/files/neu:333007>.

(5) NBA Collective Bargaining Agreement.

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