Case In Point

BC Court Dismisses CFL Concussion Case for Lack of Jurisdiction

Date: March 30, 2016

In a recent decision that has garnered media attention, the Supreme Court of British Columbia concluded it was without jurisdiction to hear claims brought against the Canadian Football League (CFL), its teams and various individuals relating to concussions alleged to have occurred to a former professional football player, as all of the matters in dispute arose under a binding collective bargaining agreement.

Arland Bruce commenced a civil court action for negligence, failure to warn and negligent misrepresentation, seeking substantial damages against the CFL teams and other defendants for an alleged failure to provide safe working conditions and protect his health and safety during his years as a professional football player. Specifically, Mr. Bruce alleged that he was knocked unconscious and suffered a concussion during a game for the BC Lions on September 29, 2012, and that the BC Lions and Montréal Alouettes teams were negligent in allowing him to return to play in the Western Division Final on November 18, 2012 (BC), and throughout the 2013 season (Montréal), and that they misrepresented and failed to warn him of the dangers of continuing to play professional football.

As in Ontario, the relevant BC and Québec labour legislation provides labour arbitrators with exclusive and broad remedial jurisdiction to interpret and apply the terms of a collective agreement under a mandatory grievance and arbitration process, which is binding on the employer, the union and employees. Accordingly, the CFL and the teams brought an application to have the claim removed from the courts and struck out on the basis that the courts did not have jurisdiction to hear the case. They argued that the alleged claims were governed by the terms of his Standard Player Contract (SPC) and the applicable collective agreement, and therefore, pursuant to established Supreme Court of Canada case law, they were within the exclusive jurisdiction of a labour arbitrator – not the courts.

In response, Mr. Bruce argued that the statutory regimes that typically grant labour arbitrators exclusive jurisdiction over such disputes were inapplicable to the CFL due to the unique nature of the collective bargaining relationship, among other things.

The Court rejected this argument and accepted the position of the CFL, the teams, and the other defendants. It concluded that Mr. Bruce's claims arose under the collective agreement, and therefore, must resolved through the grievance and arbitration process. The Court struck out his claim in its entirety.

In reaching its decision, the Court concluded that the dispute related to matters of health and safety, and specifically, whether the CFL or the teams that Mr. Bruce had played for had taken steps to ensure his health and safety in carrying out the duties they allegedly owed to him. More particularly, the Court determined that the substance of Mr. Bruce's claim fell within the scope of the provisions of the collective agreement addressing player safety and player equipment. It further found that the language of the arbitration provisions required disputes between a player and his team and/or the CFL, like that involving Mr. Bruce, to be finally and conclusively settled through the grievance and arbitration process, even if not all of the parties are bound by the collective agreement.

The Court expressly rejected Mr. Bruce's argument that the wording in the relevant provisions – i.e. that a dispute "may be submitted to arbitration" and that a grievance "may be initiated" – made the grievance and arbitration procedure optional or non-exclusive. Nor was the Court persuaded that a player's ability to negotiate his personal compensation or certain other items in the SPC gave it jurisdiction over the case. Instead it found that the authority to negotiate these issues had been delegated by the CFL and CFLPA and had to be performed within the terms of the collective agreement.

The Court further concluded that Mr. Bruce could have obtained a meaningful remedy for any injuries that he may have

suffered under the collective agreement, and that he could have filed a grievance at the time he commenced his civil claims in the courts. In fact, the Court noted that Mr. Bruce was “still arguably eligible” to file a grievance (if an arbitrator granted an extension to the time limits) despite having failed to initiate a grievance within the one-year time limit under the collective agreement. Importantly, however, the Court determined that even if Mr. Bruce was precluded from filing a grievance due to his delay, it would not alter the result in this case because he could have obtained an effective remedy through the grievance and arbitration process.

Significantly, the Court declined to consider the allegations relating to the conduct of the CFL, the teams and other defendants in their research and representations with respect to concussions and head injuries, which was a central part of Mr. Bruce’s case, finding that such an inquiry went to the merits of the dispute and was unnecessary to determine whether it had jurisdiction.

As a result, the Court concluded that it is without jurisdiction to hear the claims and ordered Mr. Bruce’s notice of civil claim to be struck out in its entirety.

Mr. Bruce has filed a Notice of Appeal.

While the matter arose under BC and Québec legislation, this decision affirms and applies well-established first principles of labour law in Canada in the context of labour relations governing professional sports. The decision further underscores that the exclusive jurisdiction model governs these types of disputes, and the key principle of our labour relations framework that matters arising under a collective agreement are arbitrable, and within the exclusive jurisdiction of a labour arbitrator.

The CFL was represented by Hicks Morley’s Stephen J. Shamie and Sean M. Sells, and Geoffrey J. Litherland.

Bruce v. Cohon, 2016 BCSC 419