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**ARBITRATION OPINION AND AWARD
RICHARD R. KASHER, ARBITRATOR
APRIL 9, 1994**

In the Matter of an Arbitration Between

and

**THE NATIONAL FOOTBALL LEAGUE MANAGEMENT
COUNCIL AND THE CLEVELAND BROWNS**

Hearing Location: Cleveland Browns' Offices
80 First Avenue
Berea, OH

Hearing Date: September 28, 1993

Appearances

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for the Grievant

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Nature of Dispute: Fine and Suspension

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Introduction

An arbitration hearing in the above-styled matter was conducted on September 28, 1993 at the Cleveland Browns' Offices in Berea, Ohio.

The hearing was conducted in accordance with the procedural provisions of the 1982 collective bargaining agreement between the National Football League Management Council (hereinafter the "NFLMC" or the "Management Council") and the National Football League Players Association. Counsel were afforded a full and complete opportunity to raise all relevant evidence through the testimony of witnesses and in documentary proofs; a broad range of cross-examination was permitted; and counsel filed post-hearing briefs in support of their respective positions.

The issue before the Arbitrator is whether the Cleveland Browns (hereinafter the "Browns" or the "Club") had just cause to impose a disciplinary fine and/or a disciplinary suspension upon Mr. ██████████ (hereinafter ██████████ or the "Grievant") and, if not, what would be the appropriate remedy.

Background Facts

Mr. William "Bill" Belichick became the Head Coach of the Browns in February, 1991 after a seventeen year career as an Assistant Coach in the National Football League, the last twelve of which were spent with the New York Giants. Coach Belichick

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had served, in his last capacity with the Giants, as Defensive Coordinator.

The Grievant was drafted by the Browns in the 7th round of the 1985 draft, and he was one of the Club's starting wide receivers from 1986 through 1990. After the 1990 season the Grievant and the Club entered contract negotiations which were successfully concluded on or about August 19, 1991. The length of the contract negotiations resulted in the Grievant not participating in the Club's mini-camp, and he also missed training camp activities and all pre-season games.

At the beginning of the 1991 season the Grievant was fourth on the Browns' "depth chart" at the wide receiver position, behind his former starting wide receiver partner, Webster Slaughter, veteran Brian Brennan and rookie Michael Jackson.

In the Club's first two games against the Dallas Cowboys (a loss) and the New England Patriots (a win) the Grievant made cameo appearances at the end of each game and was involved in less than a half dozen plays in each. In the third game of the season against the Cincinnati Bengals the Grievant was elevated to a starting position as the result of an injury to Brian Brennan. At the end of the game, during the "two minute drill", the Grievant played and made several "clutch" catches, which positioned the Browns for a successful field goal that won the game.

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The next game on the Club's schedule was an away game with the New York Giants, Coach Belichick's former team and the reigning 1990 Super Bowl Champions.

The events which resulted in the Grievant's being fined \$15,000 and being suspended for the game with the Giants, with the resultant loss of a game check in the amount of \$30,937.50, occurred during the practice week, which began on September 16, 1991.

As will be more fully discussed below, when the practice week began the Grievant was replaced as the starter in drills and returned to his spot as number four man on the depth chart. The Grievant became frustrated, and he expressed his frustration at the Thursday, September 19, 1991 practice when he refused to participate for a period of time at the conclusion of that practice. By the Grievant's testimony he refused to practice for the last twenty-five minutes of the session; and by Coach Belichick's testimony the Grievant did not participate for approximately forty-five minutes at the conclusion of the session.

Coach Belichick testified and sponsored the Club Rules and Fine Schedule. Coach Belichick stated that the Grievant was placed behind wide receivers Slaughter, Brennan and Jackson because he was "late coming to camp".

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Coach Belichick testified regarding the practice week following the Bengals game; to the effect that Monday was a day for film review, Tuesday was an off-day, and Wednesday and Thursday were full practice days. Coach Belichick testified that at the Thursday, September 19, 1991 practice the players ran "full team drills", and that at some point in time the Grievant stood "with his arms folded kind of behind the group" and "wasn't participating in the practice". Coach Belichick testified that he had several coaches, including Wide Receivers' Coach Ozzie Newsome speak with the Grievant, and that the Grievant advised them that he was not going to practice. Coach Belichick testified that he did not speak to the Grievant during the practice, because doing so, in his opinion, would be too much of a distraction. Coach Belichick observed that "Even though he wasn't participating, he wasn't, you know, actively antagonizing any other players or verbally confronting, you know, any coaches or anything like that". Coach Belichick testified that he confronted the Grievant at the end of the practice and advised him that he was in violation of Club Rules "for not participating in the practice", and that in his mind the Grievant's conduct "was detrimental to the football team because it detracted from what the other players were trying to do which was to prepare for the game". Coach Belichick testified that the Grievant told him that he, the Grievant, "was disappointed with his role in the

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game plan for that week and didn't feel that his participation in the game was what he wanted it to be, and that his disagreement with the situation was more directed towards me and my decision as the head coach as to how he would be utilized, but in terms of what the rest of the team stood for and his other teammates and friends on the team, that he was not trying to impact them, but, you know, what he was doing was voicing his displeasure with what my decision was".

Coach Belichick testified that he asked the Grievant if he would appear at practice the following day, and that the Grievant stated that he did not know but that he would let Coach Belichick know of his intentions.

Coach Belichick testified that he conferred with Browns' management and the Management Council, was advised that the maximum fine was \$15,000 and that he imposed a \$15,000 fine because he felt that was appropriate since the Grievant had missed half of "real week's practice time on Wednesday and Thursday". Coach Belichick testified that he applied Rule 30 (Conduct Detrimental to the Club) in deciding the discipline to be imposed, and not Rule 26 (Missed Practice) because he believed that the Grievant's conduct fell within the purview of Rule 30.

Coach Belichick testified that he met the Grievant on Friday morning, September 20, 1991 and the Grievant advised him that he was "ready to go". Coach Belichick testified that during the

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Friday practice the Grievant's performance was "very poor", as he made "mental errors", "dropped several balls" and his performance was "uncharacteristically poor". Coach Belichick testified that he did not speak with the Grievant at the end of the practice on Friday, and wanted to wait until he had an opportunity to review the film. Coach Belichick testified that at the conclusion of the Friday practice he observed the Grievant conversing with a group of newspaper reporters. Coach Belichick testified that he reviewed the film on Friday after practice, and that he believed that there was a "serious concern" as to how the Grievant would perform in the Giant's game on Sunday. As a result, Coach Belichick testified that he decided to speak with the Grievant on Saturday morning during, what he characterized, as a short team meeting.

Coach Belichick testified that before he met with the Grievant on Saturday morning he was asked if he had read a newspaper article in the Cleveland Plain Dealer in which the Grievant spoke about his desire to be traded. Coach Belichick testified that he read the article, and was "disappointed that this was in the paper, that it was a headline story". Coach Belichick testified that the newspaper article, in his opinion, contradicted the commitment that the Grievant had made to him on Friday morning, to the effect that he would "do what's best for

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the team". Coach Belichick described his reaction to the newspaper article as follows:

When this article, you know, was there in the paper, you know, here we are; it's Saturday morning, and we're getting ready to get on a plane and go to New York. We're trying to get ready to play the Giants, the world champions from the year before, and now we got something in the paper that's going to clearly distract the players from focusing on the Sunday game. I was extremely disappointed to see this type of thing in the paper when, you know, I would have liked for us to be focused on the team to be focused on, the Giants.

Coach Belichick testified that he met with the Grievant on Saturday morning and spoke with him for approximately 30 to 45 minutes; that he spoke to Mr. ██████████ regarding Friday's practice and asked him to explain why he had performed in the manner that he did; and that the Grievant responded that it had been a "tough week". Coach Belichick testified that he concluded that the Grievant was not "focused" and that he was not "mentally in the game"; and that he raised the subject matter of the newspaper article and stated to the Grievant that he believed, based upon their discussion at the conclusion of the Thursday's practice that the matter (the Grievant's frustration/distress) was a "dead issue". Coach Belichick observed that the Grievant's desire to be traded and "the fact that this whole thing was reopened" and was, in Coach Belichick's opinion, "going to be somewhat of a controversial thing with the team heading into the game" upset him and "bothered [him] very much".

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Coach Belichick testified that at the end of their conversation "essentially after ██████████ told me that . . . he felt like his mind wasn't on the game" that he advised the Grievant (1) he was being fined for missing practice or not participating in practice and/or for his conduct on the field and (2) he was being suspended for conduct detrimental to the Club because "he had shown me no evidence either physically on the football field or mentally off the football field that he was prepared and ready to go in and play the game against the Giants".

Coach Belichick testified that the Grievant questioned him about his decision and was "a little taken aback by it", but that he accepted it and left the building.

The Browns lost to the Giants 13 to 10 on Sunday. Coach Belichick testified that on Monday, September 24, 1991, he called the Grievant and arranged to speak with him the following day; and that when they met the following day in Coach Belichick's office, the Grievant stated that he desired to return to the team and have the opportunity to contribute. On this basis, Coach Belichick testified that he lifted the suspension.

On cross-examination, Coach Belichick testified that he never placed in writing a letter or notice to the Grievant advising him of the reasons for the fine and/or the suspension. Coach Belichick testified regarding newspaper articles and events which involved other Browns' players who missed practices or left

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practice or made statements to the press that might be considered detrimental to the Club. Many of the newspaper articles to which Coach Belichick was asked to respond involved starting defensive tackle Michael Dean Perry and statements Mr. Perry made to the press during 1992 and 1993. Coach Belichick identified Player Exhibit Nos. 12 and 13, respectively, a July 23, 1991 letter from Browns' Executive Vice President Ernie Accorsi to Mr. [REDACTED] agent, which stated, *inter alia*, that the Browns had "no problem pursuing a trade for [REDACTED] and had spoken with the Atlanta Falcons, the New York Giants and the Tampa Bay Buccaneers regarding such a trade and a July 28, 1992 Cleveland Plain Dealer article which stated that the Grievant had suggested that he be traded and that the Club had stated that a trade of the Grievant was "not an impossibility".

The Grievant testified that he was not under contract when he attended the Browns' first mini-camp in 1991 and that he did not attend the second. The Grievant testified regarding the contract negotiations, which began at the start of training camp at or about July 20, 1991, and that his agent was pursuing and discussing increased compensation and/or a trade.

The Grievant testified that after he signed his contract for the 1991 season on August 19, 1991, while he did not play in the final pre-season game, he participated in all subsequent practices.

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The Grievant testified that he had been a starting wide receiver for the five years prior to the 1991 season, and that when he was afforded minimal playing time during the Dallas and New England games he became frustrated. The Grievant testified that after the third game of the season against the Bengals, when he made several important catches at the end of the game which positioned the Browns for a winning field goal kick, "I was demoted again". The Grievant testified that when Brian Brennan was placed ahead of him at the practice on Thursday, September 19, 1991 "I got a little frustrated", and that at the conclusion of the practice "we were doing the last few plays of our team and the defensive skeleton stuff which is where we run the dummy squad, which I got a little offended by and a little frustrated because of not being used, not even being looked at, you might say". The Grievant testified as follows regarding his actions:

Q. So, what did you do based upon this frustration?

A. I stood behind the offense, ten, 12 yards out of the way and just watched. I didn't bother anybody, didn't say a word, just watched.

Q. Were you in any way disruptive?

A. I didn't move. If they moved the offense up five yards, I moved up and stood still.

Q. Did you have any discussions with any Club personnel regarding this?

A. Richard Mann [Wide Receiver Coach] came over, and he looked at me, and he saw the look in my eyes, and Rich and I have been together for a long time. He's the receiver coach, and we've been together for a long time, and he knew what was

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going on because I had expressed my opinion to him right after the walk-through when I felt that I wouldn't be playing, and it was out of his hands. He's not the guy in charge.

Then, Ozzie [Newsome] came over and asked me to come on and practice, and do it for me as a friend, and I just said no.

Q. Why was it that you were withholding your services at this point?

A. Well, I guess being here and doing what I do, the part that I have in it, I felt that I was being rejected, and I came to the point where I was completely frustrated. I didn't know what to do. I wasn't -- I just didn't feel like I wanted to run [the] look squad. I didn't want to cause anybody a problem, so I just sat there. I watched the practice, and the other guys knew what was going on, and Brian knew what was going on. My other teammates, I have been with them for a long time, and they knew what I was going through and that it was best to leave me alone.

The Grievant testified that he missed "at tops" twenty-five minutes at the conclusion of the practice, during which the "scout team" drills were being run. The Grievant testified that at the conclusion of the practice Coach Belichick advised him that he was going to be fined, and that we "got into a debate or a discussion about me not playing or not being able to play or not wanting me to play, and he said that he was going to fine me \$15,000." The Grievant testified that his discussion with Coach Belichick was "heated" but that "we didn't yell".

The Grievant testified that he had previously received a copy of the Club's rules and regulations, and that it was his understanding that a player was subject to a \$1,000 fine for a

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"missed practice". The Grievant testified that he had not been previously fined by the Club for any offenses.

The Grievant testified that he reported for practice the following day and spoke with Coach Belichick who asked if he had "put everything behind me", and that he said "yes." The Grievant testified that he played more than usual in practice because fellow wide receiver Webster Slaughter "was out"; and that during the practice he made some mistakes including dropping some passes. The Grievant testified that at the conclusion of the practice he spoke with Cleveland Plain Dealer Reporter Chuck Heaton, who asked whether he had considered "asking for a trade" and that he told Mr. Heaton "I tried that, and they say they won't trade me". The Grievant testified that he did not mention to Mr. Heaton that he had been fined the previous day by Coach Belichick.

The Grievant testified that neither Coach Belichick nor Receivers' Coaches Mann or Newsome said anything to him regarding his performance at the practice on Friday, September 20, 1991.

The Grievant testified that he reported for practice on the morning of Saturday, September 21, 1991 and that Coach Belichick approached him and spoke to him privately. The Grievant testified regarding their conversation as follows:

A. We went to side room and sat down, and we discussed everything that had taken place, and the first thing he asked me was: I thought this was all behind us. I

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said: it is. It's behind me. I have no problem with nothing, and I'm ready to go on with whatever. He said: I don't think that you're ready to play. You made some mistakes yesterday. I said: yeah, I know. Believe me, when someone makes a mistake, we know it before anyone else does because that's the way it is, and we're always hard on ourselves.

We continued to discuss and go on and talk about the whole ordeal, and, then, he told me that I wouldn't be traveling, and he would suspend me, and I asked him over again: Did it have anything to do with the article? He would never say yes. He just kept saying: you're not ready to play.

The Grievant testified that Coach Belichick mentioned "conduct detrimental" and "you're not ready to play", but that he never received any writing describing the nature of his alleged offense. The Grievant testified that he never told Coach Belichick that his "mind was not on the game of football".

The Grievant testified that he met with Coach Belichick on Tuesday morning, September 24, 1991; that the suspension was lifted; and that he resumed playing with the Club and regained his starting position in approximately the seventh or eighth game of the season.

In cross-examination, the Grievant testified that when he stopped practicing on Thursday, September 19, 1991 he was in plain view of the other players and that they knew that he was "in protest". The Grievant testified regarding his opinion as to what constituted "conduct detrimental to the Club", and stated that it was important for a player to be mentally and physically

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prepared to play and that not being "focused" could negatively impact upon the team.

As noted above the issue before the Arbitrator is whether just cause existed for the fine and/or the suspension of the Grievant as the result of his activities beginning on September 19, 1991 to and through September 21, 1991; and, if not, what would be the appropriate remedy.

Position of the Club

The Club points out that Paragraph 30 of the Browns' rules establish that a player will be fined a maximum amount equal to one week's salary and/or suspension without pay for a period not to exceed four weeks for conduct which is considered as being "detrimental to the Club"; and that while certain offenses are specified, the language of the rule indicates that conduct detrimental to the Club is not limited to those offenses.

The Club submits that Coach Belichick properly concluded, since Wednesday and Thursday, September 18 and 19, 1991 were the two most important practices preceding the New York Giants' game, that the Grievant was justifiably subject to a \$15,000 fine, which represented one half of his weekly salary, because of his refusal to participate in the September 19, 1991 practice.

The Club further submits that, when the Grievant acknowledged to Coach Belichick on Saturday, September 21, 1991

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that he had had a poor practice because he was not "focused", the Club properly concluded that the Grievant should be suspended for the Giants' game because he had failed to demonstrate, either physically or mentally, that he was prepared to play.

The Club argues that the Grievant refused to participate in a mandatory team practice and stood "defiantly" on the sidelines four days before a critical game with the New York Giants and that this action constituted conduct detrimental to the Club and justified the imposition of a \$15,000 fine consistent Paragraphs 2 and 14, which incorporate the Club's rules, of the 1991 NFL player contract signed by the Grievant.

In support of its position that the Club's actions in this case were appropriate and reasonable, the Browns rely, in part, upon the case of Donnell Thompson v. Indianapolis Colts, (Kasher, 1984). The Club contends that the Grievant's activities were designed to disrupt the team practice by drawing the attention of his teammates, and that he admitted that he was not mentally prepared to play in the upcoming Giants' game.

The Club submits that the Grievant's arguments to rescind the discipline are unpersuasive. The Club contends that the Grievant was on notice that his conduct could lead to disciplinary action. The Club asserts that the Grievant, as a veteran player, is expected to be familiar with the system of discipline and the rules of conduct established by the Browns;

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but that in spite of this understanding the Grievant knowingly embarked upon a course of action which he knew could have resulted in some type of reprimand and/or discipline from the Club. The Club points out that although the Grievant did not receive discipline in a written statement from the Browns, he admitted that he did receive the schedule of fines when he arrived at training camp and that he was told by Coach Belichick that he had engaged in conduct detrimental to the Club on September 19 and 20, 1991.

The Club argues that the Grievant's conduct at the practice on September 19, 1991 cannot be properly categorized as "a missed or unauthorized absence". The Club maintains that the Grievant's actions are not analogous to a player leaving the practice field and walking out of training camp, as Michael Perry did, which the Club submits is an action "fairly common in training camp". The club asserts that the Grievant's "antics", unlike Michael Dean Perry's leaving training camp, "occurred during a regular season practice session"; and that the Grievant remained on the field "where his presence and demeanor made it clear to everyone around that he was challenging a team decision and he better be left alone". The Club submits that the Grievant, unlike Michael Dean Perry, caused a distraction to the other players on the field, and when these distractions were reported to Coach Belichick he properly concluded that the Grievant should be disciplined.

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Relying upon the testimony of Coach Belichick, the Club submits that the Grievant's actions on September 19, 1991 constitute misconduct and are not properly analogized to the situation where a player, "through whatever the series of circumstances [was], unable to attend practice". The club points out that Coach Belichick testified that the Grievant's action was "extraordinary" and that he had never been confronted with a similar situation of a player refusing to participate in his previous eighteen years as a professional football coach.

The Club contends that Coach Belichick uniformly enforced discipline consistent with the schedule of discipline established by the Club. The Club argues that there is no evidence that the Grievant was disciplined for his comments to the press, or that Coach Belichick ever disciplined any player for comments to the press. The Club asserts that Coach Belichick acted evenhandedly in doling out discipline to his players, and that the Grievant's conduct is unprecedented and nullifies any comparison with other discipline within the Browns' organization.

Based upon the foregoing facts and arguments, the Club submits that the Grievant engaged in conduct detrimental to the Club and that he was properly fined and suspended for his actions. Accordingly, the Club submits that the grievance should be denied.

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The Grievant contends that the Club failed to define and/or put in writing his alleged offenses; and points out that in Campbell v. New Orleans Saints (Luskin, 1983) and Thompson v. Indianapolis Colts (Kasher, 1984) arbitrators have concluded that it is fundamental in a discipline case that the disciplined employee be notified in writing of the reasons for which he is being disciplined.

The Grievant argues that the Club's fine and suspension were imposed without just cause and were excessive. The Grievant points out that he briefly withheld his services on Thursday, September 19, 1991 during a practice as a result of genuine frustration, and submits that his conduct was not disruptive and did not merit the "draconian" punishment imposed by Coach Belichick. In support of his argument that the punishment was excessive, the Grievant relies upon the case of Alexander v. New York Yankees (Bloch, 1983), in which it was concluded that a "spur-of-the-moment misjudgment" did not justify a harsh penalty.

Insofar as the suspension imposed on September 21, 1991 is concerned, the Grievant asserts that there was no incident which led to the suspension. The Grievant refers to his testimony regarding the conversation he had with Coach Belichick on that morning, and submits that it was Coach Belichick who concluded that he, the Grievant, was "not ready to play". Relying upon the

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decision in Billups v. Cincinnati Bengals (Kasher, 1992) the Grievant submits that the Club has failed to establish by "substantial and convincing evidence" that he engaged in conduct which justified the imposition of discipline.

The Grievant submits, assuming arguendo that there was just cause for the imposition of some discipline, that both punishments were excessive. In support of this contention the Grievant relies upon the cases of Barr v. San Francisco Giants (Porter, 1977) and the Campbell v. New Orleans Saints case, cited above. In contrasting his situation with that of Campbell, the Grievant submits that he did not commit an act of insubordination, that he engaged in no remonstrations with the head coach or an assistant coach and that he had no record of prior fines, all elements in the Campbell case in which Mr. Campbell was found to only have warranted a \$500 fine.

The Grievant maintains that his disciplines violate the Club's rules, which rules were not uniformly imposed in dealing with other players. The Grievant points out that there is no penalty listed for "failing to participate in part of a practice"; and that the "closest" offense referenced in the rules involves being late for an appointment, a meeting or a practice, which offenses merit a \$200 fine, while missing an appointment, meeting or practice may result in a \$1,000 fine. The Grievant argues that failure to participate in part of a practice is not

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as severe an offense as reporting late or failing to report at all, and thus a \$15,000 fine is excessive.

The Grievant maintains that his poor performance in the Friday, September 20, 1991 practice does not constitute a "fineable" offense and that there is no merit in Coach Belichick's "vague contention" that the Grievant was not ready to play.

Referring to Paragraph 30 of the Browns' Club Rules, which enumerate offenses that are "detrimental to the Club", the Grievant contends that his actions on September 19 and 20, 1991 did not constitute such conduct. The Grievant points out that the Club drafted its Rules unilaterally, and the failure to specify certain actions as being violative of those rules or any ambiguities in those rules should be construed against the Club.

The Grievant argues that the Browns violated the Club's obligation to impose discipline uniformly and relies upon the treatment accorded by the Club to Defensive Tackle Michael Dean Perry, Wide Receiver Webster Slaughter and a player named George Williams who was on the Club's roster at the start of the 1993 season.

The Grievant argues that the Club failed to adhere to the notion of progressive discipline in his case, and points out that the Club's Rules recognize that repeated violations of any rule may result in an escalation of discipline. The Grievant submits,

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notwithstanding his previously clean slate, that he was fined a substantial amount (\$15,000) for a first purported offense, and then suspended, without pay, for his second alleged offense. This action, in the Grievant's opinion, represented immediate and harsh retribution, and runs contrary to notions of progressive discipline frequently cited in sports arbitration cases.

Based upon the foregoing facts and arguments, the Grievant maintains that the club has failed to meet its threshold burden of defining and establishing that he engaged in "conduct detrimental to the Club", and further failed to meet the standard of proof justifying the imposition of discipline. Therefore, the Grievant requests that the grievance be sustained and that the Club be directed to make him whole in the amount of \$45,937.50, representing monies lost as a result of the fine and suspension.

Findings and Opinion

In many material respects the testimony of both Coach Belichick and the Grievant regarding the events which led to Coach Belichick disciplining ██████████ are consistent. It is this Arbitrator's opinion that there are only three relevant areas of factual dispute which require inquiry, in order to determine whether the Club had just cause to fine and suspend the Grievant.

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The first two factual disputes which should be addressed regard the questions of the manner and extent to which (1) the Grievant refused to participate in part of the September 19, 1991 practice and (2) whether the Grievant's actions on that date constituted a "distraction" or "disruption", which, if they did, would contribute substantially to Coach Belichick's conclusion that the Grievant was guilty of conduct detrimental to the Club.

Interestingly, the Grievant appears to have admitted that he "refused" to participate at the end of the practice and that his reasons for refusing to practice were well-known to his coaches and to some, if not all, of his teammates. Ordinarily, admissions of this type would be sufficient basis for concluding that there was substantial and convincing evidence in the record to justify the imposition of discipline. However, the second of the Grievant's admissions, that is, that "the other guys knew what was going on" and "they [his teammates] knew what I was going through and that it was best to leave me alone", is pure speculation. Absent the testimony of any coach as to what the Grievant's teammates said or did concerning the Grievant's standing back with his arms folded for approximately 25 minutes, there is insubstantial evidence in the record to conclude that the Grievant's actions on September 19, 1991 "disrupted" the practice or "distracted" his teammates. If anything, the

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evidence of record would appear to support a conclusion that the practice ran smoothly without the participation of the Grievant.

It is not uncommon during practice sessions in the regular season for players, who are on the 47 member roster to stand aside and observe parts or all of a practice and not participate; either because they are slightly injured or not involved in the particular drills. There is no evidence in this record to establish that the Grievant's teammates understood why the Grievant was not participating during the final "scout team" portion of the September 19, 1991 practice.

On the other hand, the Grievant's testimony would support the conclusion that Coaches Mann and Newsome understood that the Grievant was distressed because of his "demotion" to the fourth position on the wide receiver depth chart; and while it is appropriate to conclude that the Grievant "refused" a request by Coach Newsome to participate in the practice, as a favor to Coach Newsome who was the Grievant's former teammate, there is insufficient evidence to establish that the Grievant was guilty, in labor management relations parlance, of insubordination. There is no evidence that the Grievant was directed to participate in the last portion of the practice, nor can one speculate that if he was so ordered he would have refused.

Thus, the Grievant's "refusal" to participate in the last portion of the practice, while it represented a serious breach of

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Club rules, did not rise to the level of "insubordination" and did not cause a disruption or distraction during the team's practice. In fact, Coach Belichick's testimony belies the argument that the Grievant "defiantly" stood on the sidelines and created a distraction. Coach Belichick testified that the Grievant was not "actively antagonizing other players or verbally confronting . . . any coaches". The evidence of record reflects that the Grievant passively and, apparently, unobtrusively stood back and watched the last 15 minutes of practice.

Based upon these findings, it is this Arbitrator's opinion that the Grievant's actions did not justify the imposition of the harshest penalty possible under the "conduct detrimental" discipline schedule.

Additionally, the Grievant was entitled at some time to be placed on notice as to what consequences would flow from his refusal to participate in the last segment of Thursday's practice. Any disciplinary program requires that individuals subject to that program understand, with reasonable certainty, what results will occur if they breach established rules. Not only was the Grievant not advised at the time he stood aside with his arms folded that if he did not resume practice he would be subject to a \$15,000 fine, but the Club's failure to memorialize in writing the basis for the imposition of this most harsh penalty deprived the Grievant and other Browns' players from

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knowing what consequences would flow in the future if, in fact, they violated certain rules regarding participation in practices.

Accordingly, it is this Arbitrator's opinion that the Grievant's non-participation during the last portion of the practice was an event which justified the imposition of discipline. However, as the Grievant did not disrupt the practice, did not cause a distraction and did not act in an insubordinate manner, it is this Arbitrator's opinion that the Grievant's offense is most closely analogous to the circumstance when a player is late for a practice (Club Rule #12), and therefore misses part of the practice and subjects himself to a fine of \$200 for the first offense.

On Saturday, September 21, 1991 Coach Belichick determined that the Grievant had shown him no evidence "either physically on the football field or mentally off the football field that he was prepared and ready to go in and play the game against the Giants". The Grievant disputes Coach Belichick's recollection that he, the Grievant, told him, Coach Belichick, that "his mind wasn't on the game". There is substantial reason to credit the Grievant's testimony regarding the discussion on Saturday morning, September 21, 1991 that he had with Coach Belichick.

Coach Belichick, by his own testimony, acknowledged that he was upset when he read the article in the Cleveland Plain Dealer on the morning of September 21, 1991, which reported that ██████████

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██████████ wanted to be traded. In fact, Coach Belichick testified that the Grievant's desire to be traded and the newspaper article "bothered [him, Coach Belichick] very much". It is clear that with this mindset of distress Coach Belichick confronted the Grievant and concluded, in spite of the Grievant's capable play the week before against the Bengals, that the Grievant had shown "me no evidence . . . physically on the football field" that he was prepared and ready to play against the Giants. Presumably, Coach Belichick concluded that the Grievant's dropping several passes in practice meant that he, the Grievant, was not prepared physically to play against the Giants. There is no evidence supporting that speculation. In 1988 ██████████ ██████████ caught 57 passes and averaged 13.7 yards per reception; in 1989 ██████████ ██████████ caught 60 passes and averaged 12.5 yards per reception; and in 1990 (in 12 games, three-quarters of the regular season) ██████████ caught 45 passes and averaged 13.0 yards per reception. There is no evidence in this record to support Coach Belichick's conclusion that ██████████ ██████████ was not prepared physically to play in the fourth regular season game in 1991 against the Giants. The Grievant caught four passes the previous week against the Bengals, and did not complain of and was not found to be suffering from any physical infirmity. Therefore there was no basis to conclude that the Grievant was not physically prepared to play.

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██████████ credible denial that he did not tell Coach Belichick that he was not mentally prepared to play in the game supports this Arbitrator's conclusion that Coach Belichick concluded that the Grievant was not "mentally fit to play" because of his, Coach Belichick's, interpretation of the Cleveland Plain Dealer article which appeared in Saturday morning's paper.

Clearly, the Club cannot be contending that the newspaper article constituted "conduct detrimental to the Club"; for if it did, Players' Exhibit No. 14, a September 12, 1991 Cleveland Plain Dealer article which states in its headline "Former Holdout Now Left Out - ██████████ Feels Slighted By New Coaching Staff", was a lengthier discourse regarding the Grievant's discontent with his position on the depth chart and his desire to be traded.

"Conduct detrimental to the Club" is a most serious offense and justifies the imposition, in most circumstances, of severe penalties. However, the Club carries the burden of proving by clear and convincing evidence that a player engaged in conduct which a reasonable person would characterize as "detrimental to the Club".

The question in this case is what conduct did ██████████ ██████████ engage in on Friday and Saturday, September 20 and 21, 1991 which constituted "conduct detrimental to the Club". There is no showing that he purposefully "sabotaged" the practice on

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Friday, September 20, 1991 by his "mental errors" or a few "dropped passes", or that he caused any distraction or contributed to a lack of "focus" by the Browns on that date.

Coach Belichick may have suspected that the Grievant's frustration caused by his not regaining his starting position would result in the Grievant not having "his head in the game". However, absent any hard evidence that the Grievant engaged in identifiable conduct which a reasonable person would conclude was "detrimental" to the Browns, this Arbitrator finds that the Club has failed to carry its burden of proof and establish that it had just cause to suspend the Grievant for the September 22, 1991 game against the New York Giants.

Accordingly, the grievance will be sustained in part and denied in part in accordance with the above-findings.

Award: The grievance is sustained. The Browns failed to establish that the Grievant engaged in "conduct detrimental to the club" on Thursday and Friday, September 19 and 20, 1991. Therefore the fine and the deduction of pay associated with those alleged acts are to be rescinded, and the Club is directed to reimburse the Grievant in the amount of \$45,737.50, which represents the total amount of the assessment for the fine and the suspension less \$200 which would have been appropriately assessed for the Grievant's failure to participate in the entirety of the September 19, 1991 practice. This Award was signed this 9th day of April, 1991

Richard R. Kasher
Richard R. Kasher, Arbitrator