2012 WL 3776739 (E.D.La.) (Trial Motion, Memorandum and Affidavit)
United States District Court, E.D. Louisiana.

Jonathan VILMA, Plaintiff,
v.
ROGER GOODELL, et al, Defendants.
This Document Refers to 12-CV-1718: Jonathan Vjema,
v.
The National Football League.

Nos. 12-CV-1283, 12-CV-1718.
July 30, 2012.

Supplemental Memorandum in Support of Plaintiff Jonathan Vilma's Motion for a Temporary Restraining Order and Preliminary Injunction (Rec. Doc.28)

Peter R. Ginsberg Law, LLC, Peter R. Ginsberg, pro hac vice, 12 East 49th Street, 30th Floor, New York, NY 10017, (646) 374-0030, pginsberg@prglaw.com, Attorneys for Plaintiff.

Williams Law Group, LLC, Conrad S.P. Williams, III (14499), J. Christopher Zainey, Jr. (32022), 909 Poydras Street, Suite 1625, New Orleans, LA 70112, (985) 876-7595, duke@williamslawgroup.org, chris @williamslawgroup.org, Attorneys for Plaintiff.

Judge Helen G. Berrigan.
Magistrate Judge Daniel E. Knowles, III.

SECTION: “C”

DIVISION: (3)

MAY IT PLEASE THE COURT:

As ordered by the Court, we will be filing a Memorandum of Law in Reply to the NFL's Response to our Motion for a Temporary Restraining Order and Preliminary Injunction on behalf of Jonathan Vilma on August 3, 2012. In light of questions presented by the Court at the July 26, 2012 hearing, and while our request for injunctive relief is *subjudice*, we respectfully submit the following for the Court's consideration.

EXHAUSTION ISSUE/FUTILITY

We respectfully submit that Mr. Vilma satisfied any obligation he had to exhaust his administrative remedies by filing and arguing legal motions at the June 18, 2012 Appeal Hearing, contesting the jurisdiction of Commissioner Roger Goodell to preside over the matter at the Appeal Hearing given the nature of the underlying allegations, moving to prohibit Mr. Goodell from serving as Arbitrator in light of his bias and prejudgment of the underlying allegations, and providing a detailed proffer of Mr. Vilma's position regarding the underlying allegations.

In the event there remains doubt regarding the exhaustion issue, we respectfully submit for the Court's consideration the following case law regarding the exhaustion requirement: *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324, 330-31

(1969); *Barousse v. Paper Allied-Industrial, Chemical & Energy Workers Int'l Union*, 265 F.3d 1059, 2001 WL 872844, at *l-2 (5th Cir. 2001) (not designated for publication); *Rabalais v. Dresser Indus., Inc.*, 566 F.2d 518, 519 (5th Cir. 1978). The exhaustion requirement for arbitral procedures is not applicable when "exhaustion of contractual remedies would be futile because the aggrieved employee would have to submit his claim to a group 'which is in large part chosen by the [opposing party] against whom (his) real complaint is made." *Rabalais*, 566 F.2d at 519. While we do not suggest by any means that this exception is applicable whenever Mr. Goodell presides over 'conduct detrimental' proceedings, when Mr. Goodell has prejudged - publicly and unwaveringly - the seminal issues to be resolved at the Appeal, the exception to the exhaustion requirement is applicable, and Mr. Vilma would have been justified in not participating in the Appeal Hearing.

Likewise in *Barousse*, 265 F.3d 1059, 2001 WL 872844, at *l-2, the court applied the futility exception: "The parties are on opposite ends of the argument. . . [T]he Union's argument that the employees must turn toward the Union itself for resolution of the issue rings hollow. Requiring the employees to pursue their grievance internally, **when the Union has already stated their position on the issue**, appears to be a futile action that would fall within the exceptions granted to the exhaustion requirement." *Id*. at *5 (emphasis added).

In *Glover*, the Court addressed the exception to the exhaustion requirement "where the effort to proceed formally with contractual or administrative remedies would be wholly futile." A group of railroad employees alleged that they had no opportunity to advance their careers due to racial discrimination. The employees' complaint alleged "in the clearest possible terms that a formal effort to pursue contractual or administrative remedies would be absolutely futile." In such cases, "insistence that petitioners exhaust the remedies" set out in the CBA "would only serve to prolong the deprivation of rights to which these petitioners according to their allegations are justly and legally entitled." *Id*. at 331.

INAPPLICABILITY OF NORRIS-LA GUARDIA

The Norris-La Guardia Act does not bar Mr. Vilma's request for injunctive relief. The Norris-La Guardia Act applies to "union-management disputes," *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 251 (1970), and bars injunctive relief only in "a case involving or growing out of a labor dispute." 29 U.S.C. § 101. This action is not a "union-management dispute," as is evident given the underlying purpose of the prohibition. The prohibition "was designed primarily to protect working men in the exercise of organized, economic power, which is vital to collective bargaining." *Brotherhood of R.R. Trainmen v. Chicago R. & I.R. Co.*, 353 U.S. 30, 40-41 (1957). Mr. Vilma is not engaged in organized protests or other unionized activity and is not seeking protection from retribution. He is seeking judicial relief from an inappropriate arbitration award.

This action likewise is not a "labor dispute." A labor dispute is a dispute that addresses the "terms or conditions of employment." 29 U.S.C. § 113(c). Mr. Vilma's "terms and conditions of employment" are not at issue in this litigation. Mr. Vilma is not challenging, and there is no dispute over, the terms and conditions of his employment as negotiated in the current NFL-NFLPA CBA. *See* National Labor Relations Act, 29 U.S.C. § 158(a)(5)(d) (obligating employers and employees to bargain collectively "with respect to wages, hours, and other terms and conditions of employment"). Similarly, Mr. Vilma is not challenging the NFL-NFLPA CBA's process for resolving disputes or the Commissioner's authority to resolve such disputes. Rather, Mr. Vilma is challenging the process used to impose this particular punishment, contending that the Arbitration Award violates the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16. Pursuant to the LMRA and the FAA, there are specific grounds pursuant to which an arbitration award in this very situation can - and should - be vacated, and resolution of such a challenge lies in the courts.

Finally, this action is exempt from the Norris-La Guardia Act's bar on injunctive relief even if the Court were to find that this action is a "labor dispute" as defined in the Act. The Norris-La Guardia Act permits courts to issue an injunction, following a hearing, where the moving party "has no adequate remedy at law." 29 U.S.C. § 107(d). An adequate remedy at law exists where a party can obtain adequate money damages. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (citation omitted); *see also N.L.R.B. v. Electro-Voice, Inc.*, 83 F.3d 1559 (7th Cir. 1996) (reversing denial of injunctive relief in labor dispute

where “award of damages” would not be adequate remedy at law). This action seeks to vacate an arbitration award; money damages are not sought.

Money damages cannot replace the value of the games that Mr. Vilma stands to lose if the NFL's suspension is not enjoined. The games represent a significant portion of Mr. Vilma's extremely short career that cannot adequately be remedied with monetary damages. *See Haywood v. National Basketball Association*, 401 U.S. 1204 (1971) (injunctive relief necessary to allow professional basketball player to compete or he would otherwise “suffer irreparable injury”); *Williams v. The National Football League*, 27-cv-08-29778, 2009 WL 6423837 (Minn.Dist.Ct. July 9, 2009) (“loss of NFL playing time is sufficient to constitute irreparable harm”); *National Football League Players Ass'n v. National Football League*, 598 F.Supp.2d 971, 982 (D.Minn. 2008) (“[t]he players are certainly harmed by the impending suspensions”); *also Jackson v. National Football League*, 802 F.Supp. 226, 231 (D.Minn. 1992) (“[t]he existence of irreparable injury is underscored by the undisputed brevity and precariousness of...players' careers in professional sports, particularly in the NFL”); *Linseman v. World Hockey Ass'n*, 439 F.Supp. 1315, 1319 (D.Conn. 1977) (“the career of a professional athlete is more limited than that of persons engaged in almost any other occupation. Consequently the loss of even one year of playing time is very detrimental”).

For the foregoing reasons, and for those previously briefed and/or otherwise addressed with this Honorable Court at the Preliminary Injunction Hearing on July 26, 2012, Mr. Vilma respectfully requests the Court to temporarily restrain and/or preliminarily enjoin the NFL from effectuating the suspension against him pending resolution of the instant action, and grant other relief as the Court deems just and proper.

Dated: New York, New York

July 28, 2012

Dated: New Orleans, Louisiana

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.