Supreme Court Leaves Issue of Pay for Athletes Unresolved

By BRAD WOLVERTON

THE DEBATE over amateurism in college sports will not be settled anytime soon, as the U.S. Supreme Court said last week that it would not take up a case involving athletes' compensation.

The decision, which stems from a lawsuit filed by Ed O'Bannon, a former UCLA basketball star who had sought to be paid for the commercial use of his image, leaves in place lower-court rulings that found that certain NCAA amateurism rules violate federal antitrust law.

ATHLETICS

Those rulings prohibit pay for play but allow big-time college football and basketball players to be compensated up to their full cost of attendance. Many athletic departments already cover those costs.

The plaintiffs had appealed to the justices to reinstate a plan that would have allowed players to be paid an additional $5,000 a year for the use of their images and likenesses. A federal appeals court shot down that idea last year.

Critics of the National Collegiate Athletic Association's restrictions on player pay had hoped the Supreme Court might propose alternative remedies, such as group licensing agreements or other deals related to television broadcasts in which college athletes appear. Such deals could provide tens of thousands of dollars a year for football and basketball players.

The Supreme Court's action left many colleges relieved that they won't have to make those extra payments — at least not anytime soon. But the court's decision not to consider the case could expose the NCAA to more legal challenges. It also left open the question of whether and how college athletes should be compensated for the commercial use of their images.

"We're still unclear what the law is, and we're going to continue to see these kinds of cases being brought until either the Supreme Court takes one and gives us some definitive guidance, or we get several circuit courts all agreeing on how they should be analyzed and dealt with," says Gary R. Roberts, a legal expert who has followed the O'Bannon case closely. "We really don't know much of anything yet."

VIOLATIONS AND REMEDIES

The case, which went to trial in 2014 before Judge Claudia Wilken, of the U.S. District Court in Oakland, Calif., brought out a cast of characters. Those representing the plaintiffs, including Mr. O'Bannon and many other players who said they were wronged by the NCAA, were intent on piercing holes in the NCAA's amateurism model. The NCAA and its representatives justified the association's amateur ideals to prevent players from being paid above the cost of their scholarships.

Judge Wilken determined that the NCAA's use of players' names, images, and likenesses without pay violated federal antitrust law. As a remedy, she suggested that colleges could increase the value of football and basketball players' scholarships to meet their educational needs. Colleges, however, would not be required to make those payments. She also proposed allowing institutions to set aside up to $5,000 a year in trust for those players.

Last year a three-judge panel for the U.S. Court of Appeals for the Ninth Circuit rejected paying athletes more than the cost of attendance but upheld the finding that the NCAA had violated antitrust law.

Mr. O'Bannon's lawyers appealed that ruling, asking for the $5,000 remedy to be reinstated. They also wanted to settle antitrust questions for future legal challenges.

At trial, the NCAA argued that it did not own the rights to players' names and images, and therefore could not have restrained players from trading on them. It hoped the Supreme Court would consider that defense.

Both the plaintiffs and the NCAA also wanted the justices to provide more clarity around amateurism. The NCAA disputes that its amateurism rules violate antitrust law, citing a 1984 Supreme Court case in which the court ruled that college athletes must not be paid in order to preserve the association's amateur model.

"While we are disappointed with this decision not to review this case, we remain pleased that the Ninth Circuit agreed with us that amateurism is an essential component of college sports and that NCAA members should not be forced by the courts to provide benefits untethered to education, including providing any payments beyond the full cost of attendance," Donald Remy, the NCAA's chief legal officer, said in a statement released last week.

Michael Hausfeld, a lawyer for the plaintiffs, said in a statement that his team would have liked the Supreme Court's review, but that "we remain pleased with our trial victory and the Ninth Circuit's decision upholding the NCAA's liability."

A NEW PRECEDENT?

Legal experts say the justices could still take up the issue of player compensation through one of several legal challenges now working their way through the courts.

The most prominent involves Jeffrey Kessler, a lawyer who helped bring free agency to the NFL and NBA. His claim, brought on behalf of Martin Jenkins, a former Clemson University football player, aims to create a market for college athletes' services, arguing that any cap on scholarship limits is an antitrust violation.

Colleges have opposed such ideas, concerned that an open market could lead to bidding wars for players, diverting from their educational missions.

Mr. O'Bannon's case could be used as precedent for the Jenkins complaint, says Michael McCann, director of the Sports and Entertainment Law Institute at the University of New Hampshire School of Law.

If Mr. Jenkins prevails, Mr. McCann wrote last week on SI.com, *Sports Illustrated*'s website, it would upend the NCAA's system of amateurism.

But the NCAA might use the O'Bannon decision, he says, to highlight the judicial reluctance to impose sweeping changes to amateurism.

Either way, the matter is not likely to be resolved for years, which should give the NCAA plenty of time to consider additional benefits for players. ■