

FOOTBALL MANAGER FAILS IN CHALLENGE TO PREMIER LEAGUE ARBITRATION AWARD

Pulis v Crystal Palace Football Club [2016] EWHC 2999 (Comm)

Introduction

By a decision handed down on 18 November 2016 in *Pulis v Crystal Palace Football Club* [2016] EWHC 2999 (Comm), the English Commercial Court rejected a football manager's challenge, brought pursuant to Section 68 of the Arbitration Act 1996, to an arbitral award that had been made against that manager concerning early receipt of a bonus by deceit.

Background

During the 2013/2014 season, Crystal Palace Football Club ("the Defendant") was in the Premier League and employed Mr Pulis ("the Claimant") as manager. The Claimant was entitled by virtue of his contract to receive a £2 million bonus in the event that: (1) the Defendant did not get relegated out of the Premier League; and (2) the Claimant was still employed by the Defendant on 31 August 2014.

The Defendant did not get relegated. In early August 2014, the Claimant gave the Defendant's chairman an assurance of his commitment and requested early payment of his contractual bonus, giving as his reasons the fact that the money was urgently needed by the Claimant in order to fund a purchase of land for the Claimant's children. The Claimant received the contractual bonus on 12 August 2014. However, on the evening of 13 August 2014, the Claimant informed the Defendant of his wish to leave the club, which he did on 14 August 2014.

The Defendant commenced arbitration before a Premier League Managers' Arbitration Tribunal (Kenneth MacLean QC, Chairman; Nicholas Randall QC; Edwin Glasgow QC). The Defendant claimed that the Claimant obtained his contractual bonus early through fraudulent misrepresentations. The Claimant contended that the real reason why he had left was due to what was described as a "heated players' meeting" that, on the Claimant's case, had occurred on 12 August 2014. The events of this meeting had caused the Claimant to no longer be prepared to commit himself to the Defendant. The Claimant provided two witnesses to attest to the events of the meeting. The Defendant provided the tribunal with contemporaneous documents that proved that the meeting in question had not occurred on 12 August 2014, but had actually occurred on 8 August 2014 (i.e. 4 days before the Claimant's bonus was paid). The tribunal additionally found that there had been no imminent land purchase transaction in existence at the time when the Claimant made that representation to the Defendant.

Thus, by a Partial Final Award handed down on 10 March 2016, the tribunal held that the Claimant had procured his contractual bonus from the Defendant early through fraudulent misrepresentation/deceit. The Claimant was ordered to pay £3.7 million in damages as a reflection of the bonus payment (including the tax element that the Defendant had paid to Her

Majesty's Revenue & Customs ("HMRC")). The tribunal also ordered the repudiation of the Claimant's contract.

The Application under Section 68 of the Arbitration Act 1996

The Claimant filed an application to challenge the award under Section 68 of the Arbitration Act 1996. In the application, the Claimant argued that the tribunal's approach had been marred by "serious irregularities" that had caused substantial injustice to the Claimant. These alleged "serious irregularities" concerned the tribunal's failure to address:

- (1) the evidence of the Claimant's two witnesses regarding the correct date of the heated players' meeting (and why the tribunal had rejected that evidence);
- (2) the potential for the Defendant to achieve a double recovery in light of the fact that the Defendant may yet recover the tax element of the Claimant's bonus from HMRC;
- (3) the corporation tax benefit enjoyed by the Defendant from the payment of the bonus.

Decision

The English Commercial Court (Sir Michael Burton) dismissed the challenge.

As regards the issue of failure to address the evidence of the Claimant's witnesses, Sir Michael Burton held that the issue of the correct date of the heated players' meeting had been "fully canvassed, considered and dealt with" at the tribunal hearing. The tribunal had obviously considered the evidence of the Claimant's two witnesses because express reference had been made to that evidence in the award. At the hearing itself the relevant evidence had been tested in cross-examination by counsel for the Defendant. As a result of this, the tribunal had been able to find that the inference to be drawn from the totality of the evidence (i.e. that the meeting had occurred on 8 August 2014) was "irresistible". Provided that it was plain that the tribunal had considered the evidence, it was not a requirement for the tribunal to explain why certain evidence was preferred over other evidence. Furthermore, there was no "substantial injustice" caused to the Claimant for the purposes of Section 68 of the Arbitration Act 1996 because there were another grounds for the findings of fraud (i.e. the misrepresentations regarding the land transaction for the Claimant's children) which had not formed part of the Claimant's challenge to the arbitral award.

As regards the issue of failure to address the potential for double recovery, Sir Michael Burton held that the fact that the tribunal had not specifically mentioned the risk of double recovery in the award had not made any difference to the end result. No substantial injustice had been suffered by the Claimant in that regard. Alternatively, in the event that that conclusion was incorrect, the Claimant could not be said to have suffered substantial injustice in circumstances where the Defendant had expressly agreed before the Commercial Court to help the Claimant to recover the tax paid to HMRC or, in the event that the Defendant did recover that tax, to pay over that sum to the Claimant.

As regards the failure to deal with corporation tax benefits, Sir Michael Burton held that the point was "half-hearted". It had not been pursued by the Claimant either through investigation or argument. This could not cross the necessary threshold for a successful challenge under Section 68 of the Arbitration Act 1996, which was only to be available in extreme cases where an arbitral tribunal had conducted an arbitration so wrongly that justice required the courts to correct the irregularities. Furthermore, any tax benefit that the

Defendant might have gained was likely to be neutralised because the Defendant would in due course have to pay tax on sums recovered from the Claimant.

Concluding Remarks

The judgment of Sir Michael Burton reinforces the fact that “serious irregularities” challenges to arbitral awards pursuant to Section 68 of the Arbitration Act 1996 have a high threshold. The irregularities must not only be serious but must also have caused “substantial injustice” to the applicant party. A hopeful challenge based on matters that had not been seriously pursued before the arbitral tribunal, or on points that had been dealt with in the arbitral award (just not in as much detail as the applicant might have liked), will be highly unlikely to succeed.

4th January 2017