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ARBITRATION IN SPORT

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Arbitration in Sport

- ◆ The advantages and disadvantage of arbitration
- ◆ Challenges to arbitration

The Benefits of Arbitration in Sport

- ◆ **Composition of Tribunal**
 - ◆ Judges are generalists
 - ◆ Arbitral tribunals can be tailored

The Benefits of Arbitration in Sport (continued)

- ◆ **Privacy**
- ◆ **Flexibility**
- ◆ **Finality**

Potential Disadvantages of Arbitration

- ◆ **Expense**
- ◆ **Privacy**
- ◆ **Finality**
- ◆ **Procedure**

Challenges to arbitration

- ◆ Stretford v The Football Association
- ◆ Other cases

FA Rule K

“any dispute or difference between any two or more Participants ... including but not limited to a dispute arising out of or in connection with (including any question regarding the existence or validity of)

- (i) The Rules and Regulations of The Association;*
- (ii) The rules and regulations of an Affiliated Association or Competition;*
- (iii) The Statutes and Regulations of FIFA an UEFA; or*
- (iv) The Laws of the Game*

shall be referred to and finally resolved by arbitration under these Rules.

Stretford v The Football Association

- ◆ Football agent – issues arising out of representation of Wayne Rooney
- ◆ Mr Stretford commenced court proceedings against The FA – alleged disciplinary proceedings did not comply with Article 6
- ◆ The FA applied for a stay under Section 9(4) Arbitration Act 1996

Stretford v The Football Association (continued)

1. Was Rule K incorporated into the contract?

Claim: Arbitration agreement not incorporated. It was contained in FA's standard terms and, under English law, onerous terms must be brought to other party's attention.

Held: Court ruled that Rule K not onerous or unusual. Specific notice was not required.

In any event, rules widely available and Stretford was either aware of them, or should have been.

Stretford v The Football Association (continued)

2. Null / void due to incompatibility with Article 6 ECHR

S.9(4) requires stay “...unless satisfied that the arbitration agreement is null and void, inoperative...”

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law. Judgment shall be pronounced publicly.”

Stretford v The Football Association (continued)

Valid waiver of Article 6 rights? The waiver must be:

- (1) Voluntary
- (2) Informed
- (3) Unequivocal
- (4) Not run counter to public interests

Stretford v The Football Association (continued)

Voluntary?

Claim: Not voluntary, as no option to agree.

Held: Voluntary in every sense.

“True it is that Mr Stretford would be inhibited in carrying on his business of a players’ agent if he had not concluded it. But such an inducement to contract does not vitiate the necessary consent.”

Stretford v The Football Association (continued)

Informed and unequivocal?

Claim: Not informed or unequivocal, as did not know of Rule K.

Held: Informed. He either did know or should have known of Rule K.

Held: Unequivocal. No doubt as to what required under Rule K.

Stretford v The Football Association (continued)

Important public interest?

Claim: Case involved matter of great public interest.

Held: Public policy is to implement Arbitration Act.

Stretford v The Football Association (continued)

Court of Appeal

Court of Appeal held that parties had validly waived their right to a public hearing before a tribunal established by law by agreeing to be bound by the FA Rules.

No public interest in refusing to uphold arbitration. On the contrary, strong public interest in the resolution of disputes by arbitration.

Stretford v The Football Association (continued)

“An arbitration clause has become standard in the rules of sporting organisations like The FA. The rules regulate the relationship between the parties, which is a private law relationship governed by contract. Clauses like Rule K have to be agreed to by anyone, like Mr Stretford, who wishes to have a players’ licence, but it does not follow that the arbitration agreement contained in them was required by law or compulsory. To strike down clauses of this kind because they were incompatible with article 6 on that basis would have a far-reaching and, in our opinion, undesirable effect on the use of arbitration in the context of sport generally.”

Not all arbitration agreements upheld:

Charleroi

- Belgium courts refused to stay court proceedings.
- FIFA regulations insufficiently prescriptive and no direct nexus between FIFA and the clubs.



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