

Sports Law Handout #1: Note on Waiver and Option Rules

One of the ways that some lawyers apply their training to sports is through a mastery of complex rules that govern the assignment of baseball players between major and minor league teams. Teams that have run afoul of these complex rules often suffer embarrassing consequences – from the free agency of Fred Bennet declared by Commissioner Landis in the assigned case, to the loss of prospects in recent years.

The *ancien regime*

Critical to understanding the dispute in *Landis* was the context: the case arises at the outset of the development of the minor league farm system. Originally, all minor league teams were completely independent of major league teams. Young players would be signed to contracts by local minor league clubs, and if major league clubs were interested in acquiring their services, they did so through arms-length negotiations. For example, when Joe Dimaggio dropped out of high school during the Great Depression, he signed a contract with the San Francisco Seals of the Pacific Coast League, who sold his contract three years later to the New York Yankees for \$50,000.

The outdated rule at issue in *Landis* prohibited a major league club from **optioning** a player to the minor leagues without the player first clearing **waivers**. An **option** is the transfer of a player's contract to a minor league team with the right to recall him to the major league squad. Minor league teams – being independent – were thus contractually barred from assigning the player to anyone else. To effect an option (other than within two years of signing a player), however, the major league club had to first place the player on **waivers**. The waiver process permits any other major league club to claim the player for a modest fee. (If two or more clubs claim the player, he goes to the team with the poorest record.)

An option was distinguished from an **assignment**. A minor league club receiving a player by assignment – being independent of any major league team – was then free to sell or trade the player to any other club, including another major league club. Thus, major league teams would be reluctant to assign a prospect to a minor league team for further development as a way of avoiding waivers, because the prospect's contract could then be purchased by a major league rival.

The option rule contained an important but complicated exception, however. A player could be optioned without clearing waivers within two years of signing a contract with the major league team, *provided* that “such player shall not .. have been in active service in either or both Major Leagues an aggregate of two full championship seasons, or been transferred under optional assignment by a Major League Club two or more seasons.”

The case of Fred Bennett

Bennett signed his first major league contract with the St. Louis Browns in spring of 1928. After spring training, the Browns optioned Bennett to Tulsa (a Class A club). The Browns then wanted to cancel the option and assign Bennett outright to Tulsa, and thus sought and obtained waivers. (Presumably the Browns, hoping to retain rights to recall Bennett for as long as possible, sought to cancel the option so as to preserve the viability of the waiver exception, by not having the '28 season count as one of the seasons where an option was used.) Bennett played the '28 season for Tulsa; at the end of the season he was assigned by Tulsa to Milwaukee of the Class AA American Association.

The minor leagues at the time had similar option and assignment rules and Milwaukee, securing waivers from other clubs in the American Association, assigned Bennett over the winter to the Class A Wichita Falls club. Bennett played for Wichita Falls for most of 1929. In September, the Pittsburgh Pirates offered Wichita Falls \$10,000 to purchase Bennett's contract. Suspiciously, four days later Wichita Falls instead sold Bennett to the Browns, for \$5,000 (although Bennett did not play for the Browns during the end of the '29 season).

Prior to the 1930 season, the Browns again sought to assign Bennett to the minor leagues, but both the Pirates and the Yankees claimed him on waivers. The Browns then revoked the waiver claim (which it is permitted to do under the rules), and signed Bennett to a contract for the '30 season. After spring training, the Browns, claiming that they had newly signed Bennett and he had never been optioned by them previously, sought to invoke their right to option him back to Milwaukee without having to go through waivers. It was this effort that was vetoed by Commissioner Landis, upon a discovery that, since 1927, the Browns completely controlled both the Tulsa and Wichita Falls Clubs and substantially controlled Milwaukee.

Commissioner Landis was strongly opposed to the development of the farm system. He viewed them as compromising the integrity of minor league baseball, depriving minor clubs of the benefits of local ownership, permitting players with major league talent to be stockpiled in the minors, and benefitting only the wealthiest of major league clubs who could afford a chain of franchises. The latter concern is questionable in that the system originated with Branch Rickey's stewardship of the St. Louis Cardinals, and his need to develop a system that would allow the Cardinals to develop prospects without having independent minor league clubs sell them to wealthier rivals.

Over the Commissioner's objection, several years later the major league owners voted to change the option and assignment rules to permit options to minor league clubs controlled by a major league parent. The "farm system" was here to stay.

Current rules

Currently, the Professional Baseball Agreement (PBA) between Major League teams and most minor league teams provide that each major league club will enter into player development contracts with at least six farm teams. Thus, the majority of minor league clubs (and the overwhelming majority of players with any prospect of major league talent) are controlled by the major leagues. In this context, the rules have been somewhat inverted.

First, the “Rule 5 draft” permits any organized baseball club to purchase a player from a club in a lower level for a modest fee. (The Rule 5 draft is discussed in detail in a subsequent handout.) Thus, any player not on the 40-man major league roster may be claimed by another major league club. The purchased player must, however, remain on the major league **25**-man roster or be sent back. Players in their first two years of professional ball are not subject to the Rule 5 draft. The requirement that the player be placed on the 25-man roster protects most players in each club’s minor league system. A third-year minor leaguer toiling for an A or AA team is unlikely to be good enough for anyone’s 25-man roster.

Second, the top young stars are protected from the Rule 5 draft by being placed on the major league 40-man roster, and then optioned to a minor league club. A team can, however, exercise this option only three times without having to clear the player through waivers.

Because minor league teams are now controlled, the concept of an independent “assignment” of a player to the minors no longer exists. Thus, all players “assigned” to minor league teams must first clear waivers.