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An Endless Appeal: What Were Ezekiel Elliott and the National Football League Fighting About Anyway?

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In one of the most discussed stories of the past National Football League (“NFL”) season, Dallas Cowboys’ running back Ezekiel Elliott and the NFL skirmished across the federal court system.^[2] This battle resulted in a seemingly endless stream of rulings and appeals, each one bringing with it a flurry of tweets, articles, and fantasy football anxiety.^[3] Although legal disputes often arise in sports, it is rare that one dispute takes such a central position for the greater portion of a professional sporting season, the dispute between the NFL and Elliott having gained prominence in late July 2017 and lasting through the end of the season.^[4] Despite the publicity surrounding the dispute, there is little understanding as to the heart of conflict or how the issue was ruled on and appealed so many times in the legally-speaking short span of four months.

The dispute between the NFL and Ezekiel Elliott began in 2016 when domestic violence allegations were made against Elliott in Columbus, Ohio, where he played college football for Ohio State University.^[5] Upon further investigation of the matter, Columbus authorities decided not to prosecute Elliott, as they had insufficient evidence.^[6] A year-long investigation by the NFL followed, conducted primarily by Kia Roberts, the NFL’s Director of Investigations, who was the only individual to participate in each witness interview.^[7] At the conclusion of the investigation, Roberts recommended that Elliott face no punishment.^[8] However, NFL Commissioner Roger Goodell is solely responsible for punishing NFL players per the NFL-National Football League Players Association (“NFLPA”) Collective Bargaining Agreement (“CBA”).^[9] Roberts was excluded from meetings with Goodell and his advisors, and on August 11, 2017, the NFL informed Elliott that Goodell had decided to suspend the running back for six games.^[10]

Pursuant to the NFL-NFLPA CBA, disciplinary decisions made by Goodell may be appealed via arbitration.^[11] Elliot pursued this option as the first of several appeals in an arbitration hearing lasting from August 29-31, 2017. Harold Henderson, a former NFL executive, presided over the hearing, with Elliott being excused from practice to attend.^[12] Without waiting for the arbitration results, the NFLPA filed suit in the Eastern District of Texas, seeking a preliminary injunction on Elliott’s behalf, on August 31, 2017.^[13] Following arbitration, a preliminary injunction was Elliott’s only hope to have his suspension reversed.^[14] On September 5, 2017, the arbitrator released his decision to uphold Elliott’s six-game suspension, the same day on which the district court held their preliminary injunction hearing.^[15] On September 8, 2017, the district court enjoined the NFL from enforcing the suspension.^[16] One week later,



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on September 15, 2017, the NFL moved the United States Court of Appeals for the Fifth Circuit for a stay of the district court's injunction.^[17] Finally, on October 12, 2017, the Fifth Circuit vacated the district court's injunction and remanded the case to be dismissed.^[18] The NFL sought to immediately enforce the suspension, although the Cowboys were on a bye week, minimizing any effect of Elliott's possible absence.^[19]

Dismissal of the case by the Fifth Circuit led to the large amount of appeals, as Elliott would soon after file for an emergency hearing for a temporary restraining order in the Southern District of New York, creating an entirely new appeal process.^[20] Although the case having been split between the two circuits and the need for speedy rulings may explain how Elliott generated so many appeals and so much news in a four month period, this leaves the question of why the Fifth Circuit dismissed Elliott's case. The answer to this question lies in the heart of the NFL and NFLPA's dispute and the timing of the original motion for a preliminary injunction.^[21]

First, the reason the Fifth Circuit chose to dismiss Elliott's complaint was a lack of subject matter jurisdiction to issue a preliminary injunction pursuant to the Labor Management Relations Act ("LMRA").^[22] Elliott and the NFLPA brought their complaint under the LMRA as a violation between an employer and labor organization based on the arbitration process.^[23] Pursuant to the LMRA, such a suit must satisfy three elements: "(1) a claim of violation of (2) a contract (3) between an employer and a labor organization."^[24] However, the argument made by the NFL was that jurisdiction only exists under the LMRA where Elliott had exhausted all contractual remedies, including arbitration.^[25] Under this argument, the final arbitration decision would have to be delivered before Elliott could file his complaint with the district court. Therefore, Elliott's decision to file his motion for a preliminary injunction prior to the final arbitration decision proved fatal for his hopes in the Fifth Circuit.

In deciding to dismiss the case for lack of subject matter jurisdiction, the Fifth Circuit first relied on Elliott not having been able to prove at the time of filing his motion that waiting for the arbitration decision would have been in vain.^[26] The NFLPA attempted to argue that a repudiation exception should excuse Elliott's failure to exhaust his remedies, that is that the employer, here the NFL, acted in a way which amounted to repudiation of the remedial process set forth in the contract.^[27] Put simply, the NFLPA argued the NFL had violated the contract by improperly conducting the arbitration hearing. This argument was dismissed by the court, which pointed out that the NFL had simply taken a stance which was not the same adopted by Elliott as to the outcome of the arbitration, but had properly followed the conflict resolution procedures set forth in the contract.^[28] Despite the difference between the filing of the complaint in the Eastern District of Texas and the final arbitration ruling being only six days, the Fifth Circuit found that jurisdiction depends on the facts at the time at which the complaint is filed and dismissed the case.^[29]

In a lengthy dissent, Judge Graves took a different stance on the case.^[30] Rather than focus solely on the timing of the motion, Judge Graves looked to the conduct of the NFL in holding the arbitration hearing, including failure to involve Roberts in the hearings, failure to compel Goodell to testify, and a failure to turn over notes from interviews with witnesses, in holding that the NFL did repudiate the grievance procedure to an extent sufficient to justify jurisdiction, and that a mere attempt to use the grievance procedure satisfies the LMRA.^[31]

As the dissent displayed, there was at least a chance that the Fifth Circuit would find jurisdiction, but surely this chance would have been infinitely greater had Elliott simply waited six days to file his motion. Had Elliott waited, however, he almost certainly would not have been able to play in the Cowboys' Week One match up with their division rival New York Giants, which took place on September 10, two days after the district court initially enjoined the NFL.^[32] Indeed, because of the timing of the various rulings handed down in both the Fifth and Second Circuits, Elliott did not miss a single game in the first ten weeks of the season.^[33] Following a similar rise from the Southern District of New York to the Second Circuit as he saw in the Fifth Circuit, Elliott's final motion for an injunction was denied by the Second Circuit on November 9, 2017, less than an hour after oral arguments had concluded.^[34]

Following this defeat, Elliott told reporters he would be leaving the country to reset and train to come back in game-ready shape following service of his six-game suspension.^[35] Finally, on November 15, 2017, Elliott's agents released a statement that he would be giving up his fight against the suspension.^[36] However, by delaying his suspension, Elliott has not only gained a large amount of publicity, but was able

to play until what many considered to be the easy part of the Cowboys' schedule, providing a much needed boost for a team which, even with Elliot, was barely above .500, and would ultimately miss the playoffs.^[37] In an especially artful touch of timing, Elliott managed to save himself \$400,000 by serving his suspension during the 2017 season, rather than delaying it into 2018 when his salary increases.^[38] What initially seemed a confusing and never-ending stream of appeals and injunctions was not only one battle in a larger power-struggle between Roger Goodell and the NFLPA,^[39] but an impressive effort by Elliott's lawyers to benefit not only their client, but the Dallas Cowboys as a whole by delaying the suspension until the Cowboys' season had been all but decided.

^[1] J.D. Expected May 2019.

^[2] Katie Hairopoulos, *Ezekiel Elliott Timeline: The Suspension, the Appeal, and Where the Cowboys RB Stands Now*, SPORTS DAY (November 9, 2017), <https://sportsday.dallasnews.com/dallas-cowboys/cowboys/2017/11/09/ezekiel-elliott-timeline-suspension-appeal-cowboys-rb-stands-now>.

^[3] See e.g., *id.*; Associated Press, *Ezekiel Elliott Loses Appeal, Set to Begin Six-Game Suspension*, FOX NEWS (November 9, 2017), <http://www.foxnews.com/sports/2017/11/09/ezekiel-elliott-loses-appeal-set-to-begin-six-game-suspension.html>; Jared Dubin, *Ezekiel Elliott Reportedly Leaving the Country to Train During his Suspension*, CBS SPORTS (November 12, 2017), <https://www.cbssports.com/nfl/news/ezekiel-elliott-reportedly-leaving-the-country-to-train-during-his-suspension/>; Marc Edelman, *Ezekiel Elliott Decision Adds to Commissioner's Power, but NFL Players Need Checks and Balances*, FORBES (October 13, 2017), <https://www.forbes.com/sites/marcedelman/2017/10/13/ezekiel-elliott-decision-adds-to-commissioners-power-but-nfl-players-need-checks-and-balances/#70b23a549c92>; Jeanna Thomas, *Ezekiel Elliott Files Appeal of 6-Game Suspension*, SB NATION (August 16, 2017), <https://www.sbnation.com/2017/8/15/16150414/ezekiel-elliott-files-appeal-of-6-game-suspension-cowboys>.

^[4] Hairopoulos, *supra* note 2.

^[5] Nat'l Football League Players Ass'n v. Nat'l Football League, 874 F.3d 222, 230 (5th Cir. 2017) (Graves, Jr., J., dissenting).

^[6] *Id.*

^[7] *Id.*

^[8] *Id.*

^[9] *Id.*

^[10] *Id.*

^[11] *Id.* at 225.

^[12] Kate Hairopoulos, *Here's What You Need to Know About Harold Henderson, the Former NFL Exec Who Will Hear Ezekiel Elliott's Appeal*, SPORTS DAY (August 16, 2017), <https://sportsday.dallasnews.com/dallas-cowboys/cowboys/2017/08/16/need-know-harold-henderson-former-nfl-exec-will-hear-ezekiel-elliotts-appeal>.

^[13] NFL, 874 F.3d at 225.

^[14] *Id.*

^[15] *Id.*

^[16] *Id.*

^[17] *Id.*

^[18] *Id.* at 229.

^[19] Hairopoulos, *supra* note 2.

^[20] Michael McCann, *Ezekiel Elliott Petitions New York District Court for Temporary Restraining Order or Injunction*, SPORTS ILLUSTRATED (October 17, 2017), <https://www.si.com/nfl/2017/10/17/ezekiel-elliott-suspension-new-york-court-hearing>.

^[21] *NFL*, 874 F.3d at 227.

^[22] *Id.* at 225.

^[23] *Id.*

^[24] *Id.* (quoting *Carpenters Local Union No. 1846 of United Bhd. of Carpenters & Joiners of Am., AFL-CIO v. Pratt-Farnsworth*, 690 F.2d 489, 500 (5th Cir. 1982)).

^[25] *Id.* at 226.

^[26] *Id.* at 228.

^[27] *Id.*

^[28] *Id.* at 229.

^[29] *Id.*

^[30] *Id.* at 229–36 (Graves, Jr., J., dissenting).

^[31] *Id.* at 234.

^[32] *Season Schedule*, DALLAS COWBOYS, <http://www.dallascowboys.com/team/season-schedule> (Last visited November 16, 2017).

^[33] Hairopoulos, *supra* note 2.

^[34] *Id.*

^[35] Dubin, *supra* note 3.

^[36] Clarence E. Hill Jr., *Ezekiel Elliott Concedes NFL Suspension, Gives Up Legal Fight*, STAR TELEGRAM (November 15, 2017, 9:08 PM), <http://www.star-telegram.com/sports/nfl/dallas-cowboys/article184835613.html>.

^[37] DALLAS COWBOYS, *supra* note 32.

^[38] Katie Hairopoulos, *Why Ezekiel Elliott Withdrew Appeal of Six-Game Suspension; What's Next for Cowboy RB?*, SPORTS DAY (November 15, 2017), <https://sportsday.dallasnews.com/dallas-cowboys/cowboys/2017/11/15/ezekiel-elliott-withdrawing-appeal-six-game-suspension-according-report>.

^[39] Edelman, *supra* note 3.

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