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Leonard Koppett

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Flood Warms Up for Reserve Clause Attack

By LEONARD KOPPETT

NEW YORK, N. Y. — A major court challenge to the reserve clause is being planned by Curt Flood, regular center fielder of the Cardinals for most of the last 12 years, who was traded to the Phillies in October.

His suit will be handled by Arthur Goldberg, former justice of the United States Supreme Court, and will be supported by the Major League Players Association. Marvin Miller, director of the Association, and Goldberg both worked for the United Steelworkers Union from 1950 to 1960 in Pittsburgh.

The first step in the case was taken December 24, when Flood wrote to Commissioner Bowie Kuhn, declaring his intention to play baseball in 1970 and his objection to being treated as "property." Flood said he felt he had a right to negotiate with any team, and asked the commissioner to notify all clubs of his availability.

Kuhn replied on December 30, rejecting the request on the grounds that Flood's transfer from St. Louis to Philadelphia was in accordance with the terms of Flood's current contract, and that Flood had signed such contracts for each of the previous 12 years. He said that pending any specific claim by Flood that the transfer was done improperly, he could not comply with the request.

Bid for Freedom Denied

Thus the record was made that Flood had sought his "freedom" at the highest level available within baseball, and that it had not been granted.

The whole matter is intimately related to negotiations for a new basic agreement between the Players' Association and the major league clubs. The players are seeking modification of the reserve clause in the new agreement, and the owners are resisting any change in the traditional arrangement. The old basic agreement (which covers all questions of player-owner relations except pension and related benefits) contained a provision for "joint study" of the reserve clause question. The existing two-year basic agreement expired December 31.

Flood decided to challenge the reserve clause some time in October. In mid-November, he and his lawyer, Allan H. Zerman, went to see Miller and to ask whether the Association would back such a suit.

Indignity of Trade

It was a matter of deep personal feeling, Flood said. He had no particular objection to playing in Philadelphia. He did object, however, to the indignity of being traded, and had vowed to himself, when the Cincinnati organization traded him to St. Louis in 1956, that he would never go through those emotions again. He was 20 years old then. He said he believed, after 12 years in the majors, he should have the right to find his value on the open market.

Miller told Flood that if he were determined to go through with the case, he should come to San Juan, Puerto Rico, on December 13 to present his views to the 24 player representatives, who would be meeting there to discuss the entire basic agreement negotiation. The player representatives of the 24 major league clubs form the board of directors of the Players' Association.

Flood did so. He was questioned closely for two hours by the other players, who wanted to make sure Flood was completely sincere about the principle involved and prepared to see the matter through. The purpose of such a suit would be to push it to the Supreme Court,



Curt Flood (Left) and Arthur Goldberg . . . The Challenger and His Chief Counsel.

where baseball's status under the anti-trust laws as well as the validity of the reserve clause might be ruled upon.

Finally, the players were convinced Flood meant it—that he was not just seeking bargaining power to get more money from the Phillies, or a means of returning to the Cardinals. He assured them that he wouldn't be "bought off." When asked whether a racial issue was involved, Curt said no. He simply wanted the freedom to negotiate, once and for all.

And he said that he would go ahead whether the players supported him or not.

Vote Unanimous Support

The players had often talked about the possibility of a test case. Flood's was not the one they had in mind. But here it was. So they voted unanimously to offer him moral support, advice and financial help, if necessary.

Miller then suggested that, since the case would affect all players, it was important to present it with the most high-powered legal force possible. He then helped arrange to have Goldberg enter the case.

Meanwhile, discussions about modifying the reserve clause in negotiations made no progress.

Word of Flood's intention became public on Monday, December 29, after the Players' Association had sent a bulletin to its 800 members reporting on the labor negotiations and on the decision to back Flood.

On January 2, Flood and Zerman visited New York to begin planning strategy with Goldberg. Actual filing of the suit was expected in mid-January, but the ex-

act nature of the claims and even the locale of bringing suit remained to be determined. A case of this kind would be tried in Federal Court, appealed to the Circuit Court of Appeals and from there to the U. S. Supreme Court.

Out-of-court settlement could take two forms, theoretically: Flood could accept a money arrangement, or an assignment to some club of his choice, as an individual matter; or the reserve clause rule itself could be modified by negotiation.

The text of the letter exchange between Flood and Kuhn follows:

Flood's letter, dated December 24, said:

"After 12 years in the major league, I do not feel that I am a

piece of property to be bought and sold irrespective of my wishes. I believe that any system that produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several states.

"It is my desire to play baseball in 1970, and I am capable of playing. I have received a contract offer from the Philadelphia club, but I believe I have the right to consider offers from other clubs before making any decision. I, therefore, request that you make known to all major league clubs my feelings in the matter and advise them of my availability for the 1970 season."

Kuhn's reply, dated December 30, said:

"This will acknowledge your letter of December 24, which I found on returning to my office yesterday.

"I certainly agree with you that you, as a human being, are not a piece of property to be bought and sold. That is fundamental in our society and I think obvious. However, I cannot see its applicability to the situation at hand.

The Usual Contract

"You have entered into a current playing contract with the St. Louis club, which has the same assignment provision as those in your annual major league contracts since 1956. Your present contract has been assigned in accordance with its provisions by the St. Louis club to the Philadelphia club. The provisions of the playing contract have been negotiated over the years between the clubs and the players, most recently when the present basic agreement was negotiated two years ago between the clubs and the Players' Association.

"If you have any specific objection to the propriety of the assignment, I would appreciate your specifying the objection. Under the circumstances, and pending any further information from you, I do not see what action I can take and cannot comply with the request contained in the second paragraph of your letter.

"I am pleased to see your statement that you desire to play baseball in 1970. I take it this puts to rest any thought, as reported earlier in the press, that you were considering retirement."

Richards Claims He Welcomes Flood's Reserve Clause Fight

ATLANTA, Ga.—Paul Richards says Curt Flood's decision to challenge the reserve clause could well be the climax of a growing confrontation between players and management.

"I wonder if baseball players realize they also have great protection under the present rules," the Braves' vice-president said.

"I am talking about a player, a famous player in the majors, whose salary is in excess of \$75,000. Now this player, if our reserve clause is knocked out, might discover to his dismay that he'd be playing next year for peanuts.

"Under our current deal," Richards pointed out, "his salary next year can be cut by only 25 percent. He might just learn, if our structure is knocked out, that he might have trouble signing with another team for as much as \$25,000.

"If a court ruling gives these players the right to negotiate with another club, will they be better off? I don't think so."