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Flood's Suit Could Cost Baseball \$3 Million

By LEONARD KOPPETT

NEW YORK, N. Y.—Curt Flood's legal challenge to the reserve clause began formally on January 16, when a suit on his behalf was filed in federal court here. Actually, two steps were taken.

In a civil suit, Flood asked that Organized Baseball and the system of rules that comprise the reserve clause be declared illegal under the federal antitrust laws; that the defendants (all 24 major league clubs, the commissioner and the major league presidents) be prevented from enforcing these rules against Flood; and that they be charged \$75,000 in damages if the court grants Flood immediate free-agent status, or \$3,000,000 if Flood has to wait until the case is decided.

The amount, in each case, is three times the actual damage claimed by Flood, in accordance with the "treble damages" that are imposed as a punishment in antitrust cases.

Simultaneously, Flood asked for an immediate hearing, asking for an injunction to prevent the defendants from refusing to offer him employment—that is, to make Flood free to negotiate with any club. Judge Dudley B. Bonsal issued a show-cause order, setting January 20 as the day when the defendants must show why the injunction should not be granted.

17 Pages in Complaint

Flood's complaint, identified as File No. 70 Civ. 202, United States District Court for the Southern District of New York, was a 17-page document signed by Arthur J. Goldberg, former Associate Justice of the United States Supreme Court, former Ambassador to the United Nations and former Secretary of Labor under President Kennedy; and by Allan H. Zerman of St. Louis, Flood's attorney there.

Justice Goldberg is a member of the New York firm of Paul, Weiss, Goldberg, Rifkind, Wharton and Garrison. Attached to the complaint were a copy of Flood's 1969 contract with the St. Louis Cardinals (it called for \$90,000); his notice that he had been traded to Philadelphia; and the correspondence between Flood and Commissioner Bowie Kuhn in December, when Flood sought and Kuhn turned down free-agent status for Flood.

The request for the injunction was backed by a 35-page brief to which the names of Goldberg, Zerman and five other lawyers were attached. The others were Jay H. Topkiss, Max Gitter, Daniel Levitt, William D. Iverson and Richard M. Moss.

Players Back Curt

Moss is counsel for the Major League Baseball Players' Association, which is supporting Flood's suit and which arranged for Goldberg's participation. Marvin Miller, director of the Association, submitted an affidavit, along with Flood, in asking for the injunction.

The complaint argues that the baseball business is interstate commerce and should be subject to federal antitrust laws, and describes how the "reserve system" ties a player to one club indefinitely. It calls this system "an unreasonable restraint of trade in violation of sections 1 and 2 of the Sherman Anti-Trust Act."

It describes Flood's background and trade to Philadelphia, his exchange with Kuhn, and asks the remedies mentioned above.

In a separate section, Flood makes the same complaints and says they are a violation of common law.

In another separate section, the suit claims violation of the Thirteenth Amendment and various



NATIONAL LEAGUE President Chub Feeny and A. L. President Joe Cronin release a joint statement in New York about their views on Curt Flood's suit against baseball.

laws that deal with peonage and involuntary servitude.

Finally, it charges the St. Louis Cardinals and New York Yankees

with specific antitrust violations under the Sherman and Clayton acts—the Cardinals because of their arrangements that limit the brands

of beer sold in their ball park to those sold by affiliated companies; and the Yankees because their owner, the Columbia Broadcasting

Statement by Cronin, Feeney

NEW YORK, N. Y.—Following is the statement released by President Joe Cronin of the American League and Chub Feeney of the National League on January 17 concerning Curt Flood's suit against baseball:

As presidents of the two major leagues, we regret that Curt Flood, a highly paid star, who has contributed much to and obtained much from baseball, has decided to refuse to honor the assignment of his contract by the St. Louis Cardinals to the Philadelphia Phillies and has demanded that he be permitted to play major league baseball where he pleases.

When a player refuses to honor an assignment, he violates his contract, in which he agrees that assignments may be made, and he violates the fundamental baseball rules, including the reserve clause, which experience has shown to be absolutely necessary to the successful operation of baseball.

The court action commenced by Curt Flood attacks these fundamental rules and makes the same charges that have been made in the past and rejected by the Supreme Court of the United States. We have complete confidence that the rules of professional baseball, which have been central to the success of the game over many decades and which have permitted players such as Curt Flood to reap rich personal rewards, will withstand this new attack.

Position Called 'Violation'

We also regret that the Major League Baseball Players' Association has decided to support and encourage the demands and legal action of Curt Flood. This position of the Players' Association violates its pledge to the clubs in the basic collective bargaining agreement between the Association and the clubs to use its "best efforts to ensure that all terms and conditions of all uniform player's contracts signed by individual players will be carried out in full."

Many hundreds of players have chosen baseball as a profession with full knowledge that professional baseball is and must be "organized," with rules as to how the game is played and who is eligible to play it. Under the rules, a player is not free to jump from club to club or to demand more than three strikes. Nor is a club free to tamper with players under contract to other clubs or to sign as many players as it wishes.

Today, players are assured a substantial minimum salary, an unmatched pension, health and welfare plan and the protection of draft and waiver rules to enable them to advance and play in the highest league classification for which they are qualified.

Baseball's reserve clause grew out of the early years of the game when, without the reserve clause,

players constantly jumped to wealthier clubs, league competition was destroyed, and baseball was in chaos.

There is no reason to believe results would be any different today if players were given the "freedom" to sign with any club and to refuse assignment of their contracts. Even amateur baseball organizations, such as the Little League, have found it necessary to adopt strict rules so that players cannot jump or be induced to jump from one club to another.

A Congressional committee, after an exhaustive study of baseball and weeks of hearings, concluded as follows:

"Baseball's history shows that chaotic conditions prevailed when there was no reserve clause. Experience points to no feasible substitute to protect the integrity of the game or to guarantee a comparatively even competitive struggle."

'Chaotic Results' Claimed

The chaotic results that would be created without the reserve clause should be obvious:

1. Without the reserve clause the wealthier clubs could sign an unbeatable team of all-stars, totally destroying league competition.

2. Clubs of more limited resources would be stripped of their stars and their ability to field a team which the public would accept.

3. The integrity of the game would be threatened as players could negotiate with one club while playing for another.

4. Clubs could no longer afford to spend millions of dollars to scout and sign new players and to subsidize their development in the minor leagues. No club could build with assurance and no intelligent person would continue to invest the large capital required for player compensation, an unmatched pension and benefit plan costing \$5,450,000 per year, minor league subsidies and other costs of operating a major league club.

5. The minor leagues, which exist only because of major league support, would be destroyed. Professional baseball is the only team sport that finances the development of its players.

6. Mutually advantageous trades would become impossible if the players' consents were required, thus preventing contract assignments which have been beneficial to both clubs and players and which are exciting to those who support the game of baseball.

7. Professional baseball would simply cease to exist.

System, has refused to bid for national television and broadcasting rights, thus reducing competition which might bring baseball (and therefore the players, including Flood) more revenue.

The brief argues that:

1. Previous Supreme Court decisions (in 1922 and 1953, which held that baseball was exempt from antitrust laws) do not apply to this case, for three reasons: because of other federal legislation passed since 1922, and not considered in 1953; because this suit does not ask retroactive damages (an issue the court raised in 1953); and because the baseball business has grown and changed since 1953.

2. Federal civil rights and statutes and the Thirteenth Amendment are violated by the reserve system.

3. Various state laws regarding restraint of trade, blacklisting and civil rights are violated by the reserve system.

4. Common law in New York and other states is violated by the refusal of teams to deal with Flood.

Curt Claims Damage

To get an injunction, one must show that Flood will suffer "irreparable injury" and that there is some likelihood that his case will eventually succeed on its merits. The brief claims that Flood will be damaged, beyond future compensation by money, if he is forced to choose between not playing at all and playing for Philadelphia under reserve system restrictions; and the likelihood of success is argued by elaboration of the four points just mentioned.

The complaint itself—as distinct from the request for an injunction—must be answered by baseball within 20 days, which means February 5, unless there are postponements.

Miller, in his affidavit, cites eight alternatives to the reserve system as it now exists, as examples of proposals made for modifications.

All, he said, have been flatly rejected and the club owners have made no counter-proposals of their own. The purpose of this, presumably, is to show that Flood has exhausted other possible remedies—an appeal to the commissioner, and negotiated changes—before turning to the courts.

Hearing of Flood's Case Rescheduled Until Feb. 3

NEW YORK, N. Y.—Baseball was granted two additional weeks to prepare its case in Curt Flood's challenge of the reserve clause.

United States District Judge Dudley B. Bonsal rescheduled the hearing for February 3. Originally, it was set January 20.

The Phillies are willing to have Flood, the \$90,000-a-year outfielder they acquired in a trade with the Cardinals, join them in spring training and play without prejudice to the court, Judge Bonsal was advised.

"That's exactly what he doesn't want to do," said Jay Topkiss, one of Flood's attorneys. "He lives in St. Louis, has a business there and does not want to be treated like cattle."

Rescheduling of the hearing came as no surprise. Representatives of baseball's top echelon were expected to be granted more time to prepare their "show cause" case, considering the civil rights and the millions of dollars involved.