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MINOR RECRUITING VIOLATIONS MAY NOT ALWAYS AMOUNT TO JUST CAUSE – 4 TAKEAWAYS FOR ATHLETIC DEPARTMENTS

Insights
Feb 22, 2022

An arbitrator recently ruled that the University of Connecticut owes its former men’s basketball coach more than \$11 million after determining the school violated a collective bargaining agreement by firing him without just cause. The arbitrator determined that Kevin Ollie’s alleged recruiting violations were only minor in nature and thus did not relieve the school of its financial obligations. What are the four biggest takeaways you can learn from this development?

Summary of Decision

According to the arbitrator’s ruling, UConn terminated Ollie’s employment in 2018 after being accused of violating NCAA rules. The coach allegedly holding improper training sessions and allegedly improperly contacting recruits.

The school’s chapter of the American Association of University Professors, of which Ollie is a member, filed a complaint with the school and the dispute led to a final arbitration hearing.

Ollie argued during the arbitration process that UConn violated the collective bargaining agreement (CBA) between the school and the professor’s union, which required evidence of serious misconduct to fire an employee on legitimate grounds.

Ollie also asserted that the University violated the CBA because he was not provided with due process after his employment was terminated, his replacement was hired only

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10 days after his termination, and not he was not provided with an opportunity to appeal.

The arbitrator held the violations Ollie was accused of making were minor in scale and ultimately should not have had an adverse effect on his employment. In reaching his decision, the arbitrator noted that the low-level NCAA violations occurred over the course of Ollie's seven-year head coaching tenure and were comparable in number and frequency to other major athletic programs at the University.

4 Key Takeaways for Athletic Departments

There are four key takeaways for universities and athletic departments in light of this decision.

1. Review any applicable CBA prior to taking an adverse employment action.

Ollie's claim against UConn included allegations of procedural violations of the CBA. Universities should ensure that they provide all employees with due process, provide proper notice of performance deficiencies or misconduct, and provide an opportunity to cure if required by a CBA.

2. Include contractual language expressly stating NCAA violations of any kind amount to just cause.

Universities and athletic departments should carefully review and draft their employment agreements with every coach to expressly define what actions or misconduct amount to just cause. In the future, coaches may rely upon the decision in the UConn case to argue that alleged minor NCAA violations do not allow for a just cause termination. You can diffuse the threat of such a defense by preemptively alerting coaches that such misconduct does, in fact, amount to just cause.

3. Thoroughly investigate alleged misconduct prior to taking adverse employment actions.

Universities and athletic departments should thoroughly investigate alleged misconduct of coaches prior to taking any adverse employment action. Additionally, universities and athletic departments should consider hiring third-party investigators to conduct the investigation. By conducting an investigation and documenting the same, universities and athletic departments can not only ensure

that they make the right employment decision but also will be in a better position to defend that decision if contested.

4. Compare how similarly situated employees were managed.

As a basis for the decision, the arbitrator looked at how other coaches at UConn were managed after they were accused of minor recruiting violations. Universities and athletic departments should ensure any adverse action taken against an employee is consistent with the universities' prior employment practices.

Conclusion

This ruling likely caught the attention of many universities and athletic departments and has demonstrated that alleged minor recruiting violations may not always provide for just cause. By carefully drafting and reviewing CBAs and employment contracts, universities and athletic departments can mitigate risk and clearly define what amounts to just cause. Additionally, universities and athletic departments should always look at similarly situated employees to ensure that any adverse employment action is consistent with prior employment practices.

If your university has additional questions regarding this decision, feel free to reach out to your Fisher Phillips attorney, the author of this Insight, or another member of our [Sports Industry Group](#). We'll continue to monitor this area and will provide updates as warranted, so [make sure you are signed up for Fisher Phillips' Insight service](#) to receive the latest news directly in your inbox.