



The Professional Athlete as an employee within the context of the Nigerian Professional Football League

By: Ibidoyin Aina



Professional sports have evolved over the years from a mere tool of entertainment to a means of economic empowerment. This evolution has since crystallized into robust legal relationships that have metamorphosed into standard player contracts duly negotiated by an accredited agent of the player and signed between the player and the club. Over time, case law has expanded the jurisprudence on the relationship between players and their clubs. Accordingly, the various participants in the club football value chain especially the athletes/players have now been viewed as employees.

One of the earliest tests used to determine the employment status of players at common law was what is now technically referred to as the "control test". Under this test, a person was controlled by an employer if that person was told not only what to do but also how to do it. Arguments that skills possessed by individual sportsmen took them beyond the control of clubs who paid them were quickly discounted as a result of the decision of the English Court of Appeal in ***Walker v Crystal Palace Football Club Ltd.*** Modern employment law still requires an element of control for a person to have employee status, but emphasis is also given to other factors such as whether a person is in business on his or her own account. Therefore, it is clear that club managers, despite their technical status and authority over club matters, are also employees.

One of the earliest employment law cases was ***Union Royale Belge des Societes de Football Association (ASBL) v Bosman***. Bosman was placed on the transfer list by his club, RC Liege, once he refused to accept a new contract at a lower wage. Bosman wished to move to a French club, US Dunkerque, but RC Liege ultimately refused to process the transfer as it doubted US Dunkerque's ability to pay the agreed fee. Subsequently, the Belgian Football Association and UEFA became parties to the case as both bodies argued that their respective rules requiring transfer fees were lawful. The ECJ ruled that the transfer rules directly restrict access to the employment market in other Member States as under the applicable rules a player can transfer abroad only if the new club (or the player himself) is able and prepared to pay the transfer fee demanded. If that is not the case, the player cannot move abroad. This decision has not only revolutionized the labour jurisprudence in sports but positively impacted on the regulations on the status and transfer of players.

One of the notable spin-offs of the Bosman decision is the stability of contracts. The Nigeria Professional Football league now requires that player contracts shall not be less than three years. The only exceptions are the contracts involving minors and players who have played for 10 years or more in the league and therefore, can be offered contracts for 2 years and 3 months respectively.



This article elaborately highlights the role of the National Industrial Court in determining employment related disputes within the context of the FIFA Regulations on the Status and Transfer of Players.

Employment Contract in Sports

Employment contracts in sports are typically entered into directly between a club and player. However, given the intricacies and complexities of the ensuing legal relationship, professional athletes now engage agents who conduct the negotiation of contract terms on the player's behalf. Contract terms may also be derived from collective agreements entered into between a sport's governing body and players' trade unions. Major examples include footballers' and cricketers' contracts negotiated by the Professional Footballers' Association and the Professional Cricketers' Association respectively. Such standard contracts will be supplemented by confidential personal terms covering issues such as salaries, performance bonuses, sponsorship deals and image rights¹. The writer is unaware of any professional players' union in the Nigeria Professional Football League and the extent of influence such trade unions wield in this regard.

Express terms in a player's standard contract deal with issues such as fitness, exclusivity and discipline.

The Dispute Resolution Provisions of the NPFL Rules

Perchstone & Graeys
SOLICITORS ADVOCATES & ARBITRATORS

The Dispute Resolution Provisions under the NPFL Rules can be found in Section D of the Rules. Given the myriad of labour-related issues ranging from non-payment of salaries and sundry packages between players and their teams, it is little wonder then that the Rules stipulate that all labour-related disputes with a club over unfulfilled contract agreement or conditions of service shall in the first instance be submitted to the Arbitration & Dispute resolution Committee.

By Article 4 of Section D of the Rules, the decisions of the Committee are final and binding on all parties concerned. Section E of the Rules provides for Appeals, Adoption & Enforcement. Thus, a party dis-satisfied with the verdict of the NFF Disciplinary Committee reserves the right to appeal to the NFF Appeals Committee; provided that where an appeal or election for hearing pursuant to a notice for hearing have been found to be frivolous, such party may be liable to such additional sanction as deemed fit in the circumstances. Every Appeal must indicate clearly and fully the grounds on which it is based and must be



lodged in writing with the General Secretary of the NFF within 48 hours of receipt of the Disciplinary Committee.

The NPFL Rules, interestingly, contain supplemental provisions incorporating salient provisions of the Labour Act as well as the FIFA regulations on the Transfer and status of players.

The power of the National Industrial Court to determine employment related disputes.

A lot has been said about FIFA's enforced arbitration process rooted in the dispute resolution provisions of the NPFL Rules. Proponents of this position argue that an aggrieved player or party under the NPFL rules cannot take employment related disputes to the regular courts. This argument is not only self-serving and disingenuous, it is also completely unfounded. Under Nigerian law, it is only the courts that can enforce arbitral awards. Accordingly, where an award has been rendered in favour of a party on an issue involving employment related disputes, that party is expected to approach the National Industrial Court to enforce the award. Therefore, the current state of helplessness of players and clubs in the NPFL over enforcement of awards issued by the NFF Arbitration Committee is not only unnecessary but a misunderstanding of the dispute resolution provisions of the NPFL Rules.

It is pertinent at this juncture to examine albeit briefly, the provisions of Article 22 (b) of the RSTP.

“Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement;

It is conceded that the relevant provisions of the Regulations reproduced above, apply to transfers of an international dimension, the philosophy underpinning the determination of employment related disputes applies with equal force to employment related disputes of a domestic nature. This conjecture is evident from the silence of the NPFL Rules on the role of the courts in determining such disputes. If the intention of the drafters of the Rules was to exclude the courts completely, that intention would have been expressly stated in the provisions. As stated, Article 22(b) contemplates two scenarios, namely; an employment related dispute between a club and a local player and an employment related dispute between



a club and a foreign player. In both scenarios, the inalienable rights of access to court by the players are robustly acknowledged.

Dispute between a Non-national and a Nigerian Football Club

As stated in Art 22(b) of the FIFA Regulations on Status and Transfer of Players (RSTP), football federations are expected to set up Dispute Resolution Chambers (DRC) to handle employment-related disputes between a non-Nigerian player and a Nigerian Football Club at National Level. This provision appears to sanction the approach by the player to a court in the first instance. The provision however recognizes that where an *ad hoc* arbitral tribunal guarantees its independence and fair trial to the foreign national, such proceedings can be commenced therein.

Such claim against any club must be filed within two (2) years of the cause of action, to avoid it becoming statute barred. After the player has obtained judgment against the Nigerian club, the DRC gives the club an ultimatum (usually 45 days) within which the club must pay the judgment sum (money) even if a recent decision of the National Industrial Court seems to suggest that Statute of Limitation is no longer applicable to employment contracts.

Following the introduction of the 2018 RSTP which became effective from June 2018, the Dispute Resolution Chamber has the power to include sanctions in its decisions without the need to refer the case to the Disciplinary Committee on the grounds of non-compliance by a club which can include a ban from registering any new players, either nationally or internationally.

It is however submitted that the foregoing does not detract from the successful party's right to approach the National Industrial Court to enforce the award. Even though the Arbitration and Conciliation Act only recognizes the High Court, State or Federal as the only courts which can enforce an arbitral award, Section 254 (C) of the 1999 Constitution which vests original and exclusive jurisdiction on the National Industrial Court in respect of employment matters suggests that it is only the National Industrial Court that can hear such application.

Dispute between a Nigerian and a Nigerian Football Club

Where an Employment-related dispute arises between a Nigerian Player and a Nigerian Football Club, such dispute cannot be taken to the Dispute Resolution Chamber. It is rather expected that the matter be handled by the NFF Arbitration Committee. In practice, the NFF Arbitration Committee is the Nigerian equivalent of the Dispute Resolution Chamber since they undertake the same functions.



Perchstone & Graeys
SOLICITORS ADVOCATES & ARBITRATORS



Lagos - 1, Perchstone & Graeys Close Off Remi
Olowude Way, Lekki, Lagos
Tel: +234 704 598 4788

Abuja - D3, Jima Plaza, Plot 1267, Ahmadu Bello
Way, Opp. GTBank, Area 11, Garki, Abuja
Tel: +234 09-2919191, 0704 598 4792, +234 704 574 3012

Benin - 40, Adesogbe Rd, Benin City, Edo State
Tel: +234 704 553 0230

London - 107, Kingston Hill, Kingston-Upon-Thames, London
Tel: +447526535389

Email: counsel@perchstoneandgraeys.com
info@perchstoneandgraeys.com

Copyright: All rights reserved. No part of publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of Perchstone & Graeys.

Disclaimer: We invite you to note that the content of this article is solely for general information purposes only and should in no way be construed or relied on as a legal opinion. We urge you to contact us should you require specific legal advice on any of the topics treated in this publication.