
Athlete Agreements: Reading between the lines of power and performance

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Abstract

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Contracts are ubiquitous in sport - whether as part of the management of organizations or in the marketing of sport. Athlete Agreements are part of that contractual fabric. Contracts at the professional level of sport are framed and, more importantly constrained, within the context of various legal regulatory regimes, e.g., collective bargaining, restraint of trade legislation or employment standards. Such is not the case at the Olympic and amateur levels of sport yet national sport organizations and multi-sport organizations, such as the International Olympic Committee and various National Olympic Committees, use Athlete Agreements as a key mechanism to ensure jurisdiction over athletes and, ultimately, control over athletes.

Historically, Athlete Agreements were used as a way to communicate the organization's policies to its athletes – policy responsibilities and obligations were reduced to a form of contract to which both the organization and athlete agreed (Kidd & Eberts, 1982). Over time, commercial obligations have been included and, in many of cases, are the dominant parts of the Agreement (Findlay & Ward, 1096). Given the monopolistic nature of these organizations, these Agreements are most often proffered on a 'take it or leave it" basis, with little or no room for negotiation by the athlete (Foster, 2003; Greehow, 2008; Hanlon, 2006). The presentation is based on a case study examining one Canadian national sport organization and its process of securing its Athlete Agreement (Arsenault, 2013). The study involved interviews with 6 high performance athletes, divided into 3 categories of elite performance, the agents of those athletes who had such representation, which was only 1 agent, and 2 high performance administrators responsible for management of the Athlete Agreement within the NSOs. According to the NSO, all athletes purportedly signed the same Athlete Agreement,

although some exceptions were noted for the highest performing athletes. The presentation examines the Athlete Agreement from a contractual perspective. It confirms the lack of bargaining power of most athletes in the negotiation process and, indeed, the unilateral process used in drafting and presenting such Agreements to the athletes. Very little opportunity was made available to athletes to negotiate changes to the Agreement presented to them. Where there was some room, only the top performing, commercially viable athletes were able to exercise any influence and then, only through an agent. Indeed, most athletes paid very little attention to the Agreement, often not even reading it before signing it, indicating it made no difference to them, i.e., they could not affect the Agreement or its terms made no difference to them. That said, several subtle underlying patterns were evident. Two such patterns will be discussed in this presentation.

The first pattern reflected that the presence of one high profile athlete positively affected the contractual outcomes for lesser profile athletes. In other words, the dynamic between level of performance and marketability seems to benefit other less marketable athletes in their negotiating leverage, countervailing, to some extent, their lack of bargaining power in negotiating the Athlete Agreement. In the absence of a unionized, or otherwise regulated workplace, the elite marketable status of even one other athlete seems to have a dramatic effect on the commercial aspects of an Athlete Agreement.

The second pattern observed was that, while high performance athletes seemingly had greater leverage over the commercial aspects of the Agreement, the actual degree of bargaining power was affected by the stage of the athletes' career. High performing athletes in the twilight of their career had little bargaining influence. It was those high performing athletes moving into their projected high performing phase who held the most power and could most affect the terms of the Athlete Agreement.

References

References:

Arsenault (2013). *Bargaining Power Dynamics and the negotiation of Commercial Rights and Obligations: A case of athletes' rights*. MA, Brock University, St. Catharines, ON, Canada.

Foster (2003). Is there global sports law? *Entertainment and Sports law Journal*, 2 (1), 1-18.

Greehow, A. (2008). *Anti-Doping Suspension and Restraint of Trade in Sport*. *Sports Law eJournal* 1.

Hanlon, S. (2006). *Athletic Contracts as Unconscionable contracts of adhesion: Has the NCAA fouled out?* *Sport Lawyers Journal*, 41(13), 42-77.

Kidd, B. & Eberts, M. (1982). *Athletes Rights in Canada*. Toronto: Ministry of tourism and Recreation.