

TALKIN' BASEBALL: CURT FLOOD, THE RESERVE CLAUSE AND FREE AGENCY

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SHORT BIOGRAPHY

Curt Flood was born on January 18, 1938 in Houston, TX. He played 12 out of his 15 major league seasons with the St. Louis Cardinals. He was a three-time all star (1964, 1966 and 1968), and a two-time World Series winner (1964 and 1967). An outstanding centerfielder, Flood won 7 consecutive Golden Glove Awards (1963-1969). He attained the very unusual feat of playing the entire 1966 season without an error. He had a .293 lifetime batting average and batted over .300 in 6 different seasons. His highest Hall of Fame vote total was 15.1% in 1996. He died on January 20, 1997 in Los Angeles, CA. In 1971, Flood published his autobiography, "The Way It Is", in which he focused on his fight against the reserve clause, and the indignities he suffered playing in segregated America.

THE TRADE

October 7, 1969

St. Louis Cardinals traded Curt Flood, Tim McCarver, Byron Browne and Joe Hoerner to the Philadelphia Phillies in exchange for Dick Allen, Cookie Rojas and Jerry Johnson.

CARDINALS/PHILLIES COMPARISON

1967 Cardinals won NL Pennant and World Series (101-60)

Phillies were 5th in NL (82-80)

1968 Cardinals won NL Pennant (97-65)

Phillies were 8th in NL (76-86)

1969 Cardinals were 3rd in NL East (87-75)

Phillies were 5th in NL East (63-99)

I Federal Baseball Club of Baltimore, Inc. vs. National League et al.
259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898 (1922)

BACKGROUND

In 1914 the Federal League declared itself to be a third major league in competition with the National and American Leagues. The Federal League also filed an antitrust lawsuit against the NL and AL. The NL and AL responded with a series of lawsuits against the Federal League, which were intended to drive up the upstart league's expenses and keep it from making a profit. This lawsuit was filed in the US District Court for the Northern District of Illinois where Judge Kenesaw Mountain Landis sat on the bench. Landis was known for being tough on big business in antitrust cases, but he was also a baseball fan. He delayed ruling on this antitrust case in the belief it would force the parties to settle. He was almost 100% correct.

After the 1915 season, most of the Federal League owners did settle. Two owners were allowed to purchase existing major league teams (Chicago Cubs and St. Louis Browns). Five of the six remaining ownership groups accepted buyouts. The Baltimore Terrapins' owners, however, did not accept a buyout and filed their own antitrust lawsuit.

JUDGE KENESAW MOUNTAIN LANDIS (1866-1944) was a U.S. District Court Judge from 1907 until 1922. He served as the first Commissioner of Baseball from 1920 until his death in 1944. He is most remembered for his handling of the "Black Sox" scandal, in which he expelled from baseball 8 members of the Chicago White Sox for conspiring to lose the 1919 World Series against the Cincinnati Reds. For more details, read Eliot Asinof's book "Eight Men Out: The Black Sox and the 1919 World Series" (Holt, Rinehart & Winston 1963). Alternatively, watch the 1988 movie, "Eight Men Out" with John Cusack, Charlie Sheen, Christopher Lloyd and many others.

BALTIMORE'S LAWSUIT

The owners of the Baltimore Terrapins launched their own antitrust lawsuit against the NL, AL and their fellow Federal League owners claiming that they had conspired to create a monopoly on professional baseball by destroying the Federal League. Baltimore won in District Court with \$80,000 in damages assessed. That amount was tripled under applicable antitrust statutes. The Court of Appeals reversed, holding that baseball was not subject to the Sherman Antitrust Act because it did not constitute a form of interstate commerce.

THE LAWS

Sherman Antitrust Act (1890) 15 U.S.C. Sections 1-7 prohibits anticompetitive agreements and unilateral conduct that monopolizes or attempts to monopolize the relevant market.

Clayton Antitrust Act (1914) 15 U.S.C. Sections 12-27 supplements the Sherman Act by covering price discrimination, exclusive dealings, mergers and acquisitions, and board memberships with competing corporations.

Both laws provide for treble damages for violations.

JUSTICE HOLMES' OPINION

"The business is giving exhibitions of baseball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and states."

"But the fact that, in order to give the exhibitions, the leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business."

"According to the distinction insisted upon in (citation omitted) the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money, would not be called trade of commerce in the commonly accepted use of those words."

II Toolson vs. New York Yankees, 346 U.S. 356, 74 S. Ct. 78, 98 L.Ed. 64 (1953). In a 7-2 decision the Supreme Court held that because Congress had not acted to remove baseball's exemption from federal antitrust laws, a minor league pitcher demoted from a AAA to an A team had no ability to challenge the reserve clause as a restraint of trade under the Sherman Act.

THE RESERVE CLAUSE

In professional sports, the reserve clause was a part of a player contract which stated the rights to players were retained upon the contract's expiration. Players under these contracts were NOT free to enter into another contract with another team. Once signed to a contract, players could be reassigned, traded, sold, or released. The only negotiating leverage players had was to hold out at contract time and to refuse to play unless their conditions were met. Players were bound to negotiate a new contract to play another year for the same team, or ask to be released or traded. The players had no freedom to change teams unless they were given an unconditional release (a relatively rare occurrence).

III Flood vs. Kuhn, 407 U.S. 258, 92 S. Ct. 2099, 32 L. Ed. 2d 728 (1972)

After refusing to be traded to the Phillies, Curt Flood sued Major League Baseball and Commissioner Bowie Kuhn in the US District Court for the Southern District of New York. He sought \$1 million in damages and injunctive relief from the reserve clause- comparing that clause to slavery. He sat out the 1970 season, foregoing \$100,000 in salary that the Phillies were ready to pay him. Both the District Court and the Second Circuit Court of Appeals ruled in favor of the MLB.

Former Supreme Court Justice Arthur Goldberg returned to argue Flood's case before many of his former colleagues. Justice Lewis Powell recused himself from the case because he owned stock in Anheuser-Busch which owned the St. Louis Cardinals.

JUSTICE BLACKMUN'S MAJORITY OPINION

"It seems appropriate now to say that professional baseball is a business engaged in interstate commerce."

"The antitrust exemption created in Federal Baseball and upheld in Toolson was an aberration confined to baseball."

Nevertheless, Justice Blackmun viewed this exemption as one in which Congress has "acquiesced" by inaction. The exemption is therefore entitled to the benefit of *stare decisis*. Removal of the inconsistency between baseball and other professional sports "at this late date" is a matter for legislative, not judicial, resolution.

Note: In Radovich vs. National Football League, 352 U.S. 445 (1957) the Supreme Court had ruled that professional football was subject to federal antitrust laws.

JUSTICE DOUGLAS'S DISSENT

"Baseball is today big business that is packaged with beer, with broadcasting, and with other industries. The beneficiaries of the Federal Baseball Club decision are not the Babe Ruths, Ty Cobbs, and Lou Gehrigs. The owners, whose records many say reveal a proclivity for predatory practices, do not come to us with equities. The equities are with the victims of the reserve clause. I use the word "victims" in the Sherman Act sense, since a contract which forbids anyone to practice his calling is commonly called an unreasonable restraint of trade." 407 U.S. at 286

JUSTICE MARSHALL'S DISSENT

"To non-athletes it might appear that petitioner was virtually enslaved by the owners of Major League Baseball clubs. But athletes know that it was not servitude that bound petitioner to the club owners; it was the reserve system... He cannot escape from the club except by retiring, and he cannot prevent the club from assigning his contract to any other club."

IV THE SEITZ DECISION (12/23/75) AND THE BIRTH OF FREE AGENCY

In 1975, Andy Messersmith (Dodgers) and Dave McNally (Expos) had their 1974 contracts automatically renewed on the basis of the reserve clause. Neither player signed a contract during 1975. So they both argued they were free to sign a contract with another team for the following season. The owners disagreed, claiming that under the reserve clause, their one-year contracts were perpetually renewed.

The Major League Baseball Players Association filed grievances on behalf of both players. Peter Seitz, who was the neutral and chairman of a three-arbitrator panel, ruled in favor of Messersmith and McNally:

“There is no contractual bond between these players and the Los Angeles and Montreal clubs, respectively. Absent such a contract, their clubs had no right or power under the Basic Agreement, the Uniform Player Contract, or the Major League Rules to reserve their services for their exclusive use for any period beyond the renewal year in the contracts which these players had heretofore signed with their clubs.”

Seitz's ruling was upheld by the US District Court for the Western District of Missouri, and the 8th Circuit Court of Appeals.

In 1976, Major League Baseball and the MLBPA signed a new agreement allowing all players with six or more years of experience to become free agents at the expiration of their contracts. Free agency was born.

V LEGACY

The Curt Flood Act of 1998 amended the Clayton Act to declare that the antitrust laws apply to the conduct, acts, practices, or agreements of persons in the business of organized Major League Baseball... to the same extent that such laws apply to conduct of any other professional sports business affecting interstate commerce. It also granted MLB players standing to sue for antitrust violations.

Salaries have grown exponentially over the past 45 years. The average MLB player's salary in 1975 was \$44,676. In 2018, the average salary had risen to \$4,095,000.

SUGGESTED READINGS

The Way It Is by Curt Flood (Trident Press 1971)

A Well Paid Slave: Curt Flood's Fight For Free Agency In Professional Sports by Brad Snyder (Plume 2007)

Marianne McGettigan, *The Curt Flood Act of 1998: The Players' Perspective*, 9 Marq. Sports L.J. 379 (1999)

Stephen F. Ross, *Reconsidering Flood v. Kuhn*, 12 U.Miami Ent. & Sports L. Rev. 169 (1995)