COURSEWORK – A critical evaluation of the relationship between principles of UK employment law and the value (or lack thereof) of employment contracts in professional football as a means of holding one another to account

Introduction

In completing this coursework, it will be shown that there is somewhat of a relationship between principles of UK employment law and the value (or lack thereof) of employment contracts in professional football as a means of holding one another to account, largely due to the idiosyncrasies of the sport itself that serve to impact upon its operation. The reason for this is that, as will be put forward during the course of the analysis undertaken, sporting organisations are considered to be different from some other organisations operating in other industries when it comes to the recognition of employment rights under the law. To illustrate, this coursework will consider the matter of determining whether a given footballer is actually an employee, the extent to which they may be disciplined (or not) for any offences that are committed, the matters of unfair and wrongful dismissal and restraint of trade, along with the nature of a footballers contract. Finally, there is a need to conclude with a summary of the key points to have been derived from this coursework's discussion with regard to the subject matter under consideration.

Main Body of Analysis

Traditionally, the 'control test' is used for determining if a given individual is an employee where it is shown that another party tells them what to do **AND** how to do it so as to be applicable to sportspeople that are part of team sports as any other workers where this proves

to be the case (*Walker v. Crystal Palace Football Club Ltd* [1910] 1 KB 87). However, the position has moved on somewhat because there is now also a need to consider other matters, including, but not limited to, whether someone is in business on their own account so that even football club managers may be seen as employees where there is mutuality of obligations between employers and employees but not snooker or tennis players (compare the decisions to have been reached in *Singh v. National Review Board* (Unreported, December 3, 2001) ET Case 5203593/99 and *Varnish v. British Cycling Federation* [2018] WL 07107272).

Therefore, the same way as any other employees in any other industries, those sportspeople and support staff that fall within the understanding of employees will have certain statutory rights, including, but not limited to, being able to claim unfair dismissal and redundancy payments (James, 2017). At the same time, however, some statutory rights, such as under discrimination law, those related to the national minimum wage and concerned with paid annual holiday are available for both employees and the self-employed (Blackshaw, 2017). Nevertheless, many sporting organisations typically employ many casual workers on what have come to be known as 'zero hours contracts' so that they will not be able to claim certain statutory rights like either those related to unfair dismissal or statutory redundancy (James, 2017).

Regarding the nature of the use of employment contracts in sport, they can be entered into directly between a club and player, but agents may look to negotiate the terms in major sports like professional football (James, 2017). At the same time, however, at least some of the terms outside of the more confidential personal issues (e.g., salaries, bonuses, sponsorship and image rights) could be derived from collective agreements resulting from the relationship

between a sport's governing body (like the Football Association (FA)) and players' trade unions (like the Professional Footballers Association (Blackshaw, 2017). Express terms deal with matters including fitness, exclusivity and discipline, whilst key clauses are those that need sportspeople, such as footballers, to adhere to their club's rules **AND** the rules of their sports governing body (like the FA) (James, 2017). This view is supported by the fact that, for example, footballers' contracts include terms that mean that it is a disciplinary offence for them to bring their club and/or their sport into disrepute through the actions, with any conflict between the need to adhere to the two sets of rules meaning that the sport's governing bodies rules will prevail (Blackshaw, 2017).

Over the years there have been a number of high profile cases in football in particular where the players have committed an array of different offences that have seen them disciplined for their use of recreational drugs (like Adrian Mutu), fighting with members of football stadium crowd (like Eric Cantona), or even fighting with teammates during training (Joey Barton). Outside of the application of the general principles of the law to a given offence, it is interesting to note that football clubs have a considerable amount of discretion when it comes to determining how to penalise a particular offence, including, but not limited to, fines and/or bans or even outright dismissal (Blackshaw, 2017).

Nevertheless, as in the case of Eric Cantona's kung-fu kick on a spectator when he was playing for Manchester United, football clubs have typically shown considerable leniency where there are acts of violence perpetrated, even where the law itself provides a penalty (Livings, 2016). It is also interesting to note that a high level of sympathy was extended to Ched Evans within the professional footballing community after he was released from prison in 2014 after having been convicted of rape (Abbandonato, 2016). Prior to his acquittal in

2016, a number of clubs including, but not limited to, Sheffield United, Hartlepool United, Oldham Athletic and Grimsby Town all gave Evans the opportunity to resume his career before ultimately bowing to social pressure not to hire him (Abbandonato, 2016). At the same time, however, recreational drug-taking is considered to be a more serious offence than acts of violence that are perpetrated on or off the field of play. To illustrate, the then Romania international footballer, Adrian Mutu was found to have tested positive for using cocaine whilst under contract with Chelsea Football Club in 2004 (Freeburn, 2021). As a result, Mutu was not only banned from football until 2005, but also saw his contract with Chelsea terminated and, ultimately after a series of appeals in the ensuing years, was held to be liable to pay his former employer (Chelsea Football Club) €17,173,990 in compensation in 2018 with no further means of appeal open to him (Freeburn, 2021).

When it comes to the matter of wrongful dismissal, a dismissal can only be considered to be wrongful in the event that the employer breaches the employment contract in question. In fact, it has been recognised that where treatment of an employee amounts to a breach of the term that required their employer to maintain mutual trust and confidence between the parties and the employee resigns as a result, this will amount to a wrongful constructive dismissal which entitles the employee to claim compensation (*Keegan v. Newcastle United FC* [2010] IRLR 94). However, an employee will have no right to claim constructive dismissal where they affirm the breach of contract to have been perpetrated by the employer (*Macari v. Celtic Football & Athletic Co Ltd* 1999 S.C. 628). Conversely, where the evidence shows that the employee resigned in response to the employer's breach of contract, it does not matter that the employee had formerly indicated that they could leave the employment if suitable terms were to offered to them to do so (*Gibbs v. Leeds United Football Club* [2016] IRLR 493).

As for the matter of unfair dismissal, this is a statutory right that is provided for under section 98 of the Employment Rights Act 1996 (ERA 1996) that does not rely upon an employer dismissing the employee where there has been a breach of contract, since it is possible for an employee to claim unfair dismissal even where they have been dismissed with due notice (compare the decisions in *Beck v. Lincoln City FC*, IT Case 2600760/98 (unreported) and *Wise v. Filbert Realisations (formerly Leicester City Football Club) In Administration*, EAT/0660/03 9 February 2004). The reality is that footballer like Harry Kane, Raheem Sterling and Mason Mount are usually employed under fixed term contracts, which is not generally a problem because UK law provides that an employer can choose not to renew this kind of contract when it actually expires (see also Case C-415/93 *Union Royale Belge des Societes de Football Association & others v. Jean-Marc Bosman* [1995] ECR 4921). The problem is section 95 of the ERA 1996 includes the non-renewal of a fixed term contract with regard to what is considered to amount to a dismissal in practice, whilst unfair dismissal rights are obtained once a given employee has been in continuous employment for two or more years with a specific employer - even with a series of fixed term contracts (James, 2017). In addition, an employee with two or more years of continuity of employment with a given employer that has been constructively dismissed may actually end up being able to claim unfair and wrongful dismissal (James, 2017).

It is also to be noted that the doctrine of restraint of trade has had a significant role to play in the context of professional football contracts for both players **AND** managers alike, both in terms of the freedom and restrictions that may be provided for. To illustrate, it has been recognised that it is possible for a given club to provide for the imposition of a reasonable period of contractual ‘garden leave’ on a manager before they can leave one club to work with another club, otherwise this may amount to an unreasonable and unenforceable restraint

of trade (*Crystal Palace FC Ltd v. Bruce* (2000, unreported)). However, it is also interesting to note that the 'transfer system' that continues to operate in British football (and any other sport that operates a transfer system) is not considered to be an unreasonable restraint of trade for those that are effectively traded within said system whilst they are under contract and for those may effectively more for 'free' within the same system (see *Eastham v. Newcastle United Football Club* [1964] Ch. 413 and Case C-415/93 *Union Royale Belge des Societes de Football Association & others v. Jean-Marc Bosman* [1995] ECR 4921).

Conclusion

It is clear from the analysis to have been completed during the course of this coursework that there is a somewhat mixed relationship between principles of employment law in the UK and the value (or lack thereof) of employment contracts use in professional football as a means of holding one another to account within the jurisdiction. To illustrate, the principles related to the assessment of whether someone is an employee under employment are still considered to be relevant for determining whether a footballer is an employee. At the same time, however, it would seem that employers are somewhat reticent when it comes to penalising those footballers that breach club and/or the governing body's rules for the offences that they may commit. A key reason for this may be linked to the fact that there is still a transfer system in place which allows individual clubs to 'buy', 'sell' and even 'swap' players between themselves because professional footballers are considered to have a monetary value. Therefore, the penalisation of professional footballer for the same offences that other employees may commit in other industries may be inappropriate in view of the fact that another club may potentially come along and 'sign' the player to have been effectively released for 'free'.

It is also arguable that the players themselves are aware of their own value so that, even where a fixed-term contract comes to an end without a renewal, so as to then entitle them to claim for unfair dismissal, particularly at the higher end of the marker (i.e. the Premier League) they are unlikely to make such a claim. This is arguably largely because they know that, thanks to the ruling in Case C-415/93 *Union Royale Belge des Societes de Football Association & others v. Jean-Marc Bosman* [1995] ECR 4921, they will be able to move for 'free' (i.e., without a transfer fee) to another employer where it is highly likely they may be able to take a higher salary. Nevertheless, at least with support staff, like the manager of a professional football club, it would seem that the principle of restraint of trade's recognition and application under UK employment law retains a certain amount of relevance where it is not overused in practice.

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