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Brown v. Pro Football, Inc., No. 90-1071 (RCL)  
U.S. Dist. LEXIS 18094 (D.D.C. Sept. 10, 1992)

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pro-competitive effects, must be applied.<sup>1</sup>

-E.A.

**BROWN v. PRO FOOTBALL, INC., No. 90-1071 (RCL) U.S. DIST.  
LEXIS 18094 (D.D.C. SEPT. 10, 1992).**

Professional football players who played on Developmental Squads for the National Football League (NFL) teams during the 1989 season brought a class action against the 28 individual NFL teams and the NFL itself.

The use of Developmental Squads was a new concept which permitted NFL teams to sign rookie and first-year free agents to personal services contracts for the season. The NFL Constitution was amended to include Resolution G-2, provided that certain players placed on reserve/injured status could not practice and that others could, but would count against each Club's limit of six Developmental Squad players (maximum of 47 players per team). Those players on Developmental Squads were to be treated equally with players on the Reserve/Injured list and players on the Inactive list. Under the NFL Constitution and Bylaws, players on the Reserve/Injured list are compensated at the full rate of their NFL Players Contracts. Under Resolution G-2, Developmental Squad players would be paid a fixed salary of \$1,000 per week instead of being permitted to negotiate their own salaries. Plaintiffs filed suit.

Plaintiffs moved for summary judgment, claiming that the uniform wage provision of Resolution G-2 violates the Sherman Antitrust Act, and that under the Clayton Act, they are entitled to damages and attorney's fees. The NFL teams claimed that the antitrust laws do not apply to "wage-fixing restraints" imposed by employer groups on employees. The U.S. District Court of the District of Columbia held that wage-fixing is an antitrust violation to which the Sherman Act applies. The court determined that the wage restraints, under these circumstances, were not subject to the per se rule whereby there is no defense to the antitrust violation. Rather, the court held that the "Rule of Reason" test applied, thus permitting the NFL teams to defend the passage of the wage-restraint. Under this test, the court must balance the anti-competitive effects of the challenged restraint against its pro-competitive effects. If anti-competitive effects outweigh pro-competitive effects, the restraint is found to be unreasonable and violative of antitrust

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1. Editor's note: A summary of the final outcome of the McNeil case will appear in Volume 10 Number 1.

laws. The court concluded that the NFL's alleged pro-competitive purposes were either insufficient as a matter of law or irrelevant to the rule of reason analysis. As such, the court granted plaintiffs motion for summary judgment.

-E.A.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION v. MILLER, 795 F. SUPP. 1476 (D.NEV. 1992).

On April 8, 1991, the Nevada Legislature enacted Nev. Rev. Stat. §§398.155 - 398.255, which imposed numerous new procedural due process restrictions on NCAA infractions investigations of Nevada NCAA member institutions. The statutes, in part, required the NCAA to provide the defendant institution with all documents to be used at the prehearing conference at least 30 days in advance of the conference, allowed defendants to confront witnesses, required the NCAA to give copies of all exculpatory statements they obtained to the defendant, demanded an impartial committee be created to rule on violations and sanctions, and required all NCAA hearings be open to the public as well as recorded and transcribed. These requirements substantially altered the NCAA's standing rules regarding investigation and hearing procedure. During the summer of 1991 several of the defendants, at the time employees of University of Nevada - Las Vegas, demanded that the NCAA conform to the Nevada statutes' requirements in relation to an infractions investigation that had started in December 1990. The NCAA then filed an action for declaratory relief, claiming the Nevada statutes violated both the Commerce Clause and the Contracts Clause of the U.S. Constitution, and seeking injunctive relief to enjoin the application of the statutes to the NCAA's ongoing investigation of UNLV.

The District Court for Nevada ruled in favor of the NCAA on three major issues. First, the defendants' claim that the court should abstain from considering the federal constitutional claims and allow the case to be heard in Nevada state court was denied because the court found that no sensitive social policy issues were presented and felt that no state judicial pronouncement could dispel the federal questions raised by the NCAA. The court then ruled that the Nevada statutes violated the Commerce Clause. Finding the NCAA's activities, being of such national scope, sufficient to allow Commerce Clause analysis, the court ruled that while the statutes were not per se invalid, their effect restricts the NCAA's ability to promulgate and enforce uniform rules without