

DON'T TAKE ME OUT OF THE BALLGAME

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“If you work for a man, speak well of him” was what Clay Locke, founder of a national chain of fast food restaurants and late owner of the major league Lions baseball team use to say. This was according to his widow Mona Locke, who inherited the team at his death two years ago (2009). So when Lions baseball relief pitcher,¹ Moose Morgan publicly bad-mouthed Locke and son-in-law Alfred Jones, president of the major league Lions ball club, for the second time in three months, heads rolled. In an unusual move in the team’s history, Jones suspended Morgan without pay for the rest of the season which was 38 days. The suspension came on the heels of an interview published in a large city’s daily newspaper in which Morgan was quoted as saying:

“I’d rather have a guy who wants to win every game than have the guy we have here who doesn’t know anything and doesn’t care...He (Alfred Jones) cares more about our citizenship than winning. He wants choir boys and not winning players. What are we in this game for, to show what good people we are or to win games?... Jones just listens to what mom says.”

At a salary of approximately \$7,000,000 (excluding bonuses) for a 180 day pay schedule, Morgan would lose more than one million dollars over the course of the suspension. There were two years remaining on his five-year contract, almost half of which was deferred compensation when the suspension was invoked. After an admirable career which included 12 years with top notch east coast and Midwest teams, Morgan signed with the Lions as a free agent in January 2009. His skill helped the Lions win a pennant with a 10-6 record and 25 saves. However, the 2011 season had been among the worst in Morgan’s 15-year major-league career. In 43 appearances, he had a 5-7 record, a 4.31 earned-run average, and had lost 11 of 32 late-inning leads given him to protect. Jones had stated that in his subjective opinion, Morgan’s attitude “seems to have affected his play.” Indeed, the Lions were in last place in their division when the suspension occurred.

Much of the Lion’s recruitment interest in Morgan was that he was known as an overpowering relief pitcher that had played on World Series championship teams. Thus he warranted a higher salary than the average salary of \$2M for relief pitchers in the major leagues. Considered a pitcher by profession he was described by teammates as “a gunslinger by disposition...fearless... feisty...and an intimidating blend of velocity and bravado.” Indeed, when the Lions won the divisional league championship and celebrated their victory, Morgan was reported to have thrown Mona Locke in a swimming pool! When he joined the Lions, one teammate commented

¹ Relief pitchers enter the game after the starting pitcher is relieved for any reason. In baseball statistics, the term save is used to indicate the successful maintenance of a lead by a relief pitcher until the end of the game. The winning pitcher is defined as the pitcher who last pitched prior to the half-inning when the winning team took the lead for the last time and the losing pitcher is the pitcher who allows the go-ahead run to reach base for a lead that the winning team never relinquishes. Pitchers are also rated on their earned run averages (ERA) which reflects how many runs the pitcher gives up in an average complete game.

that he “just seemed to jump start a lot of guys inside that locker room”. With his experience in the major leagues and the relative youthfulness of the team (eleven regular players had less than four seasons of experience in the major leagues), he provided mentoring to his teammates. “The vets would get with the younger guys and let them know what was what,” according to one insider.

The tension between Jones and the ball players had been building over the summer of 2011. There was heated debate over Jones’ memo that announced the banning of alcohol in the Lion’s clubhouse. Given these differences of opinion between players and management, this latest remark by Morgan exacerbated an already strained relationship between the parties.

The ban on alcohol had precipitated a major outcry from several players. In June 2011, Jones sent out a memo to all Lions employees informing them that beer and other alcoholic beverages would no longer be allowed in the clubhouse or any other area where employees worked. The ban was a business decision that emanated from legal advice around two issues – liability and cost. The Lions could potentially be held legally liable for an alcohol-related incident that was the result of alcohol consumed by any employee within the stadium (which included the clubhouse and players lounge). In regard to cost, in the previous ten years, the liability insurance premiums for the team increased seven-fold. Several players were unhappy about the fact that they could no longer have a beer after a game in the privacy of their own clubhouse.

There was also frustration with both the message and the messenger who chose to communicate through an impersonal memorandum rather than meeting with them face to face. Players had complained about Jones’ infrequent appearances in the clubhouse and on the field in the past, so the fact that he chose not to meet with them in person added to their frustration over the ban. In an interview reported by the *Local Times* newspaper, Morgan was quoted as saying:

I guess Alfred Jones and Mona Locke don’t have anything better to do. Their life is so boring. They’re gutless, spineless people...Alfred Jones doesn’t know anything about running a club. He just has money. So he thinks he has power to butt into other people’s lives. I’d like to see him without that money.

And of Locke he said: “She’s poisoning the world with her fast foods.”

Although Jones took no action after Morgan’s public comments regarding the banning of beer in the clubhouse, he reportedly had several conversations with Morgan in the ensuing three months over what Jones perceived as his “repeated and continual personal attacks” against him and his mother-in-law. Consequently, when the newspaper interview appeared, it was the public forum used by Morgan to voice these critiques that incited Jones to suspend him. In spite of Jones’ belief that players should have the freedom to express their opinions, he asked that those opinions be expressed face-to-face and said, “...the thing I can’t tolerate is public attacks that I think affect the morale of the organization.” Jones claimed he had exhausted private peace talks and “felt it had gotten to the point where it was having a detrimental effect on the morale of the organization, and I felt I had to do something...I think that he (Morgan) has contributed to

focusing on issues other than winning baseball games, and I think it has created an atmosphere in the public that they wonder whether anybody's in charge”.

In baseball, the relationships between major league club owners and major league baseball players were governed by a collective bargaining agreement. Jones' decision to suspend Morgan was based on the application of Major League Rule 13 of the Major League Players Agreement between club owners and the players union. This rule gave club owners the right to take disciplinary action in the event of “repeated and continuing insubordination” or other behavior by a player that was deemed not in the best interest of the club (the text of the rule appears as Exhibit 1). The disciplinary action was carried out in accordance with major league guidelines - a letter from Jones was delivered in person by the team manager to Morgan. It informed him of his suspension, effective immediately for the rest of the season, without pay. (See Exhibit 2 for a description of a Discipline and Grievance Procedure used in baseball).

The suspension had become the topic of conversation in both leagues because baseball players were angry over what they considered a violation of Morgan's first amendment right to freedom of speech. After the suspension was announced, the Lion's players met and asked Jones to reinstate Morgan. They also released a public statement which they unanimously agreed upon which read in part, “...all of us agree that he has the right to say what he believes, particularly when baseball virtually demands that players make themselves available to the press and answer its questions, and particularly when the comments are offered only in response to what previously has been said and done by the club...”

Players argued that a 30 day suspension (which was the maximum stipulated in the union contract) was overkill for the comments made by Morgan and should be reserved for more serious rule violations such as fighting, not trying during a game or getting arrested by the vice squad. Indeed, compared to a suspension that was 36 days meted out to another team's players who were jailed in a drug case, this disciplinary action seemed excessive to the players for insubordination and behavior not in the best interests of the club.

The public critique of management by players and players by management is nothing new in baseball. Club owners of the Oakland A's and of the New York Yankees had been chastised by their players in the press on more than one occasion without serious consequences. Indeed, Alfred Jones himself was quoted as saying to the press before he said it to a specific ball player that he (the ball player) had million-dollar talent and “bad work habits” and “there are a bunch of players more concerned about themselves than the team”.

Within a few days of the suspension, a face to face meeting among Jones, Morgan, Locke and Morgan's attorney and agent was held which yielded no change in outcome. Therefore on September 4, the players union, the Major League Players Association, filed a written grievance against the Lions on behalf of Morgan within the requisite seven days of the suspension. The grievance charged that the Lions suspended Morgan without just cause and in violation of the collective bargaining agreement between the major league owners and the players. Major League Rule 13 stipulated that no player could be suspended for more than 30 days and Jones suspended Morgan for the rest of the season which extended to October 5. The grievance requested Morgan be reinstated with back pay.

The grievance was filed with the Players Relations Committee which represented the owners, and therefore Jones. The Players Relations Committee had the burden of proving that the disciplinary action was justified by showing that Morgan breached his contract when he violated standards of behavior in his two public interviews lambasting the Lions owner and president. According to the executive director of the Players Relations Committee, a basic principle of contracts was that in exchange for due consideration and compensation the player agreed to maintain certain standards of behavior. These behaviors included such things as obeying basic club rules (e.g., punctuality and appropriate dress for Lions related activities) conducting themselves as first-class people (e.g., no public drunkenness, fights or run-ins with the law) and representing themselves well as stewards of the club. Insofar as baseball players were public figures, it was not unusual for them to be held to a "higher standard" compared to employees in non-public jobs. (See Exhibit 3 for a description of expectations regarding loyalty and promotion of baseball from a Uniform Players Contract).

As far as Jones was concerned, the issue was not a First Amendment case regarding Morgan's right to free speech, but rather an issue between an employer and an employee regarding standards of behavior that were expected by the ball club. Jones was offended by the pitcher's second set of published comments which indicated that Morgan held to a win-at-any-cost approach. "That perception in public...and the implication, by suggestion, that we don't care about our fans and we're not trying to provide family entertainment...was not the type of image we wanted our ballplayers to put forth to the public," Jones said to a newspaper reporter.

After filing the grievance, Jones and Morgan's attorneys continued to meet and attempt to work out an agreement, which was the first step in the grievance procedure. As was typical in most labor-management grievance procedures (and baseball was no different), both sides preferred to resolve the dispute themselves rather than relegate it to an arbitrator and deal with the fallout that might be engendered. However, there had been no resolution to the matter and an arbitrator had agreed to hear the case on September 19, although the parties continued to negotiate.

Jones argued that he was within his rights as an employer (as stated in Rule 13 regarding repeated and continuing insubordination) in disciplining Morgan for breach of contract, for violating standards of behavior. He admitted he made a mistake in not paying enough attention to the ball club. He also admitted that he made judgments on players based on "what I've heard from other people and maybe feelings, and not so much based on firsthand observations" but that would change, and he would be "more visible around the club." He insisted however, that any decision regarding this issue must be resolved by upholding the principle that people are responsible for their actions.

The Major League Players Association argued that Morgan was suspended without just cause and in violation of the basic agreement between the major league owners and players. They also argued that when Morgan expressed his opinion, it was protected speech under the First Amendment, and that the punishment of a 30 day suspension was unfair. They believed that denying a man the ability to work at his livelihood for the rest of the season was too severe a disciplinary action in response to the statements he made.

Since the second published interview, Morgan had spoken to few reporters in spite of the national attention his case had received around the country. He wanted to get the whole matter over with, return to the game of baseball and stop the loss of earnings. As he told a reporter, "I am looking forward to returning to playing as soon as possible and am very optimistic about the future with the club". There had been dozens of meetings held between the parties and both sides continued to negotiate in an attempt to resolve the grievance before the arbitration hearing.

EXHIBIT 1

THE BASIC MAJOR LEAGUE PLAYERS AGREEMENT

Rule 13. Suspended Players

Section A - Basis for Suspension

A player who is suspended during the season for insubordination or failure to observe the Rules of the club shall be considered a suspended player and placed on the Suspended List.

Section B - Lifting Suspension

Such suspension may be lifted by the club president on notice of same to the president of the Major League or to the president of the National Association League and to the National Association as the case may be.

Section C - Player's Right to Appeal

A player suspended by a club or league for a term of longer than 10 days shall have the right to appeal, if a major league player, to the commissioner, who is given authority to order his reinstatement and afford him adequate redress if he holds that the punishment is excessive or not merited. In case of a National Association player, he shall have the right of appeal to the president and Executive Committee of the National Association.

(No player may be suspended for more than 30 days without pay under Rule 13).

EXHIBIT 2

Excerpts from the **2007-2011 BASIC AGREEMENT** between the Major League Clubs and the Major League Baseball Players Association regarding Grievance and Discipline

ARTICLE XI—Grievance Procedure

A. Definitions

As used herein, the following terms shall have the meanings indicated:(1) (a) “Grievance” shall mean a complaint which involves the existence or interpretation of, or compliance with, any agreement, or any provision of any agreement, between the Association and the Clubs or any of them, or between a Player and a Club.

(7) “Labor Relations Department” or “LRD” shall mean the Major League Baseball Labor Relations Department established by the Clubs, or any department of the Commissioner’s Office that assumes on behalf of the Commissioner the responsibilities formerly held by the Major League Baseball Player Relations Committee.

(8) “Grievant” shall mean a party who initiates or appeals a Grievance.

(9) “Arbitration Panel” shall mean the impartial arbitrator or, where either Party elects in advance of the opening of the hearing in a matter, a tripartite panel so empowered and composed of the impartial arbitrator and two party arbitrators, one appointed by the Association, the other appointed by the LRD. The impartial arbitrator, who shall in all instances be designated as the Panel Chair, shall be appointed by agreement of the Association and the LRD. Decisions of the Arbitration Panel shall be made by the impartial arbitrator or, where the panel is tripartite, by majority vote.

B. Procedure

Step 1. Any Player who believes that he has a justifiable Grievance shall first discuss the matter with a representative of his Club designated to handle such matters, in an attempt to settle it. If the matter is not resolved as a result of such discussions, a written notice of the Grievance shall be presented to the Club’s designated representative; provided, however, that for a Grievance to be considered beyond Step 1, such written notice shall be presented within (a) 45 days from the date of the occurrence upon which the Grievance is based, or (b) 45 days from the date on which the facts of the matter became known or reasonably should have become known to the Player, whichever is later. Within 10 days following receipt of such written notice the Club’s designated representative shall advise the Player in writing of his decision and shall furnish a copy to the Association. If the decision of the Club is not appealed further within 15 days of its receipt, the Grievance shall be considered settled on the basis of that decision and shall not be eligible for further appeal.

Step 2. A Grievance, to be considered in Step 2, shall be appealed in writing by the Grievant or by the Association to a designated representative of the LRD within 15 days following receipt of the Club’s written decision. A Grievance appealed to or filed at Step 2 shall be discussed within 35 days thereafter between representatives of the LRD and representatives of the Association in an attempt to settle it. If both Parties agree, the Player and Club principals will also participate in the Step 2 meeting. The Parties will attempt to exchange documents in advance of the Step 2 meeting but the meeting shall occur within 35 days even if documents have not been exchanged by that date. Within 10 days following such meeting the designated representative of the LRD shall advise the Grievant in writing of his decision and shall furnish a copy to the Association. If

the decision of the LRD representative is not appealed further within 15 days of its receipt, the Grievance shall be considered settled on the basis of that decision and shall not be eligible for further appeal.

ARTICLE XII—Discipline

A. Just Cause

The Parties recognize that a Player may be subjected to disciplinary action for just cause by his Club, the Vice President, On-Field Operations or the Commissioner. Therefore, in Grievances regarding discipline, the issue to be resolved shall be whether there has been just cause for the penalty imposed. If discipline imposed upon a Player is determined to be improper by reason of a final decision under this Grievance Procedure, the Player

shall promptly be made whole.

The term “make whole” means:

- (1) if a fine is found to have been imposed improperly, the fine will be promptly repaid;
- (2) any salary loss as a result of an improper suspension will be promptly paid;
- (3) in the application of items (1) and (2) above, interest will also be paid.

B. Notice

Written notice of discipline of a Player (a fine, or suspension, or both) imposed by the Commissioner of Baseball, the Vice President, On-Field Operations, or a Club and the reason therefore shall in every case be given to the Player and the Association.

ARTICLE XXII—Management Rights

Nothing in this Agreement shall be construed to restrict the rights of the Clubs to manage and direct their operations in any manner whatsoever except as specifically limited by the terms of this Agreement.

Regulations of the Uniform Players contract

5. For violation by the Player of any regulation or other provision of this contract, the Club may impose a reasonable fine and deduct the amount thereof from the Player’s salary or may suspend the Player without salary for a period not exceeding thirty days or both. Written notice of the fine or suspension or both and the reason therefore shall in every case be given to the Player and the Players Association. (See Article XII of the Basic Agreement.)

EXHIBIT 3

Excerpts from the **2007-2011 Uniform Players Contract Schedule A** regarding Loyalty and Baseball Promotion

Loyalty

3.(a) The Player agrees to perform his services hereunder diligently and faithfully, to keep himself in first-class physical condition and to obey the Club's training rules, and pledges himself to the American public and to the Club to conform to high standards of personal conduct, fair play and good sportsmanship.

Baseball Promotion

3.(b) In addition to his services in connection with the actual playing of baseball, the Player agrees to cooperate with the Club and participate in any and all reasonable promotional activities of the Club and Major League Baseball, which, in the opinion of the Club, will promote the welfare of the Club or professional baseball, and to observe and comply with all reasonable requirements of the Club respecting conduct and service of its team and its players, at all times whether on or off the field.