

# In a Twist, Judge Overturns Arbitration Decision Suspending Tom Brady

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On September 3, Judge Richard Berman of Southern District of New York overturned the NFL's four-game suspension of New England Patriots' quarterback Tom Brady. Besides being a dream come true for ESPN, the ruling is quite significant from a labor and employment law perspective, as the judge drastically departed from courts' typical deference to arbitration awards and unwillingness to interfere with the language in collective bargaining agreements.

Typically, courts give greater deference to arbitration awards, and overturn decisions only in rare instances. The theory is that greater court interference in the arbitral process would only serve to encourage parties to forego arbitration and proceed with litigation in the courts. Courts are similarly bound by the four corners of a bargaining agreement, and must decide cases in compliance with the contractual terms negotiated therein.

Notwithstanding the above, Judge Berman determined in the case (National Football League Management Council v. National Football League Players Association) that the arbitration suffered from several "legal deficiencies" that undermined its result. Using the language of the collective bargaining agreement – as well as that of several prior opinions issued against the NFL – Judge Berman found that Brady had not been given sufficient notice that his actions could result in a four game suspension; there is no language in the bargaining agreement giving players notice of a possible suspension for equipment violations, such as the deflation of footballs. (The NFL had attempted to compare Brady's purported offense to that of performance enhancing drug violations, of which there is extensive language in the bargaining agreement). Similarly, Judge Berman hammered the NFL for suspending Brady for allegedly being "generally aware" of a violation, particularly because the NFL had never disciplined another player for a similar offense. Finally, the court determined that Commissioner Roger Goodell – also acting as the arbitrator in the case – improperly denied Brady's motions to call a central witness at the arbitration and to examine notes prepared by the NFL in support of its initial determination to suspend Brady.

Judge Berman was very careful to avoid issuing an opinion on which parties could rely to overturn future arbitration awards. By using facts unique to this case, the court successfully balanced its need to support its

determination to vacate the arbitration award in this case while not providing precedent for doing so in the future.

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