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Dick Woodson's Revenge: The Evolution of Salary Arbitration in Major League Baseball

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Dick Woodson’s Revenge: The Evolution of Salary Arbitration in Major League Baseball

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I. INTRODUCTION

By the time Dick Woodson was selected as the first player to go through salary arbitration, baseball’s troubled labor history was already well-established and was nearing a breaking point.¹ Amidst increasingly common player holdouts related to salary disputes and the uniformly hostile attitudes of penurious owners, players looked to unionize as a way to fight for their rights.² With unionization came collective bargaining agreements.³ The first such agreement, in 1968, provided the framework for both grievance and salary arbitration.⁴ It was not until 1974, however, that salary arbitration

1. See Frederick N. Donegan, *Examining the Role of Arbitration in Professional Baseball*, 1 SPORTS L. J. 183, 183–190 (1994) (outlining the tumultuous history of labor relations in professional baseball).

2. See *id.* at 184–87.

3. *Id.*

4. *Id.* at 189.

actually went into effect, with the Woodson arbitration.⁵ In agreeing to this negotiation practice owners hoped to stop salary holdouts and rationalized that, in the long run, they might prevent free agency.⁶ While the affirming vote was a near-unanimous 22-2, one notable dissenter was Dick Meyer, a brewery executive and experienced negotiator who represented the Cardinals.⁷ Meyers said at the time, “[t]his will be baseball’s ruin.”⁸

When asked why he was selected as the first player for salary arbitration, Dick Woodson said, “I was picked because I was the poster child of the most abused in Major League Baseball as far as contract negotiations.”⁹ It is ironic that it was Woodson’s perceived mistreatment that led to his selection, as that dubious honor only served to exacerbate his predicament.¹⁰ Woodson himself never experienced the benefits of salary arbitration.¹¹ When his playing career ended prematurely due to injury on July 8, 1974—as a member of the New York Yankees, a team he loathed¹²—Woodson was indignant and bitter.¹³ As a martyr to the cause of fair player compensation, however, Woodson inadvertently ushered in an era of unprecedented player leverage, evident today in the outrageous salaries of many professional baseball players.¹⁴

The present state of the business of baseball is a direct result of the implementation of what has come to be known as “baseball style arbitration,” a process that began in 1974 with Dick Woodson.¹⁵ So, while Woodson himself never reaped the benefits of baseball’s arbitration system, his legacy endures to seek his revenge. Like a vengeful apparition, Woodson is there every time a flustered owner wincingly signs a multi-million dollar contract and an underpaid young player cashes in.

This paper will examine the evolution of salary arbitration in professional baseball through the lens of the original 1974 Dick Woodson salary arbitration. Part II will discuss the general development of labor relations in professional baseball, with an emphasis on how and why salary

5. See Roger I. Abrams, *Inside Baseball’s Salary Arbitration Process*, 6 U. CHI. L. SCH. ROUNDTABLE 55, 55 (1999).

6. See Maury Brown, *Evolution of Salary Arbitration: An Ironic Tale*, YAHOO! SPORTS (Jan. 19, 2010), <http://sports.yahoo.com/mlb/news?slug=ys-maurybrownarbitration011910>.

7. *Id.*

8. *Id.*

9. Telephone Interview by Twinstrivia.com with Dick Woodson, Former Pitcher, Minnesota Twins (2011), available at <http://twinstrivia.com/wp-content/uploads/2011/06/Woodsonsalaryarb.mp3> [hereinafter Audio Interview with Dick Woodson].

10. See *infra* Part III.

11. See *id.*

12. See *infra* note 79.

13. See *id.*

14. See *infra* Part V.A.1.

15. See *supra* note 5 and accompanying text.

arbitration came to be implemented. Part III will focus specifically on Dick Woodson's salary arbitration and how that experience shaped the immediate evolution of the practice and informed the current state of affairs in Major League Baseball ("MLB"). Part IV will discuss MLB's salary arbitration rules and how the process actually works. Part V will address prevailing criticisms of baseball style arbitration as it exists today—ultimately contending that it is a good system that consistently and effectively achieves its primary goal of settlement. Part VI briefly concludes.

II. HISTORY

In 1908, Pittsburgh Pirates outfielder Tommy Leach used the term "arbitration" to describe the mechanism he proposed to settle his salary dispute with club management Pirates owner Barney Dreyfuss declined to participate in this novel procedure, because he neither had to nor wanted to. Instead, he offered Leach an ultimatum to accept his terms or leave baseball. Leach signed.¹⁶

Leach's experience is indicative of the nature of player-owner interaction in the pre-arbitration era in Major League Baseball.¹⁷ Owners had no incentive or reason to bargain with individual players, therefore, they chose not to.¹⁸ The dictatorial position that owners enjoyed came from the "reserve system," which effectively deeded each player to the team for which he originally signed—for life.¹⁹

While the reserve system began as a way to retain a select number of players, owners immediately recognized the implicit benefits and by the 1880s every individual player had a reserve clause inserted in his contract.²⁰ By restricting players' mobility and limiting their options, owners were able

16. Abrams, *supra* note 5, at 57.

17. See *supra* note 1 and accompanying text.

18. See Donegan, *supra* note 1, at 183–89.

19. See Donegan, *supra* note 1, at 184:

The reserve clause allowed a team to have exclusive rights to a player for the year following the contract year. This invariably meant that a player was bound to that team for life because the reserve clause bound him to one team in perpetual one-year contracts. Faced with either sitting out a year to gain free agency, being traded, or retiring, most players were forced to accept the owners' contracts.

See also *The Curious Case of Curt Flood*, (HBO Sports television broadcast July 13, 2011) (documenting Curt Flood's fight against MLB's reserve system, which led to reform but also destroyed his career).

20. See Bibek Das, *Salary Arbitration and the Effects on Major League Baseball and Baseball Players*, 1 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 55, 55 (2003).

to keep salary costs low.²¹ Players saw potential reprieve in arbitration—a “formalized mechanism for neutrally settling disputes.”²² It was clear, however, that “baseball’s management was not going to engage in the arbitration process” voluntarily.²³

Players realized that without the ability to collectively bargain they would make little progress toward fairer negotiations and higher salaries; however, initial attempts to unionize proved futile.²⁴ Even after players ultimately succeeded in organizing in 1954 with the creation of the first sustainable players union, the Major League Baseball Players Association (“MLBPA”), which still exists today—they still struggled to improve their position.²⁵ Everything changed in 1966 when Marvin Miller left his position as chief economist for the United States’ third-largest union, the United Steelworkers of America, to become the executive director of the MLBPA.²⁶ Miller believed that arbitration would be an indispensable tool for slowly doing away with the reserve system.²⁷ In 1968, Miller brokered baseball’s first basic collective bargaining agreement, which included the framework for both grievance and salary arbitration.²⁸ It was in 1972, however, that Miller mobilized players in an unprecedented manner—he organized a strike.²⁹ By the end of the 1972 season, owners were ready to come to the bargaining table.³⁰

Perhaps surprisingly, there was little resistance to salary arbitration when it was proposed in 1973.³¹ In fact, it was the owners who actually first

21. See Josh Chetwynd, *Play Ball? An Analysis of Final-Offer Arbitration, Its Use in Major League Baseball and Its Potential Applicability to European Football Wage and Transfer Disputes*, 20 MARQ. SPORTS L. REV. 109, 121 (2009).

22. *Id.*

23. *Id.*

24. See Donegan, *supra* note 1, at 184–87. Prior to the creation of the fifth player’s union on July 12, 1954—the Major League Baseball Players Association, which is still in existence today—there were four unsuccessful attempts at unionization: (1) the Players League in 1890; (2) The League Protective Players Association in 1900; (3) The Baseball Players Fraternity, which operated from 1912–1918; and, (4) The American Baseball Guild in 1948. Each union either failed or was dissolved due to lack of player interest. *Id.*

25. See *id.* at 186.

26. See Chetwynd, *supra* note 21, at 121 (“Although the MLBPA union was established in 1954, it was not until Miller assumed the organization’s top role that true negotiations commenced between labor and management.”).

27. See *id.* at 121–22 (quoting MARVIN MILLER, A WHOLE DIFFERENT BALL GAME: THE INSIDE STORY OF BASEBALL’S NEW DEAL 239 (1991)) (“‘With impartial arbitration in effect, we could argue the meaning and interpretation of a contract provision,’ Miller wrote in his autobiography. ‘It was only a matter of time, I felt, before we could test whether a club’s right of renewal of a contract lasted forever.’”).

28. Chetwynd, *supra* note 21, at 121.

29. *Id.* at 122.

30. *Id.*

31. See Brown, *supra* note 6 (referencing 22-2 vote in favor of salary arbitration).

proposed the use of this process in the negotiations following the 1972 strike.³² This is, in part, because owners saw salary arbitration as the lesser of two evils—the greater being free agency.³³ In fact, only two people voted against the proposition on behalf of their teams: Charlie Finley, the flamboyant owner of the Oakland Athletics,³⁴ and Dick Meyer, of the St. Louis Cardinals.³⁵ Meyer was an expert on baseball labor issues who had experience with binding arbitration from when he was labor chief of Anheuser-Busch.³⁶ Finley, the antithesis of many of the other team owners, was born into modest circumstances, and has been described as “aggressive, a street-smart realist.”³⁷ Each man “correctly predicted what would happen if owners abandoned a take-it-or-leave-it stance with players and agreed to salary arbitration”: perpetually increasing salaries—or, as Meyer put it, “baseball’s ruin.”³⁸

Ultimately it was not so much the arbitration process, generally, that proved to be “baseball’s ruin”—i.e. the end of the player-owner dynamic as it had existed up to that point—but rather the peculiar and novel fashion in which baseball style arbitration was to proceed. While the decision to implement salary arbitration had been more or less unanimous among owners, it took three weeks of heated negotiations to settle on a format and structure for the actual process.³⁹ It was finally determined that baseball arbitration would be based on a “final offer format”—the arbitrator would have to choose either the owner’s or the player’s position and could not

32. Chetwynd, *supra* note 21, at 122–23.

33. See Brown, *supra* note 6. Ironically, it was through the grievance arbitration process that free agency was ultimately born, in the “Messersmith-McNalley” arbitration, which has been called “the most important arbitration decision in the history of professional sports.” See Donegan, *supra* note 1, at 187–88 (quoting MILLER, *supra* note 27, at 238).

34. See G. MICHAEL GREEN & ROGER D. LAUNIS, CHARLIE FINLEY: THE OUTRAGEOUS STORY OF BASEBALL’S SUPER SHOWMAN (2010).

35. See Brown, *supra* note 6; see also Jerome Holtzman, *Player Salaries Uphold Wrigley Arbitration View*, CHI. TRIB. SPORTS (Jan. 23, 1994), http://articles.chicagotribune.com/1994-01-23/sports/9401230223_1_arbitration-owners-finley (quoting Charlie Finley to convey the improbability of a nearly unanimous vote in favor of salary arbitration) [hereinafter Holtzman, *Wrigley*]:

I contacted every owner either personally or by telephone and I told them, one and all, the evils of arbitration. They all listened very attentively and thanked me for taking the time to call them. If I had been a betting man I would have bet all the tea in China that at least 18 of the teams would have voted against arbitration. But when it came to a vote, only the St. Louis Cardinals and Oakland A’s voted against it.

36. Brown, *supra* note 6.

37. Holtzman, *Wrigley*, *supra* note 35.

38. Brown, *supra* note 6.

39. See Chetwynd, *supra* note 21, at 123.

compromise between them.⁴⁰ While the mutually inherent risk of a no-compromise format was designed to encourage settlements,⁴¹ it quickly became apparent that when settlement was not reached and cases actually proceeded to arbitration, players won—even when they lost.⁴² The owners had signed their own death warrants.

It did not take the owners long to realize what they had done.⁴³ In 1974 and 1975, the system produced a number of positive results for players regardless of whether they won or lost their hearings.⁴⁴ The McNally-Messersmith arbitration decision of 1975,⁴⁵ which finally destroyed the reserve system,⁴⁶ only exacerbated the general climate of labor relations in baseball.⁴⁷ There was a lockout during spring training in 1976, and salary arbitration was suspended for that year as well as 1977.⁴⁸ By 1980, owners were pressing for the elimination of salary arbitration altogether.⁴⁹ The owners were unsuccessful, but they did manage to tighten the eligibility requirements for arbitration.⁵⁰ In 1990, MLB locked out players for thirty two days during spring training over a dispute related to tightened eligibility requirements.⁵¹ The worst of the headbutting, however, was in 1994, when a 232-day strike that began on August 12 caused the cancellation of the remainder of the 1994 season—including the playoffs and the World

40. *Id.* at 123–24.

41. See Darren Heitner, *A Deep Look into Baseball's Salary Arbitration System*, SPORTS AGENT BLOG (Apr. 8, 2008), <http://www.sportsagentblog.com/2010/04/08/a-deep-look-into-baseballs-salary-arbitration-system/> (describing baseball arbitration as a system “that really aims to create settlements”).

42. See Thomas Gorman, *The Arbitration Process*, BASEBALL PROSPECTUS (Jan. 31 2005), <http://www.baseballprospectus.com/article.php?articleid=15864> (explaining that pay cuts are virtually unheard of in baseball salary arbitration because, if owners do not offer more money than the player is currently making, the arbitrator will more likely than not consider *the player's* suggested salary figure the more reasonable of the two offers). The last case where someone walked out of an arbitration hearing with less money than they made the previous year was Randy Milligan, in 1994. *Id.*

43. See Ed Edmunds, *A Most Interesting Part of Baseball's Monetary Structure—Salary Arbitration in Its Thirty-Fifth Year*, 20 MARQ. SPORTS L. REV. 1, 4–7 (2009).

44. *Id.* at 4.

45. Nat'l & Am. League Prof'l v. Major League Players Assn., 66 Lab. Arb. Rep. 101 (1975).

46. See Donegan, *supra* note 1, at 187–89.

47. See Edmunds, *supra* note 43, at 4–5.

48. *Id.* at 4.

49. *Id.* at 5.

50. *Id.* Instead of salary arbitration, owners wanted individual negotiations for wages with the creation of a fixed salary scheme and compensation for a team losing a player to free agency. *Id.* The resulting agreement did not eliminate arbitration, but it did reduce the eligibility for arbitration to two years of service. *Id.* In 1985, a new agreement changed the eligibility requirement from two years to three years of credited service. *Id.* That same year, the MLBPA staved off attempts by owners to cap the size of salary increases gained in arbitration. *Id.*

51. *Id.*

Series—as well as the first eighteen games of the 1995 schedule.⁵² Again, owners were trying to eliminate salary arbitration altogether.⁵³ Unable to do so, they proposed a switch from a sole arbitrator to a panel of three at the beginning of the 1995 season.⁵⁴ That transition was uniformly implemented in 2000.⁵⁵ The structure of baseball salary arbitration has remained essentially the same since then.

Looking back, it is clear that the owners had no idea what they were getting into when they agreed to allow Dick Woodson, a right-handed pitcher for the Minnesota Twins with a 10-8 record in 1973, the opportunity to go to arbitration to fight for the right to increase his salary from the \$23,000 he was offered to \$30,000.⁵⁶ On Monday, February 11, 1974, Woodson, MLBPA attorney Richard Moss, Twins owner Clark Griffith, and American League attorney James P. Garner all met in a room before arbitrator Henry Platt for more than four hours in Major League Baseball's first salary arbitration hearing.⁵⁷ Like a roaring wildfire started with a single match, the era of baseball salary arbitration had begun.

III. THE FIRST SALARY ARBITRATION

Dick Woodson never had a good relationship with Calvin Griffith, then-owner of the Minnesota Twins.⁵⁸ Griffith had fought manager Billy Martin every step of the way when Martin initially tried to bring Woodson up from the minors to the Twins, and then later fought against any attempt to increase Woodson's salary, even prior to arbitration.⁵⁹ According to Woodson, Griffith "did everybody that way," but he still feels that he may have gotten the worst of it.⁶⁰

After the 1972 season, despite being a strong contributor, Griffith offered Woodson the league minimum salary.⁶¹ The Twins owner explained that raising Woodson's salary with the league minimum meant that he was

52. *Id.*

53. *Id.* at 6.

54. *Id.*

55. *Id.*

56. *See* Edmunds, *supra* note 43, at 1.

57. *Id.*

58. *See* Audio Interview with Dick Woodson, *supra* note 9.

59. *Id.*

60. *See* Interview by John Swol with Dick Woodson, Former Pitcher, Minnesota Twins, available at <http://twinstrivia.com/interview-archives/dick-woodson-interview/> [hereinafter Interview with Dick Woodson].

61. *See* Audio Interview with Dick Woodson, *supra* note 9.

getting a \$2,000 raise.⁶² When Woodson protested, Griffith gave him the “Tommy Leach treatment,”⁶³ explaining that he could “either sign the contract or go and carry a lunch bucket.”⁶⁴ Woodson never forgot that comment.⁶⁵

Following the unsuccessful contract negotiations at the start of the 1973 season, Woodson was handpicked by Marvin Miller for the first salary arbitration from among several players who were similarly dissatisfied with their contracts.⁶⁶ Woodson insists he was chosen because of just how abusive Griffith was to him from a compensation standpoint.⁶⁷ Despite being given the opportunity to fight for a fair salary, Woodson recalls being something like a “sacrificial lamb,” because at that point no one really understood how the process would work.⁶⁸ It was recommended that he retain counsel, but as Woodson points out today, “a guy making fifteen grand can’t afford that.”⁶⁹

Woodson went to the arbitration hoping to double his salary from \$15,000 to \$30,000.⁷⁰ What he did not realize in picking his figure, however, was that his desired salary would also be compared to National League pitchers (the Twins are an American league organization).⁷¹ What that meant for Woodson was that players who had worse records, worse innings pitched, the same number of years of service, and so on, were making \$20,000–\$25,000 more than even the best-case compensation he had demanded.⁷² In fact, when the arbitration ended and Woodson prevailed, the arbitrator’s final question was, “Why did you ask for so little?”⁷³

Woodson came to the arbitration alone and spoke on his own behalf with only his stats to support his position.⁷⁴ To counter his demand the Twins argued that he was a .500 pitcher on a .500 team.⁷⁵ Notably, however, the Twins focused less on disputing Woodson’s stats and more on the price of oil, repeatedly arguing that fans would not attend games because they

62. *Id.*

63. *See supra* note 16 and accompanying text.

64. Interview with Dick Woodson, *supra* note 60.

65. Audio Interview with Dick Woodson, *supra* note 9.

66. Interview with Dick Woodson, *supra* note 60.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* Woodson has said that after his salary arbitration “a lot of guys[] revisited their figures,” and presumably adjusted them upwards. *Id.*

74. Audio Interview with Dick Woodson, *supra* note 9.

75. *Id.*

would not be able to afford gas to drive to the stadium.⁷⁶ Ostensibly, the Twins—who were represented by Clark Griffith, Calvin Griffith’s son and a future law professor, plus another attorney—hoped to convince the arbitrator that lower attendance resulting from the 1974 oil shortage would mean they would have less money to pay Woodson’s increased salary.

Despite winning his case, it is clear that today Woodson still has mixed feelings about the arbitration process.⁷⁷ While he does not blame Marvin Miller for “sacrificing” him and is grateful for the opportunity to have participated in the first baseball salary arbitration, he resents not having been better prepared for the experience—not knowing how to “play the game” until it was over.⁷⁸ It seems that what stung Woodson the most, however, was how he was treated after the fact.⁷⁹ When asked whether he feels he was blackballed from baseball for participating in the first salary arbitration, Woodson has suggested that his decision to participate almost certainly had an adverse effect on his playing time.⁸⁰

IV. MLB ARBITRATION TODAY

While the basic structure of MLB salary arbitration has changed little since its adoption in 1973,⁸¹ the experience for players going through the process today is quite different from what Dick Woodson experienced nearly forty years ago.⁸² Even more remarkable than the changes in the player experience, however, is the general change in owners’ perceptions of the process. While it was the owners who initially proposed the use of salary arbitration—largely as a way to stave off free agency⁸³—they quickly

76. Interview with Dick Woodson, *supra* note 60.

77. *See id.* (“On one hand I was honored that Marvin Miller would pick me for [arbitration] but on the other hand I was really sacrificed. I don’t think it wasn’t [sic] really Marvin Miller[’s] intention, I just did not know how the game was played until after I went through the process.”).

78. *See id.*

79. *See* Audio Interview with Dick Woodson, *supra* note 9.

80. *See id.* (“They didn’t pick me very often [after the arbitration]. I just sat in the bullpen.”). After the arbitration, Calvin Griffith was quoted as saying during spring training that he would never pay Woodson the money he won at arbitration—that he would trade him before he would ever pay on that contract. Interview with Dick Woodson, *supra* note 60. True to his word, Griffith traded Woodson to the New York Yankees in May of 1974. *Id.* In interviews, Woodson has recalled how difficult it was playing for the Yankees. *See id.* (“It was difficult when I was traded to the Yankees, being a Dodger fan . . . my dad wouldn’t even talk to me for six months. I could not even look at myself in the mirror with the pinstripes on, [sic] it was really hard.”).

81. *See supra* text accompanying note 31.

82. *See supra* note 80 and accompanying text.

83. *See supra* note 32 and accompanying text.

realized that through the arbitration process they would not only have to abandon their take-it-or-leave-it approach to salary negotiations,⁸⁴ but also that the “final offer” format meant they had to uniformly and preemptively increase their offers in order to minimize their losses.⁸⁵ Owners who came in too low risked the possibility that the arbitrator would see the player’s demand as the more reasonable of the two proposed numbers.⁸⁶ What this meant, really, was more money for the players whether they won or lost the actual arbitration hearing.⁸⁷ Along with free agency, salary arbitration was destined to have one major effect in baseball: the steep and rapid rise in player salaries.⁸⁸

A. Enaction & Eligibility

The MLBPA enacted salary arbitration with good intentions as a way to fairly compensate players who are similarly situated in position, ability, and statistics.⁸⁹ The final offer or “last-best” format was selected to encourage the club and player to engage in good-faith negotiations.⁹⁰ Ideally, this format draws the two offers toward the center rather than forcing a polarized pair of starting points.⁹¹ Because neither side is given an indication on how the arbitrator will react to their final offers, the process generates just the kind of uncertainty that is well calculated to compel the parties to seek security in agreement.⁹² It is this mutually inherent risk that makes final offer arbitration such an effective settlement tool.⁹³

There are two main groups of players who are eligible for salary arbitration: (1) free agents, and (2) players who have not yet accumulated the six years of service time necessary for free agency.⁹⁴ Because it is extraordinarily rare for a team to actually plan on going to salary arbitration with one of its free agents, the process exists primarily for those players who

84. See *supra* note 16 and accompanying text, note 64 (evidencing owners’ dismissive treatment of players’ salary concerns in the pre-arbitration era).

85. See *supra* note 42.

86. See *id.*

87. See Holtzman, *Wrigley*, *supra* note 35 (explaining how, in a particular arbitration “season,” owners “had to increase their offers across the board” in order to ultimately *minimize* losses).

88. Donegan, *supra* note 1, at 190.

89. *Id.*

90. *Id.* at 191.

91. Eldon L. Ham & Jeffrey Malach, *Hardball Free Agency—The Unintended Demise of Salary Arbitration in Major League Baseball: How the Law of Unintended Consequences Crippled the Salary Arbitration Remedy—and How to Fix It*, 1 HARV. J. SPORTS & ENT. L. 63, 77 (2010).

92. Chetwynd, *supra* note 21, at 111 (quoting Carl M. Stevens, *Is Compulsory Arbitration Compatible with Bargaining?*, 5 INDUS. REL. 38 (1966)).

93. See *supra* note 41 and accompanying text.

94. See Gorman, *supra* note 42.

have not yet reached free agency status.⁹⁵ If, however, free agents do go the arbitration route, they are subject to a different set of rules.⁹⁶

B. Process

MLB Salary arbitration is something of a trial by statistics,⁹⁷ augmented with a focus on certain allowable criteria.⁹⁸ The arbitrators, while far more knowledgeable about baseball today than when the process began,⁹⁹ are *arbitration* experts—not baseball experts. Accordingly, no advanced metrics are used to make a case.¹⁰⁰ Even so, the process is decidedly stat-based.¹⁰¹

95. *Id.* Teams do not want to go to arbitration with free agents because the arbitration hearing tends to award higher salaries than the free market for players who were looking at pay cuts (in the market). *Id.* Pay cuts are virtually unheard of in arbitration, so a player's expectation could actually be higher in an arbitration case. *Id.* Further, free agents usually do not want to go to arbitration because the one-year deal they receive offers far less security and total money than a negotiated multi-year deal. *Id.*

96. *Id.*

97. See Abrams, *supra* note 5, at 65–69.

98. See Article VI, Section F(12) of the current CBA:

- (A) The criteria will be the quality of the Player's contribution to his Club during the past season (including but not limited to his overall performance, special qualities of leadership and public appeal), the length and consistency of his career contribution, the record of the Player's past compensation, comparative baseball salaries . . . , the existence of any physical or mental defects on the part of the Player, and the recent performance record of the Club including but not limited to its League standing and attendance as an indication of public acceptance
- (B) Evidence of the following shall not be admissible:
- (i) The financial position of the Player and the Club;
 - (ii) Press comments, testimonials or similar material bearing on the performance of either the Player or the Club, except that recognized annual Player awards for playing excellence shall not be excluded;
 - (iii) Offers made by either Player or Club prior to arbitration;
 - (iv) The cost to the parties of their representative, attorneys, etc.;
 - (v) Salaries in other sports or occupations

99. See Jerome Holtzman, *Owners Still Spell Nightmare A-r-b-i-t-r-a-t-i-o-n*, CHICAGO TRIBUNE (Jan. 16, 1992), http://articles.chicagotribune.com/1992-01-16/sports/9201050414_1_largest-arbitration-award-cubs-star-relief-pitcher [hereinafter Holtzman, *Nightmare*]. There, Holtzman recalls the "oft-told story" in which a player's agent compared his client with some of the great players of the past. *Id.* Again and again the arbitrator failed to recognize each name, until eventually Babe Ruth was mentioned. *Id.* "The arbitrator sighed in relief and said, 'Now that's a name I recognize.'" *Id.*

100. Brown, *supra* note 6.

101. See Abrams, *supra* note 5, at 66:

Today's salary arbitration hearing room table is adorned with laptop computers capable of generating any needed comparison in any instant. Every claim is met with a counterclaim until the arbitrators are left with a huge pile of numbers. Player

The winning strategy in salary arbitration is to present in simple, straightforward terms the right class of comparable players, focusing on the core characteristics of the player whose case is being adjudicated.¹⁰² The most important issue is not how well the player performed, but how well he performed *compared to other players*.¹⁰³ Experienced MLB arbitrators further suggest that, among the statistics presented, game-winning (or game-losing) events should be the focus of the presentation.¹⁰⁴

As to how the hearing actually proceeds, both the club and the player submit their “last best offer,” ahead of time, to the Labor Relationships Department and the MLBPA.¹⁰⁵ When the parties appear at the arbitration they supply the three-person panel of arbitrators with a Uniform Player Contract that has been properly completed except for the salary figure.¹⁰⁶ Each side gets one hour to offer its evidence and an additional one-half hour to rebut any opposing claims.¹⁰⁷ The proceedings are contractually private and confidential.¹⁰⁸ At the conclusion of the hearing, the arbitrator must decide between the two offers.¹⁰⁹ The manner in which decisions are issued is one of the most criticized facets of the entire process—particularly the fact that arbitrators’ decisions are not written out or formally rationalized.¹¹⁰ Without issuing written decisions there is no indication as to what kind of weight the arbitrators placed on the particular statistics presented. Without knowing the weight attached to each statistic—without any real explanation,

performance is chopped and diced, particularized and dissected. Anything not easily convertible into numerical terms, such as team leadership, hustle and courage in the face of debilitating injury, seems to play no role.

102. *Id.* at 66–67.

103. *Id.* at 67.

104. *Id.*

105. Gorman, *supra* note 42.

106. *Id.*

107. See Chetwynd, *supra* note 21, at 128. Modernly, there is some flexibility as to the time limits as arbitrators are loath to make a judgment unless the parties have had a full chance to present their arguments. Abrams, *supra* note 5, at 66 (“[Time limits] have been stretched in practice so that each party has a greater opportunity to rebut and clarify.”). Some arbitrators have pushed participants to supply data long before a hearing so it can be “digested.” *Id.* Others have asked for more time *after hearings* to review submissions. *Id.* Neither alternative seems likely to be adopted. *Id.*

108. See generally Thomas V. Hildner & Lisa J. Trembly, *Arbitration: Take Charge by Understanding and Designing the Process*, NEW JERSEY LAWYER, THE MAGAZINE, Oct. 2011 (discussing privacy and confidentiality in arbitration agreements).

109. Chetwynd, *supra* note 21, at 110.

110. See Chetwynd, *supra* note 21, at 128 (describing how opinions are issued):

At the conclusion of the hearing, the arbitrators are given no more than 24 hours to pick either the player’s or the club’s offer. The panel is prohibited from disclosing either any detailed opinion on the case or an explanation of how the panel members voted. The arbitrators simply provide the parties with a one-year uniform player’s contract that has the winning salary figure included.

See also Part V.B.2 (discussing problems with the arbitration process).

as to how or why the arbitrators arrived at their decision—neither side is any better off the next time around, which only adds to the inherent risk and uncertainty of the process.

C. Evolution

While technically the same, the arbitration process is much different from what Dick Woodson experienced in 1974.¹¹¹ For one, players still attend, but they no longer speak on their own behalf.¹¹² Perhaps because even the lowest-paid players are making significantly more than “fifteen grand”¹¹³—ironically, by following the trail that Dick Woodson blazed—they can all afford representation.¹¹⁴ Appearing at one’s arbitration hearing without counsel is unprecedented in the modern era.

Maybe the most significant difference, however, is the treatment of players who choose salary arbitration. Today, arbitration is not just tolerated; it is expected.¹¹⁵ Owners still are not too keen on the whole system, but players are certainly no longer blackballed for participating.¹¹⁶ Salary arbitration is as much a part of baseball today as spring training.¹¹⁷ In many ways, the evolution of salary arbitration from an amateurish, personal exchange to a pragmatic standardized business formality mirrors the evolution of baseball itself—from a seasonal, low-paying pastime to a full time “job” in a multi-billion dollar business.

V. BASEBALL’S RUIN?

“I have a hard time relating to those figures.”
-Dick Woodson¹¹⁸

Dick Woodson is certainly not alone in expressing his distaste for the

111. See *supra* Part III.

112. Abrams, *supra* note 5, at 71 (“The ballplayer always attends his salary arbitration hearing, sitting quietly next to his agent. A decade ago, it was not unusual for a player to say a few words at his hearing, but that no longer appears to be the case.”); *cf.* text accompanying note 74.

113. See *supra* text accompanying note 69.

114. *Contra id.*

115. See 2013 Arbitration Eligibles Rumors, MLB TRADE RUMORS, <http://www.mlbraderumors.com/2013-arbitration-eligibles/> (last visited Mar. 5, 2013) (speculating on the fates of arbitration-eligible players in MLB).

116. *Contra* note 80 and accompanying text.

117. See *supra* note 115.

118. Audio Interview with Dick Woodson, *supra* note 9.

business of baseball as it exists today.¹¹⁹ When Charlie Finley and Dick Meyer voted against arbitration, it is unlikely that even they imagined an era in professional baseball where one player's salary could exceed another team's entire payroll.¹²⁰ Reflecting recently on his experience with arbitration and offering his opinion on how it has evolved, Dick Woodson said, "I guess overall [the arbitration process] is just like unions in general: when they first start out it's a very good reason why . . . and then I think it gets to a point where I'm not sure if it's not detrimental to the game itself."¹²¹ Woodson's ambivalence speaks to a hot button topic in baseball today: the split between those who think arbitration is good for baseball and those who think it is bad for baseball.

A. *The Case Against Arbitration*

Salary arbitration has a serious image problem in the modern era in large part because some of the things that make salary arbitration "bad" are easy to see; outrageous salaries, work stoppages and holdouts, and acrimonious negotiations all play out in the public eye. Some of the most insidious effects of salary arbitration, however, are less conspicuous. In addition to the bloated salaries which get higher every year, there is also the way in which salary arbitration decisions are issued,¹²² the psychological impact on players from the adversarial nature of the process,¹²³ and the things that owners have begun to do to avoid or delay the process.¹²⁴

1. Outrageous Salaries

Big league salaries are perhaps the largest obstacle to widespread acceptance of salary arbitration.¹²⁵ Neither league officials nor the general public are likely to get behind a practice that supports MLB's outrageous salary figures anytime soon. Unfortunately, players are equally unlikely to

119. See, e.g., Craig Calcaterra, *Tim Lincecum's Case Shows Why Arbitration Sucks*, *HARDBALL TALK* (Jan. 20, 2010, 5:25 PM), <http://hardballtalk.nbcsports.com/2010/01/20/tim-lincecums-case-shows-why-arbitration-sucks/>.

120. See The Associated Press, *Report: A-Rod the Big Fish, Earns More Than All of Marlins Team*, *ESPN MLB* (April 1, 2008), <http://sports.espn.go.com/mlb/news/story?id=3324199> (discussing how, in 2008, New York Yankee Alex Rodriguez's \$28 million annual salary exceeded the combined total of the entire Florida Marlin's 33-man roster).

121. Audio Interview with Dick Woodson, *supra* note 9.

122. See *supra* note 110.

123. See Heitner, *supra* note 41 (describing the "psychological cost[s]" incurred by players hearing about why they are not worth what they think they are worth); see also *infra* Part V.A.II.

124. See *infra* Part V.A.III.

125. See Stu on Sports, *Major League Baseball Salaries Are out of Control*, *THE MONTREAL GAZETTE* (Dec. 7, 2012, 5:33 PM), <http://blogs.montrealgazette.com/2012/12/07/major-league-baseball-salaries-continue-to-skyrocket/>.

accept any modifications to the current CBA—which expires in 2012—that limit their potential earning power.¹²⁶ Baseball management has criticized salary arbitration since its inception for inflating player salaries.¹²⁷ It is apparent, however, that compensation for players eligible for salary arbitration has remained almost stable over the past six years while free agent salaries have ballooned in the competitive free market.¹²⁸ It might be argued then that salary arbitration has actually *controlled* inflation in a way the owners are unable to do themselves.¹²⁹

2. Making the Case in Arbitration and Issuing Decisions

The way in which opinions are transmitted and the psychological effects on players are both issues with the modern salary arbitration *process*.¹³⁰ Neither seems particularly likely to change anytime soon. A lack of written opinions is more of a problem for the participants themselves (as opposed to a problem in the eyes of the public), as both sides would like to get an edge any way they can.¹³¹ To add a measure of transparency to the process, however, would take away from the inherent risk and uncertainty that is so important in driving parties to settlement.¹³² The psychological toll that the process takes on players seems equally fixed, but is a much realer concern as evidenced by the documented toll on players engaging in salary arbitration.¹³³ As the process becomes more standardized and business-like, however, it is less likely that players will take issue with owner's differing viewpoints on their stats. If it really is “just business” then that familiar consolation should relieve at least some of the sting.

126. It has been argued that the simple imposition of a salary cap could control wages. See *Chapters 3–6 in* BASEBALL PROSPECTUS, *BASEBALL BETWEEN THE NUMBERS: WHY EVERYTHING YOU KNOW ABOUT THE GAME IS WRONG* (2006) (making the argument for a salary cap in MLB). Because a salary cap would limit earning power, however, it is unlikely that—barring some significant development—players would agree to take this step.

127. See Abrams, *supra* note 5, at 72.

128. *Id.*

129. *Id.*

130. For example, issues with *going through* the process as opposed to issues with the results of it.

131. See *supra* Part IV.B (explaining how, without issuing written decisions, neither side is necessarily more knowledgeable or prepared the next time around—because they do not know what factors influenced the arbitrators' decisions).

132. See *supra* note 41.

133. See, e.g., Das, *supra* note 20, at 58. In a National Hockey League salary arbitration between the New York Islanders and their goalie, the owner introduced humiliating evidence into the arbitration hearing about that goalie. *Id.* “The goalie felt so betrayed by his team and the whole process, he refused to return to the Islanders the following season. Thus, the goalie was traded because of his refusal to play directly due to the arbitration hearings.” *Id.*

3. Owner Tactics

Perhaps the most troubling side effect of salary arbitration is the behavior it induces in league owners who are finding increasingly clever ways to avoid or simply delay the process. Three particularly egregious examples from the first decade of the 2000s illustrate the point: (1) the New York Yankees' refusal to offer salary arbitration to star outfielder Bobby Abreu after a stellar 2008 season; (2) the Arizona Diamondbacks' similar refusal to offer salary arbitration to Adam Dunn, another star outfielder, that same year; and finally, and most egregiously, (3) the Tampa Bay Rays' decision in 2009 to assign star pitcher David Price—their first pick of the 2007 draft—down to the minor leagues after a season in which he helped lead the Rays to The World Series.¹³⁴

Abreu and Dunn were not offered salary arbitration because, today, that process virtually guarantees an increase in a player's salary.¹³⁵ Where there is even a shred of doubt as to the continued viability of a player, owners would rather cut the player loose and potentially re-sign him in free agency at a more reasonable price depending on the state of the market than guarantee him a raise by proceeding to salary arbitration.¹³⁶ As to David Price, he was not eligible for free agency, meaning that the decision to relegate him to the minors was simply an unabashed attempt by Ray's management to delay his eligibility for salary arbitration. This kind of behavior has led some to criticize owners for charging "full price for tickets to see an inferior, manipulated product."¹³⁷

B. The Case for Arbitration

It is not necessary to run through the pros of salary arbitration in the same way as the cons as it is apparent that both arguments ultimately make the case for its continued use in Major League Baseball. That is because all

134. See Ham & Malach, *supra* note 91, 64–65, 85–86. According to Ham & Malach, the decision to demote Price was not in the best interest of the team in winning games, nor was it in the best interest of the paying fans. *Id.* at 85. On the contrary, "[t]he Rays decision to assign [Price] to the minor leagues was simply an attempt to delay his arbitration eligibility [as a 'Super Two']." *Id.* A "Super Two" is a player with at least two years of service time, but less than three years, who also accumulated at least 86 days of service in the previous year and was in the top 17% of all two-year players in service time. Gorman, *supra* note 42. Despite not having three full years of service time, "Super Twos" are eligible for salary arbitration pursuant to the 1990 negotiations, which are still in effect today. *Id.*

135. See Ham & Malach, *supra* note 91, Gorman, *supra* note 42 ("The last case where someone walked out of an arbitration hearing with less money than they made the previous year was Randy Milligan in 1994. Occasionally players settle prior to their hearing and settle at a salary that is less than they made the year before, but even that is extremely rare.").

136. See generally Ham & Malach, *supra* note 91.

137. *Id.* at 87.

of the things that make arbitration bad or undesirable only *encourage teams and players to settle*; the worse the process is, the more inclined players and clubs will be to come to an agreement in order to avoid going through it.¹³⁸ The only real kink in the system is the incentive to arbitrate for more money.¹³⁹

Statistically, MLB's arbitration system has accomplished its primary goals of fairer player compensation and cooperation between players and clubs in the form of mutually agreeable settlements.¹⁴⁰ Since arbitration was incorporated into the 1973 Basic Agreement,¹⁴¹ 84.32% of salary arbitration cases filed settled prior to actually being arbitrated.¹⁴² Proponents of the system highlight the fact that arbitration works quickly and fairly while encouraging parties to adopt "realistic, good faith bargaining positions."¹⁴³

As to the inflated salaries, some commentators have argued it is a

138. See *supra* text accompanying notes 41 and 93 (explaining that mutually inherent risk encourages settlement).

139. Some commentators argue that players are not arbitrarily arguing for "more money," but rather for *fair* money. See Chetwynd, *supra* note 21, at 132 (quoting Scott Rosner & Kenneth Shropshire, THE BUSINESS OF SPORT 269–72, 271, 233 (2004)):

In the period before collective bargaining and [salary arbitration], player salaries were widely described as being "artificially low" as a result of "owners having the luxury of being the only employer able to negotiate with [the] player." Under the [salary arbitration] system, players and owners can now negotiate on equal footing, which presumably leads to wage figures that are, at the least, closer to fair market value.

140. See Ben Einbinder, *What FINRA Can Learn From Major League Baseball*, 12 PEPP. DISP. RESOL. L.J. 333, 342–44 (2012). Incidentally, one of the important factors driving players to settle prior to arbitration is the knowledge that, in salary arbitration, they will lose the right to negotiate for "ancillary benefits." See Chetwynd, *supra* note 21, at 124:

If a player wants to negotiate a multi-season agreement with benefits beyond simple salary, he will be unable to do so if he opts for [salary arbitration]. Therefore, a player cannot use this process to negotiate such ancillary rights as a no-trade clause, bonuses based on performance, or additional tickets for family members or special travel accommodation if he chooses to use this process.

In this way baseball arbitration is similar to other forms of alternative dispute resolution as they relate to *trial*; one of the most attractive aspects of *mediation*, for example, is the ability of the parties to have control over what the settlement actually looks like. The fear of losing that control encourages the parties to settle out of court and avoid trial in the same way that fear of losing ancillary benefits encourages players to come to terms with management before actually going to arbitration.

141. See *supra* note 31 and accompanying text.

142. Einbinder, *supra* note 140, at 342. In fact, only twice has the number of arbitrations heard exceeded 50% of the cases filed. *Id.* In 2009, more than 97% of the arbitration-eligible players settled prior to a hearing. *Id.* More recently, in 2013, MLB "pitched a shutout"—settling all 133 arbitration eligible cases without a single hearing. See Associated Press, *Arbitration Ends with No Hearings*, ESPN MLB (Feb. 18, 2013, 2:26 PM). 2013 was the first year since arbitration began in 1974 that no player who filed went to a hearing. *Id.*

143. Einbinder, *supra* note 140, at 344 (quoting Donegan, *supra* note 1, at 204).

combination of free agency and salary arbitration that is really to blame.¹⁴⁴ Supporters also attribute the increase in salaries resulting from arbitration to the fact that players are underpaid during their first three seasons in the major leagues.¹⁴⁵ Good faith salary arbitration can give owners an opportunity to retain the exclusive services of young experienced players, while giving the players an opportunity to increase their salaries at a stage in their careers when an otherwise monopolistic system would have prevented significant pay raises.¹⁴⁶ Salary arbitration in Major League Baseball is certainly not perfect, but it is the best and most-developed system of the four major professional sports associations, and it appears to be here to stay.¹⁴⁷

V. CONCLUSION

Dick Woodson was handpicked for the first MLB salary arbitration in 1974 because he was the poster child for the pervasive and one-sided abuse owners inflicted on players, particularly in the realm of contract negotiations.¹⁴⁸ Woodson blew his chance to take Calvin Griffith to the cleaners,¹⁴⁹ but his experience paved the way for nearly every player after him to take it to *their* Calvin Griffith.¹⁵⁰ Almost immediately, through Woodson's missteps, players realized how to play the salary arbitration game—lucky for them, it was a game they almost could not lose.¹⁵¹ After so many years of dictatorial and dismissive treatment, players found themselves holding all the cards.

Through the years the arbitration process has remained largely unchanged, yet salaries have continued to increase—and so have owners' profits. Ultimately, arbitration is not as evil as some owners might have the public believe. It is simply a way of more evenly distributing the revenue that the players generate. As Woodson himself said, “you are not worth a tinkers damn unless someone is willing to pay it.”¹⁵² The owners were always *able* to pay . . . just not necessary willing. It was not until Dick Woodson—a .500 pitcher on a .500 team¹⁵³—participated in the first ever salary arbitration that the players acquired the power to *make* them. So

144. Einbinder, *supra* note 140, at 345 (“Some commentators suggest that if either free agency or arbitration had been implemented independently of the other, player salaries would not have increased as dramatically.”).

145. *See supra* note 139 and accompanying text.

146. Chetwynd, *supra* note 21, at 126.

147. Donegan, *supra* note 1, at 198.

148. *See supra* text accompanying note 9.

149. *See supra* text accompanying note 73.

150. *See supra* note 73.

151. *See supra* note 42 and accompanying text.

152. Interview with Dick Woodson, *supra* note 60.

153. *See supra* text accompanying note 75.

while Woodson never directly reaped the benefits of a process he helped usher into habitualness, by inadvertently ensuring that there would never be “another Dick Woodson,” he nonetheless got his revenge.

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