

TOM BRADY ET. AL V. THE NATIONAL FOOTBALL LEAGUE STAY DECISION

Just a quick post because, well, we are sometimes a football blog here at Emptywheel you know, and we have football news! The NFL draft starts tomorrow night, so one and all can come back and yammer about the draft and who your team did or didn't draft. But, more importantly right this moment is the decision just entered by Judge Susan Nelson of Minnesota District Court to deny the stay of her decision on Monday lifting the lockout imposed by the owners collectively acting as the National Football League.

Judge Nelson hit on, and reinforced, many of the points made in her 80 page decision entered Monday, but today's order is a nice compact 20 pages and I thought it worth taking a look at.

Here is the full 20 page order denying the NFL's stay request.

After noting that the NFL bogusly attempted to use a self serving low burden for getting their stay entered, Nelson clobbered them again:

But this Court need not address this matter further because even under the lenient standard that the NFL proposes, the League still is not entitled to a stay pending appeal. Even if a lesser showing on the merits is permissible, the NFL would have to compensate for that lower showing with a strong showing of irreparable harm to it pending the appeal (and, more precisely, a strong showing of its harm compared to what a stay would inflict on the Players).

...

Here, the NFL has shown no such injury

resulting from or in any way related to this Court's Order, which, importantly, only enjoins the lockout. The NFL argues that it will suffer irreversible injury and irreparable harm—not because the lockout has been lifted—but by the potential signing of contracts between owners and players in a free-agency market. (Doc. No. 103, at 11-12 (claiming that “the Order in this case may entail the start of a free-agent signing period in the NFL—a period in which any structure or set of rules, even an agreement among the member clubs on the number of games that should make up a season, is subject to antitrust challenge ”).) That argument is based on the incorrect premise that this Court's Order somehow enjoined the restraints on player free agency alleged to violate the antitrust laws in the Brady Plaintiffs' Complaint.

Ouch. Well, okay, how about the Leagues other points? Judge Nelson didn't like those either:

Moreover, as the Brady Plaintiffs point out, a stay of the injunction and a continuation of the lockout would inflict financial harm upon the League, which stands to lose approximately \$1 billion before a single game is even cancelled. (Doc. No. 111 (Decl. of Richard A. Berthelsen) ¶ 3, Ex. B.) As to the notion that, without a lockout, the “competitive balance” of the NFL will be jeopardized, Plaintiffs counter that in 2010, the last season covered by the expired CBA and White Stipulation and Settlement Agreement (“SSA”), the League operated without a salary cap and there was no harm identified to competitive balance, as perhaps best exemplified by the fact that two small market teams, the Green Bay Packers and the Pittsburgh Steelers, played in the

Super Bowl. (Id. ¶ 4.)

Further, the League's own advanced planning belies the likelihood of any descent into chaos such as they now envision, absent the imposition of a stay. On April 13, 2011 – during the lockout – the NFL announced the complete pre-season schedule for 2011, and released the regular season schedule one week later.

Heh. Hilariously, the League also had the temerity to claim that the *players* (you know their opponents who do NOT want a stay) would be harmed without a stay. Judge Nelson didn't think much of that either:

Any such argument fails to acknowledge this Court's ruling. The lockout plainly raises issues of harm beyond those that are compensable by damages. This Court addressed, at substantial length, the irreparable injuries that the Players are presently incurring, and have been incurring, since the League locked them out on March 12, 2011. This Court came to that conclusion based on the extensive affidavit evidence submitted by the Brady Plaintiffs. The NFL offered little, if any, evidence to directly rebut the Players' affidavits, either in response to the motion for a preliminary injunction, or here. Moreover, the NFL's argument assumes the Eighth Circuit will rule before the season begins. In the absence of a motion seeking an expedited appeal, that seems unlikely.

Accordingly, the balance of equities tilts indisputably in favor of the Brady Plaintiffs. A stay would re-impose on the Players precisely the irreparable harm that this Court found the NFL's lockout to be likely inflicting on them since March 12.

After again noting that the NFL is premising their stay request by substantially arguing irreparable harm on issues that were not even in front of the court, much less elements of Monday's decision from which they could appeal, the court concluded by telling the NFL that their argument that "public interest" would be served by letting the league trample the players is complete horse manure (and it is):

The NFL has had ample opportunity to serve and promote the public interest in encouraging the collective bargaining process in the past, but in this present context, there is no such process to encourage. As this Court suggested in its Order, there is no public interest in permitting the NFL to continue to enjoy the benefits and protections of labor law—antitrust immunity and the right to lock out the Players—without the Players being able to enjoy their corresponding rights of collective bargaining and the right to strike.

In contrast stands the public interest in the enforcement of the Sherman Act and the public interest in a professional football season. These are actual, "live" interests, and they favor the denial of a stay of this Court's Order.

Well, okay then. That is a pretty thorough butt whipping laid down by Judge Nelson. Now the league will seek an accelerated appeal and emergency stay in the 8th Circuit. The 8th has a reputation for being pretty business friendly, so the NFL will find it a much more friendly forum. That said, it is far from clear the NFL will get their stay; Judge Nelson left quite a record supporting her decision, and it is pretty compelling. The 8th Circuit will have to do some fancy footwork to overcome what Nelson has ordered here. The 8th may be generally fairly business friendly, but it is a good bet they are football fans too; I would not be shocked if

they surprised the pundits and also declined the stay application.