

EXHIBIT B

Complaint

PDB Sports, Ltd., et al. v. Lelie, et al.

SHYAM DAS, ARBITRATOR

In the Matter of Arbitration)	ARBITRATOR'S OPINION
Between)	AND AWARD
)	
)	
THE DENVER BRONCOS and)	
THE NATIONAL FOOTBALL LEAGUE)	
MANAGEMENT COUNCIL)	Case Heard:
)	March 12, 2007
and)	March 23, 2007
)	
)	
ASHLEY LELIE and)	
THE NATIONAL FOOTBALL LEAGUE)	Award Issued:
PLAYERS ASSOCIATION)	April 23, 2007

Appearances

For the NFL Management Council:

Daniel L. Nash, Esq.
T. David Gardi, Esq.

For the NFL Players Association:

David Greenspan, Esq.
Todd Flanagan, Esq.

BACKGROUND

Broncos/Lelie

In this grievance the Denver Broncos and the NFL Management Council seek an order requiring former Broncos wide receiver Ashley Lelie to return a portion of his signing bonus, and to pay fines that were levied for his failure to report to the Club's mandatory minicamp and pre-season training camp in 2006.

The Broncos drafted Lelie in the first round of the 2002 NFL draft. He entered into a Player Contract with the Club covering the 2002 through 2006 seasons, with 2007 as an option year. The Broncos exercised the option by paying Lelie an option bonus of \$1.1 million in 2002. (The option year subsequently was voided pursuant to other provisions of the Player Contract.) Lelie was paid a \$3.3 million signing bonus in the first year of his contract pursuant to an addendum to his Players Contract. This addendum further provides:

If Player fails initial physical, does not report to Club, does not practice or play with Club (unless his failure to practice or play is due to an NFL football related injury incurred while properly performing his services under this contract), leaves Club without prior approval, does not honor all terms of his Contract, including any addenda thereto, is suspended for, Conduct Detrimental, violation of the NFL Policy and Program for Substances of Abuse, the NFL Policy and Procedures for Anabolic Steroids and Related Substances, or the NFL Personal Conduct Policy, or violates any other agreements between Club and Player, Player shall be in default of this agreement and, upon demand by Club, will repay to Club based on the following schedule:

If Player defaults during	Player will return
Calendar year 2002	\$3,300,000
Calendar year 2003	\$2,640,000
Calendar year 2004	\$1,980,000
Calendar year 2005	\$1,320,000
Calendar year 2006	\$660,000

It is further understood that Player's waiver of rights to any unpaid amounts and Player's obligation to re-pay this Bonus as stated above, are express provisions of this Bonus and, but for the provisions herein contained, Club would not have executed this Bonus.

During the 2005 season, Lelie was one of two starting wide receivers for the Broncos, but at the end of the season he felt he was being "underutilized" and that his role was "diminishing" on the team. He testified he also heard rumors and reports that the Club was trying to get another "big time receiver." At or shortly after the Pro Bowl, Lelie's agent, Mike Sullivan, let the Club know that Lelie was unhappy with his role on the team, did not want to come back and wanted to be traded. Coach Mike Shanahan spoke to Lelie. Both of them thought the conversation went well, and Shanahan thought there was a good chance Lelie was coming back. The Club did, however, look into possible trades. Shanahan had told Sullivan that if a player did not want to be with the Broncos he would try to trade the player provided an acceptable deal could be worked out.

During the 2006 draft, the Broncos traded a second round draft pick for Javon Walker, a wide receiver with the Green Bay Packers. The Broncos had proposed trading Lelie for

Walker, but the Packers rejected that. Broncos General Manager Ted Sundquist stated the Club made this trade because it did not know if Lelie would be back and needed a suitable replacement if he did not return. Sundquist added that this trade did not change the Club's desire to retain Lelie, as one of three strong receivers. Coach Shanahan indicated that concern over Lelie's return was part of the reason for the trade, but that the Club also was interested in acquiring Walker because he was a good football player.

Shortly after the draft, Lelie replaced Sullivan with a new agent, Peter Schaffer. Lelie at that point felt he was going to be on the bench and was quite upset. In a television interview aired on May 7, Lelie stated:

Q: So what's gonna happen July 27th when training camp starts?

A: Hopefully, I'm in a camp playin football.

Q: You don't see any way that you'd return to the Denver Broncos-is that even feasible?

A: Not-not. No I can't be a number three receiver-I can't accept that role. You know, I wouldn't be able to live with myself if I did.

Q: If you don't get traded before training camp, what are your options then-how far can you take this?

A: To week ten.

The Broncos permitted Schaffer to talk to other Clubs to try to arrange a trade that would be acceptable to the Broncos. Schaffer discussed various possibilities with Coach Shanahan, Sundquist and Broncos Director of Football Administration Mike Bluem, but a trade was not worked out before the start of mandatory minicamp in early July. Lelie did not report for minicamp, and subsequently did not report for training camp which opened on July 27.

On July 8, the Club notified Lelie it was fining him \$11,634 for missing minicamp. (This fine subsequently was reduced to \$8,000 in accordance with Article VIII of the CBA.) The Club further notified Lelie:

Please be aware that although your conduct entitles the Broncos to pursue enforcement of the forfeiture provisions of the Signing, Reporting and Playing Bonus of your NFL Player Contract dated 7/25/02 as well as Attachment II (Option Agreement) of your NFL Player Contract dated 7/25/02, the Broncos are electing not to pursue repayment at this time.

The Broncos' decision in this present matter in no way limits the Club's ability to enforce our rights (forfeiture provisions of the Signing, Reporting and Playing Bonus, forfeiture provisions of the Option Agreement) in the event of any breach of your NFL Player Contract in the future, including but not limited to the failure to report to Training Camp on July 27, 2006 (mandatory reporting date for veterans).

On July 28, the Club informed Lelie that he would be fined \$14,000 for each day of training camp he missed. (He ultimately missed 27 days prior to being traded to Atlanta on August 23.) On August 16, the Club demanded Lelie repay \$660,000 of his signing bonus as required under his Player Contract.

Ultimately, on August 23, a three-way deal was worked out under which Lelie was traded to the Atlanta Falcons and the Broncos received draft pick compensation from the Washington Redskins. The assignment of Lelie to the Falcons was subject to several conditions set forth in the trade agreement, including the following:

As additional consideration for the trade discussed herein, the Denver Broncos (the "Broncos") reserve any and all rights to seek repayment of \$660,000 in bonus money that Lelie is required to return to the Broncos under the express terms of the Signing, Reporting, and Playing Bonus addendum in Lelie's NFL Player Contract (dated July 26, 2002). The Broncos also reserve any and all rights to collect any fines that have been levied against Lelie as of the date of this trade agreement. The preservation of rights provided herein is an express provision of this trade agreement and, but for this preservation of rights, the Broncos, Falcons and Redskins would not have executed this trade agreement.

The Broncos also insisted, as a non-negotiable condition of agreeing to trade Lelie, that he sign an acknowledgment (Acknowledgment) under which he acknowledged he was obliged to

return \$220,000 of his option bonus (which he repaid at that time) and \$660,000 of his signing bonus, and to pay "in cash on demand" fines levied for his missing minicamp and pre-season training camp totaling \$386,000 (to be reduced to \$170,000 in the event he repaid the \$660,000 of his signing bonus, pursuant to Article VIII of the CBA.)

In a proceeding initiated by Class Counsel and the NFLPA pursuant to Article XXVI of the CBA and the *White Stipulation and Settlement Agreement (SSA)*, Special Master Stephen Burbank ruled that the Acknowledgment signed by Lelie was void under the terms of the SSA, and "may not be used for any purpose in any other proceeding." The Special Master further ruled that the return of \$220,000 of Lelie's option bonus was a prohibited forfeiture under the terms of the SSA, and that Lelie was entitled to return of that money.¹

The present grievance was filed on September 11, 2006. It was submitted to arbitration as an expedited appeal under Article IX, Section 4 of the CBA. The parties filed pre-hearing briefs and a hearing was conducted on March 12 and March 23, 2007. General Manager Ted Sundquist, Coach Mike Shanahan and Director of Football Administration Mike Bluem testified on behalf of the Broncos. Ashley Lelie and his agent, Peter Schaffer, testified on behalf of the Player. There also was a

¹ The Special Master issued his ruling, hereinafter Lelie Special Master Case, on November 16, 2006. The NFLMC appealed the ruling on the option bonus. That ruling was affirmed by U.S. District Court Judge Doty on March 26, 2007.

stipulation that if he were to testify NFLPA General Counsel Richard Berthelsen would testify that he was unaware of any player having paid any fine on demand or out of future salary payments from other Clubs after his service with the Club imposing the fine had ended.

CLUB POSITION

Fines

The Club contends that by withholding his services from the Broncos mandatory minicamp and pre-season training camp, Lelie was properly subject to the fines imposed by the Club, which are expressly authorized by Article VIII of the CBA. Lelie has not been able to demonstrate that the fines were not uniform. In particular, Trevor Pryce -- a player cited by Lelie as having been treated differently -- was fined for not reporting to training camp for a 14-day period in 2000.

The Club insists that it has standing to collect the unpaid fines through this grievance. Lelie incurred the fines while under contract to the Broncos, and the Club specifically reserved the right to collect the fines when he was traded to Atlanta. The Club maintains that Lelie's reliance on Carolina Panthers v. Greene (Kagel 1997) is misplaced. The Panthers released Greene and terminated his contract. The NFLPA argued in that case that the Club discharged Greene for alleged violation of club rules, thereby superseding and mooted prior lesser forms of discipline. Here the Club granted Lelie's

demand for a trade and expressly preserved its right to seek payment of the fines.

Lelie also cites Greene for the proposition that a Club may collect fines only through payroll deductions. But, the Club contends, Paragraph 7 of his Player Contract -- which is an Appendix to the CBA -- clearly states:

Any advance made to Player will be repaid to Club, and any properly levied Club fine or Commissioner fine against Player will be paid, in cash on demand or by means of deductions from payments coming due to the Player under this contract....

(Emphasis added.)

Slaughter v. Jacksonville Jaguars (Das 2005) held that a Club can rely on Paragraph 7 to enforce a demand for repayment of a salary advance, and this language is just as applicable to collection of fines.

Signing Bonus Forfeiture

The Club contends that Lelie is contractually obligated to repay a portion of his signing bonus in accordance with the terms of his Player Contract. As stated in NFLPA v. Cincinnati Bengals (Loyalty Clause Dispute) (Bloch 2001):

Arbitration precedent between these parties clearly establishes both the contractual nature of the signing bonus and the

enforceability of forfeiture provisions contained therein.

See: Denver Broncos v. Kennison (Wittenberg 2003); Miami Dolphins v. Williams (Bloch 2004); Tampa Bay Buccaneers v. McCardell (Das 2005). By failing to report to the Club's mandatory minicamp and pre-season training camp, Lelie was in "default" as defined in the addendum to his Player Contract. Because his default occurred in 2006, he is obligated to repay the amount specified therein -- \$660,000.

Lelie breached his contract before he was traded to the Falcons, and the Broncos expressly preserved the right asserted here in the trade agreement. Enforcement of the signing bonus agreement, the Club argues, is not disciplinary in nature. See: Loyalty Clause Dispute. Nor does it amount to a penalty in violation of Colorado law governing liquidated damages. As Arbitrator Bloch held in Williams, the bonus repayment provisions in that case did not violate state law because they were not, in fact, liquidated damages provisions. See also: McCardell.

The Club further asserts that even if the signing bonus repayment provisions were to be considered a liquidated damages provision, it is enforceable under Colorado law. To be unenforceable, a contract term must fix unreasonably large liquidated damages. See Klinger v. Adams County School Dist. No. 50, 130 P. 3d 1027 (Colo. 2006). That is plainly not the case here. This grievance seeks repayment of the bonus in accordance with the specific schedule set forth in Lelie's

contract -- \$660,000 of the \$3.3 million of the total bonus. There is nothing unreasonable about such a forfeiture where, as here, the player has effectively repudiated his contract with one year remaining.²

The Club maintains that the evidence shows the Broncos only traded Lelie reluctantly because of his threat to hold out through week 10 of the regular season. It also insists that the Broncos ultimately got much less trade-wise than what it had wanted when it considered the possibility of trading him before his holdout. While the Club is not obliged to show harm, it obviously was harmed and did not get the benefit of its bargain. Most importantly, Lelie refused to finish out his contract and did not play for the Broncos in the final season of his contract.

PLAYER POSITION

Fines

Lelie contends that under the express language of Article VIII, Section 5 of the CBA, as well as under long-standing industry custom and practice and arbitral precedent, Clubs may only collect fines by deducting them from the paychecks of a player still employed by the Club. See: Greene. The rationale behind this CBA provision and practice is that a Club ceases to have any valid disciplinary purpose for collecting fines from a player who no longer is an employee.

² The Club's prehearing brief states "with two years remaining," but the 2007 option year was voided.

Even if Lelie's Player Contract does provide for fines to be paid in "cash on demand", which to the NFLPA's knowledge has never occurred, the CBA does not, and the protections of the CBA are controlling, as specifically provided in both the CBA and Lelie's Player Contract.

Signing Bonus Forfeiture

Lelie stresses at the outset that this case differs from other cases where arbitrators have upheld the application of signing bonus default provisions because the evidence establishes there was no harm to the Club. The evidence shows the Club got market value and just what it wanted by way of compensation when it traded Lelie to the Falcons. Indeed, if the trade had been worked out a few months earlier, before minicamp, the Club would have been in the exact same position as it was after Lelie was traded on August 23, but there would be no grievance at all. Lelie also fully performed under his original Player Contract. He reported to Atlanta's training camp the day after he learned he was going to be traded and played for the Falcons throughout the 2006 season under the terms of that contract, and thus continued to earn the signing bonus the Broncos now are trying to recoup.

Lelie contends that the enormous financial penalties imposed on him by the Broncos constitute discipline and violate the CBA requirements of "uniform discipline" and "just cause". A determination of whether a Club's response to player conduct constitutes discipline is to be determined on the basis of the

precise circumstances at issue. See: Owens v. Philadelphia Eagles (Bloch 2005). The punitive, i.e., disciplinary nature of the Broncos response to Lelie's conduct is established by the contrast between this case and the manner in which the Club responded when all-pro defensive end Trevor Pryce held out from training camp in 2000 as well as by the Broncos coercive recovery of \$220,000 of Lelie's earned option bonus.

Pryce held out from training camp because he felt he was underpaid. His Player Contract had a signing bonus default provision similar to Lelie's, but the Club did not exercise that provision, and subsequently rewarded Pryce with a lucrative, long-term contract. Lelie argues that in Pryce's case the Club chose not to exercise the forfeiture provision in his contract because it did not want to punish a player that it highly valued. Here, however, the Broncos no longer had any need for Lelie, and, thus, punished him with what he believes to be the highest financial penalties imposed in Club history.

In the Lelie Special Master Case, the Broncos stated that in recovering \$220,000 of his option bonus, the Club was simply enforcing its rights under his Player Contract. Yet, the Club had informed Lelie before his trade that, in accordance with his contract, it would seek repayment of one-seventeenth of his 2006 option bonus allocation (\$220,000) for each regular season week he missed. Because he missed zero regular season weeks, Lelie insists, the Club knew full well it was not entitled to any portion of his 2006 option bonus allocation under the terms of the forfeiture provision. Yet, the Club

insisted on its right to recover the full \$220,000. The Special Master's ruling has put an end to the Club's improper attempt to recover Lelie's earned option bonus, but the Club's bad faith attempt to recover money it knew it was not entitled to shows this grievance is not about the Club's good faith exercise of a purported contractual right. It is intended to punish him.

Lelie maintains that there is no arbitral precedent that controls the precise circumstances of this case. In particular, while the decision by Arbitrator Bloch in the Loyalty Clause Dispute case found that forfeiture provisions may in the abstract be "contractual" rather than disciplinary, in this case it is the Broncos' selective exercise of Lelie's forfeiture provision in response to his holdout which establishes the disciplinary nature of that action.

Discipline, under the CBA, must be uniformly administered. The lack of uniformity is established, Lelie argues, by the Club's very different treatment of Pryce for the same conduct. To the Player's knowledge and belief, not only did the Broncos not exercise the forfeiture provision in Pryce's contract and reward him with a new contract at the end of the season, it did not even deduct the fines he accrued for the days he missed training camp.

Discipline also must be for just cause. Here the punishment is out of all proportion to the purported crime. Lelie did not attend minicamp or the first few weeks of training camp, but there was no harm to the Broncos. His absence from

practice caused no disruption or any adverse effect on the Club, and when the Club voluntarily traded him it received the very draft compensation it had been seeking.

Lelie further contends that the signing bonus default provision in his Player Contract is an unenforceable liquidated penalty under Colorado law.

In the just issued Lelie Special Master Case, the Special Master expressly held that:

It is clear from the structure of section 9 [of Article XVII of the SSA] as a whole that a contractual provision vesting in a Club a right to recoup monies upon subsequent breach of contract by a player constitutes a "forfeiture."

This ruling, Lelie insists, is binding on all parties and the Non-Injury Grievance Arbitrator because the Special Master has exclusive jurisdiction over Article XIV of the CBA and Article XVII of the SSA, which cover NFL Player Contracts. Under the Special Master's ruling, the signing bonus default provision in Lelie's contract must be treated as a "forfeiture" -- not a mere contractual term determining the conditions under which the bonus is earned. There is no way to reconcile this controlling interpretation of the SSA with the holdings in McCardell and Williams that such default provisions are not liquidated damages provisions because they are contractual incentives.

The signing bonus default provision in Lelie's contract is, by definition, a liquidated damages provision under Colorado law. A liquidated damages provision is invalid as a penalty if it is unreasonably disproportionate to the expected loss on the very breach that did occur. See: Yerton v. Bowden, 762 P. 2d 786 (Col. Ct. App. 1988); Gouger v. Buffalo Specialty Co., 141 P. 511 (Col. Ct. App. 1914). Under the forfeiture provision in his contract, Lelie would forfeit his signing bonus allocation for the entire 2006 season regardless of whether he missed a single day of training camp, a month of training camp, or the entire regular season. If he missed the entire regular season, such a forfeiture might have been appropriate, but here Lelie resumed full performance of his contract after missing minicamp and a few weeks of training camp, and continued thereafter to earn the very signing bonus money the Broncos are trying to recover. Clearly, the \$660,000 penalty in this case, in which the Club suffered no harm since Lelie was traded for full value to another Club before the start of the regular season, was an unenforceable penalty.

Moreover, Lelie contends, the facts in this case are quite distinguishable from those in Williams and McCardell and show that the incentive analysis applied in those cases -- even if not now overruled by the Lelie Special Master Case -- is not applicable here, and that the forfeiture exercised by the Broncos is a liquidated penalty. Unlike Ricky Williams, who had three years remaining on his contract when he stopped performing all together, Lelie played out his entire contract without missing a game. Unlike the finding in McCardell, Lelie is not

receiving any financial benefit for his holdout. Lelie has earned all of the signing bonus allocation at stake in this case. Moreover, his temporary breach caused no harm to the Club unlike the findings in Williams and McCardell.

FINDINGS

Fines

In this case the Club rightfully cites and relies on NFL arbitral precedent in support of its claim for return of \$660,000 of Lelie's signing bonus. Arbitrator Kagel's decision in Greene is entitled to equal treatment. Notwithstanding the language in Paragraph 7 of the NFL Player Contract stating that fines will be paid "in cash on demand or by means of deductions coming due to the Player under this contract," which is quoted in Greene, Arbitrator Kagel concluded:

The Collective Bargaining Agreement in Article VIII, "Club Discipline," Section 5, "Deduction" reads:

"Any Club fine will be deducted at the rate of no more than \$1,000 from each pay period, if sufficient pay periods remain; or, if less than sufficient pay periods remain, the fine will be deducted in equal installments over the number of remaining pay periods. This will not apply to a suspension." (Jt. Ex. 1, emphasis supplied)

Both the Collective Bargaining Agreement and Greene's Player Contract provide that payment of fines will be satisfied by "means of deductions from payments coming due to the Player under his contract" and the Collective Bargaining Agreement provided it to be "...deducted at the rate of no more than \$1,000 from each pay period."

Both the Collective Bargaining Agreement and Greene's Contract provide that payment of fines can only result from a Player earning a salary as a Player. In this case, Greene never worked as a Player under the 1997 contract and therefore earned no monies during any "pay period" from which a fine, even if proper, could be deducted.

Notably, there is no provision in Article VIII of the CBA for collection of fines other than through deductions, as specified in Section 5. Moreover, the decision in Greene is consistent with unrebutted testimony in this record supporting a finding that as a matter of practice over many decades Club fines have only been paid by means of deductions by the Club imposing the fine. While the facts in this case are somewhat different from those in Greene, in that Lelie did continue to work as a player under the 2002 contract he signed with the Broncos after his trade to the Falcons, the only way Denver can now collect the fines it imposed on Lelie is by insisting they be paid in cash on demand. That is contrary to the law of the shop in this industry.

The decision in Slaughter v. Jacksonville Jaguars (Das 2005), cited by the Club, involved repayment of a salary advance. The CBA does not include any provision, other than

Paragraph 7 of the NFL Player Contract, relating to repayment of salary advances. Moreover, a salary advance and a Club fine obviously are very different in nature. One is a loan to be repaid. The other is a disciplinary penalty imposed for violating team rules. There is nothing illogical or inconsistent in allowing a Club to seek repayment of a salary advance from a player who no longer is under contract to that Club "in cash on demand," while not permitting the Club to demand payment of outstanding fines in those circumstances.

The Broncos are not entitled to an order requiring Ashley Lelie to pay fines that were levied while he was under contract to the Club.

Signing Bonus Forfeiture

The terms of Lelie's Player Contract clearly require him to return \$660,000 of his \$3.3 million signing bonus to the Denver Broncos.

Lelie's contention that the Club's decision to enforce the provisions in the addendum to his contract governing his signing bonus constitute improper disciplinary action is not persuasive.

In the Loyalty Clause Dispute Arbitrator Bloch, after reviewing prior NFL arbitration cases, concluded:

In sum, the finding here is that the existence of a separately-negotiated bonus provision requiring forfeiture of monies that may exceed the Article VIII Maximum Penalties does not conflict with Article VIII merely because it seeks to regulate conduct that may also be subject to disciplinary fines under that Article. The parties have utilized and applied such negotiated provisions in the past, and the arbitration precedent, discussed above, supports the conclusion that the contractual mechanism is distinct from, and does not conflict with, the Maximum Discipline provisions of the CBA. For these reasons, the grievance will be denied.

Lelie contends, however, that the particular circumstances in this case distinguish it from others where arbitrators have upheld forfeitures of various types of bonuses pursuant to negotiated bonus provisions for conduct that may also be subject to disciplinary fines.

First, Lelie cites what he claims was a very different response by the Broncos to a similar holdout by Trevor Pryce in 2000. The evidence establishes that Pryce -- like Lelie -- was fined, and the fines were collected as deductions from payments due Pryce under his contract. The Club did not demand repayment of a portion of his signing bonus, as it had the right to do under the terms of his contract. As in Lelie's case, when Pryce began his holdout, the Club put him on notice that it had the right to do so. Two weeks later he reported to the Club's training camp, and the Club took no further action to enforce that right. In Lelie's case, the Club only demanded repayment

of \$660,000 of his signing bonus on August 16, almost three weeks after the start of training camp, at which time there was no reasonable basis to expect that Lelie would report to the Club. Even accepting the testimony by Pryce's agent that Pryce only returned after being told that the Club would "revisit" his contract (which had two years left) at the end of the year -- which Coach Shanahan insisted he would not have done -- the fact is Pryce returned to the Club after a two-week absence, whereas Lelie had made it clear he had no intent or interest in doing so. The evidence does not support Lelie's claim of disparate treatment.

Second, Lelie points to the Club's action in recovering \$220,000 of his option bonus which, Lelie contends, the Club knew it was not entitled to. The Club disputes that assertion, pointing out that Lelie did not play for the Broncos in the final year of his contract. The Club's action was overturned in the Lelie Special Master Case, and the Club may have overreached in an effort to recoup as much of the bonus monies it had paid to Lelie as it could after he defaulted on his obligations to the Club. The Club's efforts to maximize its recovery after Lelie made it clear he would not honor the final year of his contract does not establish that its decision to seek return of \$660,000 of his signing bonus was improper because it was disciplinary in nature.

The remaining issue is whether the signing bonus default provision in Lelie's Player Contract is an unenforceable liquidated damages penalty under Colorado law. Prior NFL

arbitration decisions, particularly Williams which was followed in McCardell, have held that signing bonus forfeiture provisions like the one in Lelie's contract are not liquidated damages provisions. The rationale for these decisions is set forth in Williams, the first case to squarely address this issue, as follows:

...But the clauses in these agreements are not liquidated damage provisions; they are, instead terms that highlight, with precision, those circumstances in which bonus monies will be given and those in which they will be taken away.

To be sure, whether a provision is seen as forfeiture, penalty, refund or return, the end result is the same: Net monies are reduced. But there are meaningful differences in the nature of the financial arrangements and, hence, in the contractual consequences of a breach. Reading the contract as a whole, there is no real question that what was bargained here was a comprehensive incentive and default mechanism. At stake was not solely a series of individual field performance goals and rewards for the player but also a long-term arrangement that figured prominently in the Club's overall plan. Under the circumstances, it was not unreasonable for the parties to structure incentives that recognized and accommodated both expectations. These were not simply surrogate methods of estimating damages in the event the bargain went sour; rather, they were the essence of the bargain themselves.

Failing to honor and enforce the clear terms of this particular arrangement would be to

at once ignore both the overlay of the master collective bargaining agreement and the overall structure of this individual Player Contract. In this case, the Miami club had made extensive plans for the Player, attempting to provide both benefits and costs that would ensure a long-term relationship. All this was held for naught when Williams walked away. In response, the Club was entitled to reclaim the bonuses.

Lelie's contention that the ruling in the Lelie Special Master Case that a contractual provision vesting in a Club a right to recoup monies upon subsequent breach of contract by a player constitutes a "forfeiture" as that term is used in Article XVII of the SSA (and Article XIV of the CBA) does not invalidate the rationale and holding in Williams and McCardell. Those cases did not hold that repayment of bonus monies was not a "forfeiture". Indeed, in Williams the Player Contract specifically provided for "forfeiture" of various performance bonuses. Nomenclature is not conclusive; what is important is the substance and nature of the bargain. The issue decided in Williams and McCardell, which was not addressed in the Lelie Special Master Case, was whether a bonus forfeiture or repayment provision constituted a liquidated damages provision. The analysis in Williams is not overruled, in my opinion, by the ruling in the Lelie Special Master Case.

It is true that the facts in this case are different from those in Williams, McCardell and Kennison. Indeed, other than not showing up for minicamp and training camp and communicating privately and publicly that he was not going to

report to the Broncos, at least until the tenth week of the season when the NFL rules gave him an incentive to do so, Lelie conducted himself quite professionally. His agent worked with the Club to try to work out a trade that would be acceptable to the Broncos, who had little choice but to trade Lelie.

Following the trade, Lelie performed for the Falcons under the terms of his Player Contract during the remainder of 2006, after which he became a free agent. But by his intentional failure to report to minicamp and training camp and his continued refusal to perform for the Broncos, Lelie defaulted on his obligations under his signing bonus provision, triggering the Broncos' contractual right to demand repayment of \$660,000 of his signing bonus.

The parties are far apart on whether the Broncos were harmed by Lelie's holdout.³ By holding out and making clear he would continue to do so, Lelie left the Club little choice but to trade him. The Club presented evidence that its clear preference was that Lelie play for the Broncos in 2006 pursuant to his contract. As the Club also has argued, absent a likely holdout by Lelie the Broncos may not have traded for Javon Walker, although that is a moot issue on this record. While the Club accepted the terms under which Lelie was traded to the Falcons, there is evidence it had sought more when it first considered the possibility of trading Lelie earlier in the off-season before he had refused to report to camp. Moreover, Club witnesses, whose credibility is not challenged, testified that

³ It is important to keep in mind that there is no equitable restitution issue in this case as there was in McCardell.

after the Club had demanded repayment of part of his signing bonus the Broncos made it clear they would only agree to a trade on condition it receive that repayment plus the other monies it believed it was entitled to as a result of Grievant's failure to comply with Club rules and the terms of his contract. In the final analysis, however, Williams stands for the proposition that if a Player fails to perform in accordance with the terms of a bonus provision he is subject to having to return that portion of the bonus specified in his contract.

Lelie also stresses that unlike players in other signing bonus forfeiture cases he has "earned" all of the signing bonus allocation at stake in this grievance by playing under his contract after his trade to Atlanta. In this regard, Williams is instructive. That case did not just involve repayment of a signing bonus allocation corresponding to the remaining duration of Williams' contract after his announced retirement. The Dolphins also successfully sought enforcement of performance bonus provisions under which Williams was required to return to the Club the full amount of over \$5 million of various performance bonuses he had already earned and been paid.

The Williams decision was unsuccessfully challenged in Federal District Court in Florida on the issue of liquidated damages. Absent a controlling court decision compelling a finding that the analysis and rationale in Williams is legally indefensible, it is the law of the shop. The parties are free to change that "law" by agreement, as they have done in certain

respects in the 2006 CBA. But those changes are not by their terms applicable to Lelie's signing bonus, as they are to his option bonus which was at issue in the Lelie Special Master Case.

For the reasons set forth above, I conclude that the Broncos are entitled to repayment by Lelie of \$660,000 of his signing bonus.

AWARD

The Club's grievance is denied in part and granted in part as set forth in the above Findings. Ashley Lelie shall forthwith repay the Denver Broncos the total sum of \$660,000.



Shyam Das, Arbitrator