

Dispute Resolution in Professional Sports¹

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ABSTRACT

In the modern society, sport is an indispensable part of our life. Following the development of professional sports, resolution to sports disputes is more and more important. In the 20th Century, the concept of ADR was brought into the sports field, which gave us more choice of resolving sports disputes. However, more choices also brought us more confusion: with lack of understanding the alternative resolutions, it seems really difficult to choose the appropriate one. Furthermore, the popularity of Sports ADR is low in some countries where is more difficult to choose the right dispute resolution. This paper, using the method of Multi-attribute Decision Making (MADA), found out that Mediation is the most suitable resolution to sports disputes.

Key words: Sports Dispute, Resolution, ADR, Litigation, Arbitration, Mediation, Negotiation, Right and Interest

INTRODUCTION

In recent years, modern sports has seen a rapid development; the trends of professionalism and commercialization brings more and more participants into the sports industry. The prosperity of professional sports brought a great profit, which makes the relationship between the related parties (sports organization, players, sports brand, boss of a sports team...) more complicated. In this situation, the increase of disputes in the field of professional sports is inevitable. Solving disputes in an effective way will not only protect the rights and interests of the involved parties but also stimulate the development of sports industry. Therefore, the objective of this paper is to find out a better resolution to the disputes in the sports industry.

In general, professional sports dispute can be divided in to three types: the first one is commercial dispute, such as the disputes caused by sponsor, advertisement and the broadcasting right; The second is the dispute between sports organizations and their members where the contract of player, the eligibility and the nationality are examples; The last sort of dispute is caused by punishment such as suspension and cancellation of license.

There are several resolutions to disputes; the commonest is bringing a lawsuit to the court. However, litigation is not the only way to solve disputes. There are also some alternative dispute resolutions (ADR) for sports. Avoid is one of the resolutions, for example, in Chinese basketball Association, Stephen Marbury left Beijing Ducks this summer because of a dispute of

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contract. As we know, avoid, which is passive and may bring a lose-lose situation seems not to be a wise way. Thus, I will also discuss other ADR, which are negotiation, arbitration and mediation. In this paper, I will discuss and compare the alternative resolutions and then find out an appropriate and effective way to solve the dispute in professional sports.

METHODOLOGY

1. Problem Statement

Dispute is common in our life; it's also common that people resolve disputes like marital disputes, property disputes, trading disputes and debt disputes with litigation and ADR. However, in the area of sports, the ADR has just risen. Some sports organizations or athletes in the developing countries are even not familiar with the ADR to sports dispute so that they are always confused when they want to choose a resolution. Thus, I will present and discuss the dispute resolutions in professional sports, and then decide which is the most appropriate.

2. Feasible Alternatives

As we discussed in the introduction, the main feasible alternatives for resolving sports dispute are: **Litigation, Avoid, Arbitration, Negotiation** and **Mediation**. In this paper, I will use the method of Multi-attribute Decision Making (MADA) to find out which alternative is the most suitable resolution to sports disputes.

3. Outcomes of Each Feasible Alternative

After knowing the feasible alternatives, in this part, I will discuss each alternative to show its features and the outcome of choosing it.

3.1. Outcome and Features of Litigation:

Litigation, as a mandatory legal mean, forces two involved parties to accept the judgment. It can fully and comprehensively protect the rights and interests of both parties with justice. The result of litigation has the final effect and is enforceable so that the dispute must be solved after the litigation.

However, litigation seems to be the most expensive resolution to dispute because of the attorney fee and legal fare. Also, litigation has the features of strictness, normativity and integrity so that a case may go through the first instance, the second instance or even retrial to keep the justice and preciseness, which will take a long period of time. But disputes of professional sports usually need to be solved urgently. For example, to solve a dispute caused by the eligibility of Olympics, an involved athlete may issue litigation, but before getting the judgment from the court, the Olympic game may already be finished.

In addition, dispute in professional sports has particularity and technicality. The judge may not be familiar with the rules in sports so that for disputes like match-fixing, black whistle and doping, he might not make an appropriate decision and judgment.

In many cases, litigation brought huge damages to the careers of athletes, because during the period of waiting for the judgment, athletes normally can't play any game. And the period of litigation is long, for some specific cases, the period will even be longer than one year. However, the sports career of an athlete is really short; each year for them is extremely precious. So litigation has a great and negative impact on the sports career.

Thinking from the perspective of social benefits, litigation may be harmful to the reputation of sports organization and athletes because of the transparency and then be harmful to the development of sports. Furthermore, if a dispute between a sports club and a player is brought to the court, the relationship between them will break up, so that it's impossible to continue cooperation.

3.2. Outcome and Features of Avoidance

As discussed in the introduction, avoidance is a passive but usual resolution to sports dispute. In general, it may be the result of a failure in negotiation or other resolutions. The cost and time of Avoiding seem non-measurable; if we count the cost of the predecessor of avoiding, like negotiation, the cost might be huge. However, avoidance itself does not take any cost (money or time).

To describe this resolution clearer, I will present a real case: In 2003, Ariel Ortega, an Argentine football star, fell into a contract dispute with his football club, Fenerbahçe Spor Kulübü. He then left the team without permission, so that Fenerbahçe instituted an arbitration to FIFA who then acted a judgment that Ortega shall be suspended for 6 months and pay 110 million dollars to his club. Ortega didn't accept the result because he couldn't afford the huge fine, and then he chose to retire.

In this case, Ortega's retire is a way of avoiding. Through this way, he terminated his sports career and it seems impossible to recover his relationship with S.K.Fenerbahçe Spor Kulübü. After solving this crisis, Ortega's reputation was also impaired, because of his decision to retire led to an uproar so that everyone knows the reason for his retirement.

3.3. Outcome and Features of Arbitration

To resolve a dispute by the arbitration, the two involved parties must find a third party (except the court) as an arbitrator who will decide an "arbitral award". In the sports field, there are several arbitral institutions like the Court of Arbitration for Sports (CAS) and UK sports Resolution (UKSR) which consist of sports experts. Compared with litigation, it's clear that sports arbitration is more suitable for resolving sports dispute for having the expertise of sports.

The first feature of arbitration is promptness. The process of arbitration can be decided by the involved two parties so that they can avoid unnecessary stages and resolve the dispute efficiently. In this way, involved parties can reduce time and energy consumption, thus saving costs. However, the parties must pay the arbitration fees. Secondly, arbitration is a finality resolution with compulsion, once an arbitral award is made, there will be a legal binding on both parties. If one party doesn't execute the award, the other party has the right to sue.

Finally, arbitration, not opening to public, is a confidential process, which can protect the reputations of the involved parties.

3.4. Outcome and Features of Negotiation

In general, negotiation is a cost-saving and time-saving way, however, sometimes it can also be the opposite. For example, in 2011, there was a "lockout" in NBA because of a failure of negotiation. The negotiation between the NBA league and the player union about the Collective Bargaining Agreement had already started in 2009, however, in June 2011, the negotiation was finally failed. In this case, the negotiation took two years but still saw a failure, shows that negotiation may not be an appropriate resolution for some complicated sports dispute.

Besides, the agreement resulting from a negotiation doesn't have the effectiveness of compulsory performance, means that negotiation is not a resolution with finality. So that means new disputes may occur during the execution of the agreement.

Nevertheless, negotiation has also some advantages. A successful negotiation will not break up the relationships between the involved parties, even in some cases, the relationship will be strengthened after negotiating. Moreover, the process and content in the negotiation are relative confidential, the reputation of the parties usually won't be damaged because of a negotiation.

3.5. Outcome and Features of Mediation

In the CAS Mediation Rules, the CAS defines mediation as:

*"a non-binding and informal procedure, based on an agreement to mediate in which each party undertakes to attempt in good faith to negotiate with the other party with a view to settling a sports-related dispute. The parties are assisted in their negotiations by a CAS mediator."*²

From this definition, we can find out that a mediation is a negotiation involved by a third party (the mediator) who provides assistance. The mediator selection system is very strict, even well-trained, only the people with rich experience and a good reputation can be qualified as a mediator. So, compared with a common negotiation, mediation can be more efficient with the involvement of a mediator.

The procedure of mediation is flexible, so that involved parties can resolve the dispute quickly and cost-effectively. And the mediation agreement, based on the will of each party, is easier for the parties to accept and fulfill voluntarily, avoids the difficulties in implementation. In

² CAS. (n.d.). CAS Mediation Rules.

Retrieved from: http://www.tas-cas.org/fileadmin/user_upload/CAS_Mediation_Rules_2016__clean_.pdf

addition, like the arbitration, mediation is also a confidential process, so that the reputation of each involved party won't be influenced.

However, like other resolutions, mediation is not perfect. During the mediation, each party can stop the process at any time when they are not willing to continuing, which undoubtedly increase the uncertainty. At the same time, as a non-binding resolution, the mediation agreement is not compulsive, and the finality of mediation is low.

So far, we have discussed each feasible alternative. It's easy to find that the key factors of an appropriate resolution are: the process shouldn't need to pay huge fees, the process of dispute resolution won't take too much time, the judgment or result should be fair, the resolution should have finality, the result should satisfy both involved parties, the process and the result should impact the sports career of an athlete as less as possible, the process and the result will not damage the reputation of each party and the relationship between the involved parties won't break up. Knowing this, I made a chart shown below to evaluate the alternatives.

Attribute	Litigation	Avoid	Arbitration	Negotiation	Mediation
Cost Saving	0	NA	2	2	3
Time Saving	0	NA	2	1	3
The Justice	3	0	2	1	2
The Finality	3	2	1	0	0
Satisfaction of Involved Parties	1	0	2	2	2
Less Impact on the Career of Athletes	0	0	1	1	2
Less Damage on Reputation	0	0	3	2	3
Relationship Keeping	0	0	1	2	3
Average	0.875	0.25	1.75	1.375	2.25

3= Excellent performance
 2= Good performance
 1= Acceptable performance
 0= Bad performance

4. Selection of a Criterion

In this chart, we notice that Avoid gets the lowest average mark at 0.25 and performances badly in 5 (out of 6) items including Impact on the Career of Athletes, which is a key attribute. As for Litigation, it performances badly in 5 (out of 8) items so that its average mark is the second lowest at 0.875, especially for key attributes as Cost Saving, Time Saving and Impact on the Career of Athletes, Litigation is marked as “0”. According to this, we can conclude that Litigation and Avoid are not good choices for sports dispute resolving, in the next part, I won't analyze these two alternatives anymore. I'll focus on arbitration, mediation and negotiation to compare and get a final result.

FINDINGS

1. Analysis and Comparison of the Alternatives

After eliminating Litigation and Avoid, the chart will look like below. Here, we can obviously know that within the 3 alternatives Mediation, getting 2.25 points, has the highest mark. Arbitration gets the second highest mark which is 1.75. The third and last is Negotiation which gets 1.375 points.

Attribute	Arbitration	Negotiation	Mediation
Cost Saving	2	2	3
Time Saving	2	1	3
The Justice	2	1	2
The Finality	1	0	0
Satisfaction of Involved Parties	2	2	2
Less Impact on the Career of Athletes	1	1	2
Less Damage on Reputation	3	2	3
Relationship Keeping	1	2	3
Average	1.75	1.375	2.25

However, we cannot conclude and directly choose Mediation now, because the average grades don't reflect the importance of each attribute. In the next step, I will use the additive weighting technique to see whether Mediation is still the first choice after introducing the weights.

2. Selection of the Preferred Alternative

For further comparing, I used the additive weighting technique which is one of the compensatory model techniques. Considering the importance of each attribute, I decided the relative rank and then made the chart shown below:

Attribute	Step 1	Step 2			Arbitration		Negotiation		Mediation	
	Relative Rank	Normalized Weight (A)			(B)	(A)*(B)	(C)	(A)*(C)	(D)	(A)*(D)
Cost Saving	8	8/36	=	0.22	2	0.44	2	0.44	3	0.66
Time Saving	7	7/36	=	0.20	2	0.40	1	0.20	3	0.60
The Justice	4	4/36	=	0.11	2	0.22	1	0.11	2	0.22
The Finality	6	6/36	=	0.17	1	0.17	0	0	0	0
Satisfaction of Involved Parties	3	3/36	=	0.08	2	0.16	2	0.16	2	0.16
Less Impact on the Career of Athletes	5	5/36	=	0.14	1	0.14	1	0.14	2	0.28
Less Damage on Reputation	2	2/36	=	0.06	3	0.18	2	0.12	3	0.18
Relationship Keeping	1	1/36	=	0.02	1	0.02	2	0.04	3	0.06
SUM	36		SUM	1.00	SUM	1.73	SUM	1.21	SUM	2.16

We can easily discover that after calculating with the weights, Mediation is still the best choice. I can now produce a ratio scale to see how much Mediation is better than the others. The calculation should be like this:

$$\text{Mediation vs Arbitration: } 2.16/1.73*100\%=125\%$$

$$\text{Mediation vs Negotiation: } 2.16/1.21*100\%=179\%$$

To conclude, Mediation, being 125% better than Arbitration and 179% better than Negotiation, is obviously the preferred alternative.

3. Best Resolution and Recommendation

After the analysis and comparison, we can finally get the result and we also have to make sure the result is effective.

3.1 The Best Resolution

Among all of the alternatives, Mediation stands out and is chosen as the best resolution to sports dispute. Here are the reasons: firstly, there are some institutions which have sports expertise providing the service of sports mediation, so that the result will be respectively fair and precise. Secondly, with a flexible procedure and the help of an experienced mediator, the disputes can be solved quickly and cost-effectively. Thirdly, with the high efficiency and a high level of confidentiality, mediation won't have too much impact on the precious career time of an athlete, as well as his reputation. Finally, based on voluntary and high satisfaction, the agreement resulting from the mediation is easier to implement and the relationship between the involved parties will not be influenced severely.

To sum up, Mediation is more suitable for resolving sports disputes. When facing disputes, a sports organization or an athlete should firstly think about Mediation rather than other alternatives.

3.2 Post Evaluation of the Chosen Resolution

Suppose we are a sports organization who didn't take mediation as the first choice before, and now, we decide to put Mediation in the first place.

To track the recommendation, we can set up some indicators. The first indicator could be "the cost of dispute resolving during a period"; after taking the recommendation, we can calculate the accumulated cost of dispute resolving within a specific time such as 6 months, 1 year or 2 years. And then we can compare it with our historical data to identify the cost decreased or not.

The second indicator could be "the average time spending on dispute resolving". We can compare the average time costs of dispute resolving before and after the recommendation taking. (For an athlete, this indicator can be changed into "the average suspension time caused by disputes" .)

As for the reputation, which seems impossible to measure, we can initiate a survey (like a questionnaire), to find out whether the image of our organization is better than before.

CONCLUSIONS

In this paper, I have discussed and compared the alternative dispute resolutions and then I found out that Mediation is the appropriate and effective way to solve the dispute in professional sports.

As using the MADA method, I firstly stated the existing problem which is: facing with sports disputes, sports organizations and athletes are sometimes confused and don't know how to choose the best resolution because of being unfamiliar with the ADR. To give a

recommendation, I then identified the feasible alternatives which are Litigation, Avoid, Arbitration, Negotiation and Mediation. After discussing their feature and outcome, I removed Litigation and Avoid because of their bad performance in key criteria.

During the analysis and comparison of Arbitration, Negotiation and Mediation, I used additive weighting technique and found out that Mediation is the best resolution to sports dispute.

In the last step, I again emphasized why Mediation is the most suitable for resolving sports disputes and I also gave some suggestions on post-decision tracking, to make sure the resolution that I had recommended will bring benefits to professional sports.

FOLLOW ON RESEARCH

After the research and analysis, we find out Mediation is the most suitable resolution to sports dispute. However, like I said in the Methodology part, each alternative is not perfect. Although Mediation performs well in many key attributes; its performance for the finality is relatively poor. So during the research in the future, we should solve the problem like: should the mediator be given more power? Should the mediator do a post-mediation tracking to make sure the involved parties implement the agreement? How can we modify the process to improve the finality of mediation without sacrificing the satisfaction of the involved parties?

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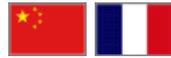
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