

IN THE MATTER OF AN FA RULE K ARBITRATION

BETWEEN:

**(1) LEEDS UNITED 2007 LIMITED
(2) THE ROTHERHAM UNITED FOOTBALL CLUB LIMITED
(acting by its administrator)**

Claimants

-And –

THE FOOTBALL LEAGUE LIMITED

Respondents

SUMMARY

1. This is an Arbitration pursuant to Rule K of the Football Association. Leeds United 2007 Ltd seeks a Declaration that the imposition of 15 points deduction for the season in League One (L1) was unlawful. (paras 1-3)
2. On 4 May 2007 the Club went into administration. The Football League's Insolvency Policy requires a Company Voluntary Agreement (CVA) to protect Football Creditors (e.g. players) and unsecured creditors. The proposed CVA failed. A consortium of businessmen (including Mr Ken Bates) wanted to acquire the assets of the Club and made an offer to the Administrators which was accepted. Regulation 11 requires a new Member ('Leeds NewCo') to start the following season in a lower league (L2). Leeds NewCo wanted to stay in L1. The League's Board was receptive to the idea but on condition of a deduction of 15 points in the following season. Leeds NewCo agreed to this condition. (paras 4-21)
3. On 3 August 2007. A formal document (the Compromise Agreement – copy is attached to the Award) was signed by Mr Mark Taylor a Director of Leeds NewCo. It contained Clause 4 which provided (material parts):

“4.1 Leeds hereby release the League ... from all claims, whether known or unknown to Leeds, which Leeds has or may have against [the League] arising out of or connected, whether directly or indirectly with ... the conduct of the League with regards to OldCo, the Conditions and the imposition of the sanction or, if passed, the Appeal Sanction (the “Claims”). (Emphasis added)

4.2 Except for the obligations created by this Agreement Leeds hereby covenants that it shall not ... commence, or threaten to commence any proceedings in any jurisdiction before any court, arbitration body ... against [the League] ... arising out of or connected, whether directly or indirectly with any of the Claims”. (Emphasis added)

The effect of this Clause is that Leeds NewCo agreed to release the League from the claims now advanced and waived any right to do so. They also covenanted not to bring the claims it now seeks to bring.

4. The Tribunal concluded:

“We are satisfied that the Claimants case begins and ends with the Compromise Agreement which clearly embodied the intention of both parties. Taking the Agreement as a whole and in particular Clause 4 Leeds NewCo agreed to the imposition of the 15 points and to release the League from the claims which have now been advanced and to waive any rights to do so. Leeds NewCo specifically covenanted not to bring the claims it has now sought to assert and there is no basis to allow it not to honour that covenant.

The Tribunal dismisses the Claim on this ground alone.” (paras 22-36)

5. Even if the Claimants could avoid the effect of the release and waiver they still faced a formidable obstacle. On 9 May 2007 the League’s Member Clubs dismissed NewCo’s appeal against the 15 point Condition. Instead of commencing an Arbitration against the Football League under Rule K they elected to do so against the Football Association for their failure to hold an enquiry. NewCo also commenced High Court proceedings against the Football League which were abortive.

6. They did not commence the present Arbitration process until 19 March 2008. No convincing reason or explanation was given why it could not have been commenced

in August 2007 – a delay of seven months. The late challenge brought uncertainty to the League near the end of the season. Until 19 March the other Clubs vying for promotion would have been proceeding on the legitimate assumption that there was to be no challenge and that the 15 points would not be restored. If the 15 points were now to be restored it would place Leeds comfortably in second position (88 points) and with assured promotion. This would prejudice the second placed Club (currently Doncaster) by depriving it of its automatic promotion place, forcing it to compete for promotion through the play off process. This situation is worthy of our particular and sympathetic consideration.

7. **The Tribunal also dismissed the Claim on the ground of Leeds NewCo's unreasonable and inexcusable delay in bringing the Claim to this Arbitration.** (Paras 37-59)
8. Having dismissed the Claim on these two grounds it was not necessary to consider the Claimant's alternative case in detail and we recorded in summary form what our conclusions would have been. (paras 60-65)
9. The Tribunal also dismissed the Claim by Rotherham which sought similar Declaratory relief. We decided that this Club had no right as there was no 'dispute' between this Club and the Football League within Rule K. (paras 66-69)
10. Finally, in a Postscript we record suggestions as to the way the Board might address the situation where there is no CVA. We also recommend that the Appeal to the League should be replaced by an Appeal Tribunal with strict time limits. (paras 1-6)

Sir Philip Otton