



# ARL in a league of its own

*News Limited & ors v Australian Rugby Football League Ltd & ors, Federal Court of Australia, Sydney; Lockhart, Von Doussa, Sackville JJ; 4 October 1996, unreported.*

There was plenty of drama surrounding the 'Super League' issue during its epic nine hearing days. Even the 200 odd pages of judgment came complete with prologue and dramatic chapter headings - 'The Birth of the Super League', 'Mr Arthurson's Return', 'The Final Conflict'. The media showed the emotional responses of the winners and losers, but the case was not all about 'love of the game'. It was about the harder game of business.

## Background

The substantial disagreements between the parties were the inferences drawn from the facts and the application of legal principles, not the findings of fact or the principles themselves. The main issues in the appeal were whether:

- contractual obligations owed by the clubs to the Australian Rugby League (ARL) and the NSW Rugby League (League) existed and, if so, they were breached;
- News Ltd and others unlawfully induced 'rebel' clubs to breach these contractual duties;
- News Ltd unlawfully inflicted harm on the League and ARL;
- the proper parties had been joined;
- a fiduciary relationship existed between the League, ARL and the clubs;
- the definition of the Rugby League market was incorrect; and
- 'Commitment' and 'Loyalty' Agreements not to go outside the League/ARL scheme for a five year period (the Agreements) were in breach of the Trade Practices Act (TPA).

## The contractual issues

The trial judge agreed with the League/ARL that the rebel clubs had breached four distinct contracts - a 'statutory contract' under s 180(1) of the Corporations Law constituted by the League's Memorandum and Articles of Association; the '1995 competition contract' constituted by each club's application for admission to the 1995 competition and its acceptance by the League; Commitment Agreements made between the League, ARL and clubs in November 1994; and Loyalty Agreements made between the League, ARL and clubs in February 1995.

The Court found that the membership provisions of the League's Constitution were carefully and deliberately drawn to prevent the clubs becoming members of the League when they nominated representatives. The clubs were not bound by any statutory contract. Even if such a contract had existed, it would not be a basis for the long term injunctions in the original orders, as the rebel clubs could have ended their membership at any time.

Although the Court agreed that acceptance of a club's application for the 1995 competition was contractual in nature, it was not convinced that clubs were obliged to act in a manner that was not prejudicial to the 'interests, welfare and image of the League' or in 'the best interests of the game' when they agreed to be bound by League rules. There was an implied obligation that each party do all things necessary on its part to allow the other to have the benefit of the contract. Each club was obliged to do all it could to enable the 1995

competition to be carried out in a way that, amongst other things, allowed the League and the ARL to achieve the benefit of the promotion of the League and its national and international competitions. This obligation ceased at the end of the competition year. In that year, a club was free to enter contracts with other parties for later years, but it could not take any action, such as promoting rival competitions, that would prejudice the current competition.

While the Court recognised that the launch and promotion of Super League by rebel clubs and players during the 1995 competition were unfair headstarts, the original orders had effectively frozen the rival competition for 1996, ameliorating much of the damage to the League/ARL. The Court remitted the question of damages to the trial judge.

Both Agreements were found to have contained 'exclusionary provisions' in contravention of TPA s 45(2). As these agreements were void, the Court did not address other related issues.

## Inducement of breach of contract

The trial judge found that News Ltd, Super League and its franchisees unlawfully induced rebel clubs to breach each of the categories of contract. As the other 'contracts' were either void or did not exist, the only findings upheld were those relating to breaches of the 1995 competition contract. Again, as the original orders had effectively reduced any unfair advantage, damages for these breaches were confined to the 1995 year.



## The proper parties

Super League players and coaches argued that, as they were not joined in the action, orders made under the ARL/League cross claim should be set aside. The Court agreed. A number of orders directly restricting players' rights to choose their employers were set aside.

## Claims based on breaches of fiduciary duties

The Respondents had pleaded that the League, ARL and each club were involved in a joint venture for carrying out the objects of the League, ARL and clubs, and for the advancement of the game in Australia. The joint venture was said to have arisen from terms of the Agreements and each party's constitution, and the promotional activities of the League, ARL and clubs. As a result, it was alleged that each of the clubs, its principal officials and players owed fiduciary duties to the others.

The Court noted that essential features of fiduciary relationships in such collaborative arrangements include the presence of the legal indicia of a partnership and underlying elements of mutual confidence and trust between the parties.

The League's incorporation brought about fundamental changes in its relationship with the clubs, removing power from the clubs and vesting it in the League's Board. Clubs were not members of the League. One of the chief characteristics of the relationship was the League's power to impose terms and conditions on clubs and to exclude them from the competition. Tight control exercised by the League evidenced an absence of mutual trust and confidence. Individual clubs were conducting businesses and building up assets independently of League activities. Each club was entitled to act in its own interest by choosing, if it wished, to

withdraw from the competition. Clubs also competed strongly with one another for players, coaches, sponsorship and marketing opportunities. They had no entitlement to receive any fixed proportion of the net revenue derived by the League. The Court found these factors difficult to reconcile with a fiduciary relationship. Although there was a degree of co-operation in the conduct of the competition, clubs were not bound to act solely for the joint advantage of all parties. Therefore, the Court did not need to consider issues arising from the purported joint venture such as breach of fiduciary duties and inducement by News Ltd.

## Intellectual property claims

Although the League controlled various trade marks, it was not as part of a joint venture. The original order was therefore set aside. The Court recognised that there were other bases on which the ARL and League could seek relief for intellectual property infringements, such as the possible existence of constructive trusts in relation to specific assets held by rebel clubs. These matters were remitted for determination.

## Breaches of the Trade Practices Act

The evidence showed that, at the time the Agreements were executed, clubs were in competition for services of the League/ARL as competition organisers (and News Ltd as an alternative competition organiser) and services of players.

To a large extent, the Agreements were designed to prevent clubs from joining the rival competition. There was no question in the Court's mind that the League, ARL and clubs were involved in commercial activities.

The Agreements were void as they contained 'exclusionary provisions'

in terms of s 4D of the TPA and in breach of anti-competitive provisions in s 45(2)(a)(ii). There was no need to consider the question of the relevant market(s) for the game.

## Implications

Aside from the oft-discussed consequences for actual parties, the decision has some important general implications. It is clear that many of the complex joint arrangements that have arisen as a result of the increasing globalisation of trade and commerce could be regarded as exclusionary under the TPA. This is problematic, since contracts with exclusionary provisions are void under the TPA. No further test of an anti-competitive effect is needed. It is arguable that the operation of this part of the TPA could reduce rather than foster competition.

Second, the definition of market is very significant, as the TPA looks at the effects of activities on 'competition in a market'. The trial judge found that Rugby League operated in a very wide market that included other sports and forms of entertainment, rather than a number of defined markets. If this approach to defining markets is correct, it might be difficult in many cases to find any act that would have the effect of lessening competition. This matter was not considered by the Full Court.

The saddest consequence was the revelation to league supporters that the game was about big business. Players were tradesmen, not athletic gods. Teams were products. It is not easy to maintain enthusiasm and loyalty for just another brand of soap powder. □

### Lucy York

*On 15 November, the High Court will consider whether it will grant special leave to appeal the decision of the Full Federal Court.*