

DECISION ON APPEAL (JASON SPEZZA)

The National Hockey League Players' Association (the "NHLPA" or the "Union"), on behalf of Toronto Maple Leafs Player Jason Spezza, has appealed from a December 7, 2021 supplementary discipline decision suspending Mr. Spezza for six (6) games. This shall constitute my decision on Mr. Spezza's appeal. For the reasons described herein, I affirm the decision of the Department of Player Safety ("DPS") that Mr. Spezza committed a kneeling infraction that violated Playing Rule 50. I also find that the suspension of Mr. Spezza for six (6) games should be, and hereby is, reduced to four (4) games.

SUMMARY OF FACTS

In the third period of the December 5, 2021 Regular Season game between the Toronto Maple Leafs and the Winnipeg Jets, Neal Pionk (a defenseman with Winnipeg) delivered a check on Toronto defenseman Rasmus Sandin that constituted a kneeling infraction and resulted in an injury to Mr. Sandin.

Approximately a minute and a half later, Mr. Spezza delivered a check to Mr. Pionk. As the puck bounced away from him in the Winnipeg defensive zone, Mr. Pionk (who had lost his stick several seconds earlier) got low to the ice to attempt to clear the puck from his defensive zone slot area with his hand. As he did so, Mr. Spezza approached him from the blue line to deliver a check. As the video footage shows, as he prepared to make contact, Mr. Spezza shifted his weight to his right leg, lifted his left leg off the ice, leaned in with his left knee in front of him and drove his knee into Mr. Pionk's head. Mr. Pionk played the remainder of the game but he

was subsequently diagnosed with a concussion and was determined by Winnipeg's team doctor to be not fit to play.¹

PROCEDURAL HISTORY

On December 7, George Parros (Senior Vice President of Player Safety) held an "in-person" supplementary discipline hearing via Zoom. Following that hearing, Mr. Spezza was suspended for six (6) games for his conduct in the December 5 game. The NHLPA raised no objections -- procedural or otherwise -- with the conduct of the disciplinary hearing itself, during which all parties, including Mr. Spezza, were provided an opportunity to be heard.

By letter to Deputy Commissioner Bill Daly dated December 8, 2021, the NHLPA gave notice of the Player's appeal.

STANDARD OF REVIEW

Section 18.12 of the NHL/NHLPA Collective Bargaining Agreement (the "CBA") provides for the right to appeal to the Commissioner any decision regarding Supplementary Discipline for On-Ice Conduct. The CBA directs, in connection with any such appeal, that I determine whether the "decision was supported by clear and convincing evidence."

¹ Mr. Pionk was suspended for two games on account of the illegal check he had delivered with his knee to Mr. Sandin and was thus ineligible to play in Winnipeg's games on December 7 and 9. Due to his diagnosed concussion, Mr. Pionk also missed Winnipeg's December 10 game. Mr. Pionk was cleared to return to play on December 14.

THE DECEMBER 14 HEARING

As set forth in CBA Section 18.12, where, as here, the underlying disciplinary decision results in a suspension of six (6) or more games, and such decision is appealed, I am required to hold an in-person hearing. I held such a hearing on December 14 by Zoom. In attendance at the hearing on behalf of Mr. Spezza were Mr. Spezza himself, his agent, Rick Curran, and NHLPA representatives Donald Zavelo, John Gerba, David Sinclair and Maria Dennis. Also present at the hearing were Toronto General Manager Kyle Dubas and members of the League office staff, including Bill Daly, David Zimmerman, Julie Grand, Daniel Ages, Kate Watson, Jamie Hacker and George Parros, who was called to testify. Joseph Baumgarten and Jordan Simon from Proskauer Rose also attended.

The hearing began at approximately 4:00 pm and concluded at 5:15 p.m. All parties were given a full and fair opportunity to be heard and there were no objections raised at the hearing. The transcript of the hearing was received at the League office on December 15.

THE PLAYING RULE AT ISSUE

Playing Rule 50.1 defines “kneeing” as “the act of a player leading with his knee and in some cases extending his leg outwards to make contact with his opponent.” A Player guilty of kneeing an opponent may be assessed a minor penalty or a major penalty depending on the severity of the infraction and “supplementary discipline can be applied by the Commissioner at his discretion. . . .” (Rule 50.6)

THE NHLPA'S CONTENTIONS

The NHLPA advanced two arguments on behalf of Mr. Spezza: (i) that the play did not constitute a violation of Rule 50 at all; and (ii) that even assuming, *arguendo*, that Mr. Spezza violated Rule 50, the quantum of discipline (six (6) games) was excessive.

In support of the first argument -- that there was no Rule 50 violation -- the NHLPA emphasized that the check delivered by Mr. Spezza was a "hockey play"; that Mr. Pionk was attempting to clear a loose puck from his team's defensive zone and was eligible to be checked; that Mr. Spezza took an angle that was designed to deliver a clean check to Mr. Pionk's right arm/torso and lowered his body in order to do so as Mr. Pionk crouched low to the ice for an attempt to clear the puck with his hand; that Mr. Spezza's shoulder and left arm made the initial contact with Mr. Pionk's upper body; that Mr. Spezza's knee made only secondary contact with Mr. Pionk's head; and that such contact was inadvertent and the result of Mr. Pionk suddenly dropping and turning his head at the last moment.

In support of the second argument -- that the six (6) game suspension was excessive -- the NHLPA emphasized that Mr. Spezza has played in excess of 1,300 NHL games over nineteen (19) seasons without ever having been fined or suspended for on-ice conduct; that he has never been warned or counseled by DPS; and that he did not act out of malice or based on a desire for retribution or in retaliation for the illegal check that had been delivered by Mr. Pionk to Rasmus Sandin moments earlier. The NHLPA further emphasized that a suspension of six (6) games is the third lengthiest suspension that the League had ever imposed for a play involving kneeling, and that, therefore, the penalty was disproportionate to the discipline imposed for other similar incidents that had involved kneeling infractions.

ANALYSIS

I find that there is clear and convincing evidence that Mr. Spezza's check on Mr. Pionk constituted "kneeing" under Rule 50 for the reasons explained by DPS. The video footage of the incident shows that Mr. Spezza approached Mr. Pionk as the latter sought to clear the puck with his hand. With Mr. Pionk low to the ice and in a vulnerable position, the video footage clearly indicates that Mr. Spezza shifted his weight to his right leg and extended his left knee forward, driving it into Mr. Pionk's head. The contact to Mr. Pionk's head was not incidental; it was not caused by any sudden material change in Mr. Pionk's position; and it was avoidable. Mr. Spezza clearly led with his knee in making the check and DPS's finding of a Rule 50 violation was plainly correct.

As to the length of Mr. Spezza's suspension, and as I have noted in prior opinions, the CBA does not prescribe a formulaic basis for the determination of the appropriate level of supplementary discipline. Each case is unique and must be decided on the basis of its own particular facts and circumstances.

The following factors are set forth in Section 18.2 of the CBA:

- (a) The type of conduct involved: conduct in violation of League Playing Rules, and whether the conduct is intentional or reckless, and involves the use of excessive and unnecessary force. Players are responsible for the consequences of their actions.
- (b) Injury to the opposing Player(s) involved in the incident.

- (c) The status of the offender and, specifically, whether the Player has a history of being subject to Supplementary Discipline for On-Ice Conduct. Players who repeatedly violate League Playing Rules will be more severely punished for each new violation. (Emphasis in original.)
- (d) The situation of the game in which the incident occurred, for example: late in the game, lopsided score, prior events in the game.
- (e) Such other factors as may be appropriate in the circumstances.

Applying these factors here, I find that a suspension of four (4) games for Mr. Spezza's kneeling infraction is appropriate.

First, the conduct not only violated an important League Playing Rule (kneeing), but it was clearly delivered in a reckless manner on a Player in a vulnerable position, as determined by DPS. An experienced Player, Mr. Spezza understood (or should have understood) the difficulty of delivering a clean check to Mr. Pionk in these circumstances and thus the onus was on him to avoid the check if it could not be delivered cleanly. I also agree with the conclusion of DPS that Mr. Spezza's infraction involved forceful contact to the head of an opposing Player, a significant aggravating circumstance.

Second, the violation resulted in an injury to the opposing Player, *i.e.*, a concussion suffered by Mr. Pionk. I note here that Mr. Pionk was determined by Winnipeg's team physician to be unfit to play on December 6 and that the severity of the injury was unclear at the time DPS issued its decision on December 7. Fortunately, Mr. Pionk's injury was less severe than it might otherwise have been. He was subsequently cleared to play on December 14 and he only missed three (3) games, two (2) of which would have been missed in any event on account of his own

suspension. I have therefore taken this additional fact (not available to DPS at the time of its decision) into account in reducing the length of Mr. Spezza's suspension from six (6) games to four (4) games.

The above factors distinguish the violation here from the prior kneeling suspensions cited by the NHLPA in the exhibit it submitted at the hearing. Most notably, the circumstances present here are more serious than, and warrant a lengthier suspension than, the one or two game suspensions assessed in eight of the suspensions included on the NHLPA's list of prior kneeling suspensions. Only one of those cases (Zack MacEwan) involved head contact and the head contact there was not forceful and did not result in an injury—unlike the contact delivered by Mr. Spezza.

Of the five (5) other suspensions referred to in the NHLPA's exhibit, only the suspensions of Mr. Spezza, Alexandre Burrows² and James Neal were for kneeling infractions that involved head contact. Mr. Neal was suspended for five (5) games in 2013. However, the circumstances involved there were different in important respects. On the one hand, Mr. Neal's conduct was deemed intentional (rather than reckless), and Mr. Neal had a prior disciplinary history that included one fine and two prior suspensions. On the other hand, the force involved in his case was considerably less than the force delivered by Mr. Spezza's check and (likely for this reason) Mr. Neal's conduct did not result in an injury to the opposing Player. Thus, while

² The Burrows suspension (ten (10) games) involved a considerably more flagrant infraction by a Player who also had supplementary discipline history. The Burrows suspension was not an appropriate comparator.

somewhat comparable, the Neal suspension certainly does not dictate the result here in terms of the appropriate length of a suspension.³

Applying the factors set forth in Section 18.2 of the CBA, I find that a four (4) game suspension is appropriate here. My conclusion accords with the findings of DPS that Mr. Spezza committed a serious and reckless infraction of Rule 50 that resulted in an injury to Mr. Pionk (albeit an injury that turned out to be less serious than it might have been). My decision to reduce the length of the suspension is based primarily on an undisputed fact -- Mr. Spezza's admirable record of clean play over a nineteen (19) season, 1,300 game career -- which is an important factor that is expressly emphasized in Section 18.2(c) of the CBA. I note that this record supports Mr. Spezza's reputation for clean play and that he has never received a warning or counseling from DPS about conduct coming close to the line; and leads me to give Mr. Spezza the benefit of the doubt in terms of his intention.

The primary object of supplementary discipline is not simply to punish conduct in violation of the Playing Rules, but to do so in a way that causes the disciplined Player to conform his conduct to the limits imposed by those rules. In the unusual circumstances presented here, I believe that the conduct at issue was a serious, but isolated, aberration from Mr. Spezza's

³ The Neal suspension was also eight (8) years ago. Although head safety had already long been a focus for the League by that time, expectations regarding Player conduct have further evolved in the intervening years. I note here that while the League strives to apply discipline in a consistent manner, slavish adherence to "precedent" that is no longer appropriate in light of intervening changes in the game is not -- and has never been -- required.

consistent style of play over nearly two decades and that a four (4) game suspension is sufficient to ensure that the conduct will not be repeated.⁴

CONCLUSION

The determination that Jason Spezza violated Rule 50 is supported by clear and convincing evidence and is therefore affirmed. The suspension is reduced to four (4) games for the reasons set forth above.

Dated: December 17, 2021

Gary B. Bettman

⁴ At the hearing, the NHLPA was asked for its view of the appropriate suspension. The NHLPA responded that, in its view, four (4) games was appropriate. My decision here, though reached independently for the reasons explained above, is consistent with the view expressed by the NHLPA.