



NFL PLAYERS
ASSOCIATION

November 19, 2014

VIA E-MAIL

Commissioner Roger Goodell
National Football League
345 Park Avenue
New York, NY 10154

Re: Notice of Appeal of Article 46 Discipline (Adrian Peterson)

Dear Roger:

We are in receipt of the discipline notice you issued on November 18, 2014, imposing an indefinite suspension on Adrian Peterson, without pay, to remain in effect for “at least the remainder of the 2014 season” and scheduled for review no earlier than April 15, 2015. This letter serves as a notice of appeal on behalf of Mr. Peterson for the discipline issued on November 18.

The relevant facts of this matter, as we know them, include the following:

- To date, no first-time offender of an NFL disciplinary policy—like Mr. Peterson—has served more than a two-game suspension for an act of domestic violence.¹
- On August 28, 2014, the NFL announced a revised Personal Conduct Policy with respect to domestic violence. The revised Policy was a reaction to widespread and intense criticism concerning your prior failures to punish domestic violence sufficiently harshly under the Policy. You publicly admitted that your historic treatment of domestic violence was a “mistake.”
- On September 11, 2014, following an investigation into child abuse allegations stemming from Mr. Peterson’s May 2014 conduct, a Texas grand jury indicted Mr. Peterson for reckless or negligent injury to a child.
- After the charges against Mr. Peterson were revealed, the criticism against the NFL—and you—intensified. NFL and Club sponsors threatened to, and in some cases did, withdraw their sponsorships and support.

¹ The lone exception is Ray Rice, whose suspension is presently on appeal before Hearing Officer Barbara Jones.



NFL PLAYERS
ASSOCIATION

- On September 18, 2014, in order to assist the NFL with the negative publicity that caused sponsors to threaten to, or in some cases actually, withdraw their support, Mr. Peterson entered into an agreement that he would not play football and would be placed on the Commissioner's Exempt List with pay until the criminal charges against him were resolved. Mr. Peterson entered into that agreement with the clear understanding that the League Office would remove him from that list when, per the terms of that agreement, "the criminal charges pending against him [were] adjudicated."
- League officials, including Senior Vice President Troy Vincent, told Mr. Peterson and his agent that the time Mr. Peterson agreed not to be on the football field would be considered "time served" if and when the NFL assessed discipline against Mr. Peterson.
- On November 4, 2014, Mr. Peterson entered into a plea agreement approved by a Texas state court. Mr. Peterson pleaded Nolo Contendere to a reduced misdemeanor charge for reckless assault and agreed to a fine of \$4,000, 80 hours of community service, and no jail time.
- On November 6, 2014, the NFL wrote to Mr. Peterson to inform him that it would begin to determine Mr. Peterson's discipline and that, pending completion of the disciplinary process, Mr. Peterson's status on the Commissioner's Exempt List would remain unchanged; thus, the NFL failed to honor the agreement it made with Mr. Peterson on September 18, 2014.
- In the November 6 letter, the NFL asked Mr. Peterson or his outside counsel to provide documents/materials about the criminal case. Mr. Peterson's outside counsel promptly wrote to the NFL to inform League officials that a Texas state law that took effect on January 1, 2014 strictly prohibits a defendant or his counsel from disseminating such materials to third parties; the letter also informed the NFL that it could seek a "good cause" showing from the court to obtain the information. To Mr. Peterson and his counsel's knowledge, the NFL made no effort to seek relief from the court.
- On November 11, 2014, the NFL informed Mr. Peterson that it had scheduled a November 14 "hearing" to review his disciplinary case. The proposed "hearing" was contrary to the Parties' long-standing custom and practice for Article 46 disciplinary matters. The NFL informed Mr. Peterson that several outside



NFL PLAYERS
ASSOCIATION

individuals would participate in the proposed “hearing,” but the NFL has refused to answer important questions asked by the NFLPA and Mr. Peterson about the “hearing,” particularly the roles and functions of the outside individuals proposed to be in attendance.

- On November 12, 2014, on behalf of Mr. Peterson, the General Counsel and Associate General Counsel of the NFLPA called Mr. Birch and other NFL officials to ask about the purpose, process and procedures for the proposed “hearing.” The NFLPA followed up with written inquiries, including an email sent to you by NFLPA Executive Director DeMaurice Smith that also inquired about the nature and purpose of the “hearing.” You never responded to Mr. Smith’s email.
- On November 13, 2014, the NFLPA sent Mr. Birch and Mr. Pash a detailed letter expressing Mr. Peterson’s questions and concerns regarding the proposed “hearing” and stating that Mr. Peterson was happy to meet with the Commissioner on the terms that have been the Parties’ long-standing custom and practice for pre-discipline assessment meetings, which have not included individuals outside of the NFL (sometimes including Club officials), the NFLPA and a player’s representatives.
- Mr. Peterson informed the NFL in the November 13 letter that he looked forward to arranging such an in-person meeting for early the next week (November 18) so that he could offer you his frank, honest perspective on the underlying incident. As the NFL acknowledged, Mr. Peterson had the right to attend an in-person meeting with his contract advisor and NFLPA counsel, and as the NFLPA informed the NFL, the proposed date for the “hearing” on Friday, November 14, was not possible for the customary pre-discipline meeting for Mr. Peterson’s representatives.
- The NFL did not respond to Mr. Peterson’s request for a meeting that comported with the Parties’ custom until after the NFLPA sent another letter requesting a response. The NFL refused Mr. Peterson’s request for such a meeting.
- On November 18, 2014, you sent a letter to Mr. Peterson, stating that he is suspended without pay at least for the remainder of the 2014 season and conditioning his reinstatement on your satisfaction with “the results of the counseling and treatment program.”



NFL PLAYERS
ASSOCIATION

The NFLPA and Mr. Peterson appeal the indefinite suspension on a minimum of the following grounds:

First, your November 18 discipline letter expressly imposes discipline on Mr. Peterson pursuant to the August 28 Policy—enacted *after* all of the conduct at issue occurred. Well-established principles of just cause and industrial due process require prior notice of consequences for an employee’s actions and prohibit such *ex post facto* punishment. Moreover, this prohibition on retroactive punishment is “law of the shop” under Article 46. *Bounty* Final Decision on Appeal, slip op. at 6 (2012) (Tagliabue, Arb.) (“[A] sharp change in sanctions or discipline can often be seen as arbitrary and as an impediment rather than an instrument of change. That is what we see on the record here.”) (vacating discipline); *see also id.* at 7-8.

Because the August 28 Personal Conduct Policy cannot retroactively be applied to Mr. Peterson’s May 2014 conduct, any punishment must be assessed and imposed consistent with the Policy and practices prior to August 28. In that light, we note that not only have you suspended Mr. Peterson for the remainder of this season, plus a minimum six-game fine, but the NFL has publicly stated that Mr. Peterson’s punishment accounts for the nine (9) games Mr. Peterson has already missed while placed on the Commissioner’s Exempt List. Accordingly, Mr. Peterson’s indefinite suspension would span *at least* sixteen (16) weeks and fifteen (15) games, is wildly disparate from that of any previous similarly situated employee, and therefore cannot stand. *See Bounty* Final Decision on Appeal at 18-19 (“selective enforcement . . . does not satisfy the basic requirements for consistent treatment of player-employees similarly situated”), 3-4, 13.

Second, the imposition of an entirely new and obfuscated disciplinary process—including the proposed pre-discipline “hearing” that would have involved several outside consultants not provided for in the CBA—is inconsistent with the Parties’ long-standing custom and practice with respect to Article 46 discipline. The conditions you purported to impose on Mr. Peterson during his indefinite suspension, such as two forms of mandated psychiatric counseling, with a psychiatrist of the *NFL’s* choosing, are also without precedent. The NFL is making up the process and punishment as it goes—a blatant violation of the CBA, Mr. Peterson’s industrial due process rights, and any notion of fundamental fairness.

The NFLPA and Mr. Peterson reserve their right to challenge the November 18 discipline on additional grounds.



NFL PLAYERS
ASSOCIATION

It is abundantly clear that League Office personnel violated express agreements and failed to honor promises made to Mr. Peterson, as well as promises made about application of the new domestic violence policy. The League Office's actions in the disciplinary "process" applied to Mr. Peterson included attempts to impose new disciplinary processes and procedures in violation of the CBA and in complete disregard of proper and fair procedures consistent with custom and practice under the CBA. Moreover, given the intense criticism that you and the League office have faced from NFL business partners, Congress, the media, NFL fans and the public at large, and the public pronouncements and commitments you have personally made in response to this criticism, it is clear that you have, by your actions, rendered yourself evidently partial and biased in this matter.

For all of the foregoing reasons, the NFLPA and Mr. Peterson hereby demand that you recuse yourself and anyone from your office from serving as Hearing Officer over Mr. Peterson's disciplinary appeal. There is simply no way for you to impartially arbitrate Mr. Peterson's appeal. Indeed, your retroactive application of the revised Policy, imposition of grossly disproportionate discipline, and implementation of unprecedented procedures underscore your inability lawfully to serve as Hearing Officer. Under these circumstances, neither you nor anyone associated with the NFL could issue an arbitration award that would be enforceable under the Labor Management Relations Act or the Federal Arbitration Act.

We are prepared to commence discussions with you immediately about the appointment of a neutral arbitrator.

Sincerely,

A handwritten signature in black ink that reads "Tom DePaso".

Tom DePaso
NFLPA General Counsel

cc: Adrian Peterson
DeMaurice F. Smith, Esq.
Heather McPhee, Esq.
Jeffrey Kessler, Esq.
Jeff Pash, Esq.
Adolpho Birch, Esq.
Ben Dogra