

Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Employment MVP: Akin Gump's Daniel Nash

By Matthew Bultman

Law360, New York (December 13, 2016, 3:44 PM EST) -- Akin Gump Strauss Hauer & Feld LLP's Daniel Nash handled several high-profile cases for the National Football League in 2016, including a legal battle over the Deflategate suspension of New England Patriots quarterback Tom Brady, helping earn him a spot on Law360's list of Employment MVPs.

Nash, a Washington D.C.-based partner at Akin Gump, had a banner year representing the NFL, starting in April when an arbitrator upheld the league's right to implement its "Personal Conduct Policy" following a lengthy arbitration proceeding.

Several months later, the Eighth Circuit reversed a lower court ruling that said Commissioner Roger Goodell acted unfairly when he suspended Minnesota Vikings running back Adrian Peterson over allegations he disciplined his 4-year-old son with a wooden switch.

Then, of course, there was the Brady case. The Patriots quarterback had been fighting a four-game suspension for allegedly scheming to deflate footballs before a playoff game, but dropped the challenge in July after the Second Circuit overturned a lower court and reinstated the suspension.

Taken together, the three cases marked major victories for the league and Goodell, affirming the commissioner's power to discipline players for conduct deemed detrimental to the game of football.



Daniel Nash Akin Gump

"They're really based on traditional labor law principles," Nash said of the cases. "The sports fans who follow these cases, they're focused on other things but ... to me, these were always about the deference that the labor laws say are supposed to be given to arbitrators' decisions."

The Brady case — the year's most unlikely federal labor dispute — began at halftime of the AFC Championship Game in January 2015, when officials discovered several footballs the Patriots were using tested at below the league's minimum air pressure.

The NFL suspended Brady for four games, fined the team \$1 million and docked the team a pair of draft picks after an investigation by attorney Ted Wells of Paul Weiss Rifkind Wharton & Garrison LLP found it

"more likely than not" Brady was involved in a scheme to deflate footballs for a competitive advantage.

After Goodell upheld the decision following an arbitration hearing he oversaw, the NFL filed a lawsuit in New York federal court seeking to confirm the decision. Brady scored an initial victory in September 2015, when U.S. District Judge Richard M. Berman ruled Goodell had overstepped his authority.

The league appealed, and in April a panel of judges for the Second Circuit overturned the lower court, ruling Goodell acted within the "especially broad" disciplinary authority given to him in the league's collective bargaining agreement. Brady's request to have the case reheard in front of the full appeals court was subsequently denied.

The Brady case, and to some extent the Peterson case, was the subject of intense media coverage. Developments and court decisions were major stories, not just in Boston or Minneapolis, but for newspapers, radio talk shows and TV outlets around the country.

This sort of attention is impossible to ignore, but Nash has never been one to argue his cases in the press. And he said that judges for the most part are able to put all the outside distractions aside and decide the cases on the law.

"I think that's what the appellate courts did in both [the Brady and Peterson] cases," he said. "It didn't matter to them that these were famous athletes. They approached it from what the law required."

Nash's work in 2016 wasn't limited to the NFL. Akin Gump's longtime labor and employment specialist is also representing Starbucks Corp. and Ernst & Young LLP in some significant cases that could have broad implications.

Most notably, EY recently asked the U.S. Supreme Court to decide whether class waivers in arbitration agreements are legal and can be enforced. The Big Four accounting firm has gotten conflicting answers from appeals courts: The Second Circuit enforced its arbitration program, but the Ninth Circuit in August ruled the agreement violated workers' rights to engage in concerted activity under federal labor law.

This EY case, and others like it, are being closely watched by both the business community and the employment bar. Many have said the class waiver issue could result in one of the most important employment cases in years.

With respect to Starbucks, Nash is representing the coffee company in several cases around the country, including a wage-and-hour case that is on appeal at the Ninth Circuit.

Nash, who was also a 2013 Law360 MVP, is quick to note that representing clients like EY, the NFL or Starbucks is a team effort.

"There are a number of lawyers that I work with here at Akin Gump who have really developed their own relationships and become very important counsel to these clients," he said. "That's maybe been the best part of the whole relationship."

--Additional reporting by Zachary Zagger and Vin Gurrieri. Editing by Bruce Goldman.

All Content © 2003-2016, Portfolio Media, Inc.