

WVU vs. Rodriguez

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The stakes were high last December when U-M athletic director Bill Martin and president Mary Sue Coleman met secretly with West Virginia University football coach Rich Rodriguez in Toledo . Martin's search for a replacement for the recently retired Lloyd Carr had seen so many missed opportunities and public rejections that commentators were openly mocking the proud AD. Signing Rodriguez, widely regarded as one of the best young coaches in college football, would silence the criticism.

Rodriguez also entered the meeting with high hopes – and troubles on his mind. At age 44 he was already a legend in West Virginia , a local boy who had led WVU's football program to national prominence. Though disputes about WVU's financial support of the program had soured his relations with the school, Rodriguez had signed a contract extension just four months earlier, committing him to serve as its head coach until 2014. The contract obligated him to pay a \$4 million buyout if he left before September of 2008 - enough to make even a restless coach think twice about bolting.

Nobody knows exactly what took place at the meeting--but just three days later, Martin introduced Rodriguez as Michigan's new head coach. The hiring sparked jubilation among fans, accolades in the media - and an epic legal battle that would tarnish the reputations of practically everyone involved.

In arguing that he didn't owe WVU the full \$4 million, Rodriguez's lawyers attacked many of the most prominent people in the school - and the state. The coach testified that WVU's president, Mike Garrison, had verbally assured him that the buyout would be reduced if he ever decided to leave. And he insisted that he'd only signed off on the amount under pressure from West Virginia Governor Joe Manchin, wealthy WVU donors, and members of its board of governors. Rodriguez's lawyers invoked slavery analogies, and probed into a tainted degree WVU awarded to the governor's daughter.

Entertaining as these antics were, most legal experts agreed that his case had little legal merit. "The allegation of fraud was an extremely weak claim," says John Weistart, law professor at Duke University and an expert in sports and contract law. "This is not the aluminum siding guy ripping off some little old lady - these are very sophisticated contracts between very sophisticated parties. You have a clear contract negotiated by attorneys on both sides, and it would have been very difficult to get any mileage out of an alleged oral statement that was made by one of the parties."

Theatrics aside, Rodriguez's core argument was that the size of the buyout far exceeded the actual monetary damages his departure had caused WVU. His lawyers asserted that the \$4 million should be considered a penalty rather than liquidated damages - an important legal distinction, since penalties for breaking a contract are unenforceable.

But Weistart wasn't impressed by that claim, either. "It would have been very difficult for Rodriguez to show that the \$4 million was punitive," he says. "There's a decent likelihood that

all the tangible [damages] in a case like this will add up to around a couple million dollars. But beyond that is a whole range of intangibles, including everything from players who did not come to the university because the coach was gone, to things like the university's brand. You can't attach a dollar sign to those things. And in a university with an athletic budget of \$48 million, with the lion's share going to the football program, \$4 million doesn't seem all that large for a multi-year contract."

Between the weakness of Rodriguez's case and the bad press it generated for both schools, many have wondered why the U-M didn't just buy his contract out from the start. Some have suggested that the AD may have been afraid to antagonize his new coach by pressuring him to settle. Others have speculated that Martin was reluctant to appear inconsistent, after publicly refusing to pay John Beilein's buyout when the U-M lured the basketball coach out of his WVU contract in a similar episode last year. Or maybe Martin hoped Rodriguez would settle the issue on his own, like Beilein did?

The only people who know for sure-- Martin, Rodriguez, and Coleman--aren't talking. But Thomas Flaherty, lead counsel for WVU, says the U-M promised to cover most of the buyout from the start.

"We've seen an email that went from [Rodriguez's] financial advisor Mike Wilcox to Athletic Director Martin on December 15, 2007, confirming a conversation they'd had earlier that day," he says. "I believe it was cc'ed to Mary Sue Coleman. It said that the liquidated damages clause with West Virginia was a HUGE issue, and that the U-M had agreed that they were going to be

responsible for I think it was 75% of the buyout, up to \$2.5 million.” The email was sent one day after the Toledo meeting that led to Rodriguez’s hiring.

Rodriguez’s lawyers prevented him from answering Flaherty’s questions about the U-M’s role in the buyout. And according to Flaherty, the university went to great lengths to keep that information concealed. “The U-M kept putting restrictions on the deposition of Athletic Director Martin, and steadfastly said President Coleman wasn’t involved in the process, when in fact she was at the meeting back in December. We had issued Freedom of Information Act requests for documents regarding whether or not anyone had agreed to indemnify Coach Rodriguez for all or part of the \$4 million. The U-M said they didn’t have any documents, when in fact we saw the email that Wilcox had sent. Whether the university deleted theirs or destroyed it, I don’t know, but they certainly didn’t produce it.”

The U-M finally chipped in its \$2.5 million, settling the affair the day before Martin and Coleman were set to be subpoenaed to testify about it, so the reasons for the university’s secrecy may never be known. But Flaherty takes a cold-eyed view of the U-M’s intentions. “When Coach Rodriguez met with the U-M in Toledo, the lawyers who subsequently appeared as Rodriguez’s counsel in the West Virginia litigation were also there,” he says. “They were clearly embarking on a strategy to try to settle this case for something less than the \$4 million, since [the email] broke down specifically who would pay what in the buyout, depending on if it was resolved for \$3 million, or \$2 million, or what have you. I think their strategy was to try to either wear down [WVU], or drag the issue through the mud to the point where they would just give up and resolve it. It just didn’t work.”

If Flaherty's suspicions are right, perhaps the U-M is hoping to avoid an ironic karmic payback should the Rodriguez experiment fail. The university has inserted a buyout clause of its own in the coach's contract. The reported amount: \$4 million.