

David Beaty: Colleges Trying to Convert Not-For-Cause Firings to For-Cause-Firings

By Martin J. Greenberg and Giancarlo Mora

I. Who is David Beaty?

David Beaty (“Beaty”) first gained his coaching reputation for excelling at the high school football level in the Dallas-Fort Worth area. He began his coaching career as an assistant coach at Naaman Forest High School in Garland, Texas.¹ His first head coaching job came in 2001 at North Dallas High School where he posted a 6-4 record.² That was his only season at North Dallas as Beaty would take over as head coach at MacArthur high school.³ In three years at MacArthur, Beaty’s teams posted a 33-11 record as well as two district titles.⁴ Beaty was also recognized with several coach of the year honors.⁵

Beaty’s many successes through the high school ranks carried over to the collegiate level. In 2006, Beaty began his first college coaching job as a wide receivers coach at Rice University.⁶ Beaty would continue to impress as a coach and would continue to rise through the ranks. He had stops at the University of Kansas (“Kansas”) as a wide receivers coach and offensive coordinator, and later coached Texas A&M as their wide receiver coach. During these eight years of collegiate coaching, Beaty’s success can be seen by the number of young receivers Beaty helped transform into NFL caliber players. Some of these receivers include Kerry Meier, Dezmon Briscoe, and more notably Mike Evans who is still a dominant receiver today.⁷ Texas A&M was a big milestone for Beaty as many believe the Southeastern Conference (“SEC”) to be the toughest conference in

¹ *David Beaty*, 12THMAN.com, <https://12thman.com/sports/football/roster/coaches/david-beaty/445> (last visited July 5, 2021).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

college football. Success at this level meant that Beaty was ready to take the next step as head coach of a college program.

In 2014, Kansas had gone through three football coaches in six years and were in search of their fourth. This coach would be tasked with turning around a long-struggling program both on and off the field. Aside from the fact that the team was not winning football games, the program suffered in other respects. The program had issues with their student-athletes academic progress.⁸ Additionally, the program had only filled 60 of its 85 scholarships going into the season.⁹ Kansas needed a coach who was going to turn the Program around and after the coaching search concluded that Beaty was the best candidate.

II. Hiring at Kansas

Beaty and Kansas entered into an Employment Agreement dated December 8, 2014.¹⁰ Both Beaty and Kansas knew that this program overhaul would not be completed overnight. This was evident from the length of the contract which stated that “[t]his agreement shall be for a term of 5 years from December 8, 2014, through December 31, 2019, unless earlier terminated as set forth herein.”¹¹ In the contract, it stated that at any moment Kansas could terminate their agreement with Beaty provided that he is provided written notice.¹² This would be considered a termination without cause for which Kansas would still owe Beaty compensation. Specifically, the First Amendment to the Employment Agreement dated December 1, 2016, imposed obligations on Kansas if Beaty was terminated without cause:

[Section 7] In the event that Head Coach's employment is terminated without cause. [Coach Beaty] shall be entitled to a

⁸ Complaint at 4, *Beaty v. Kansas Athletics INC.*, 2:19-cv-02137-CM-GEB, (March 12, 2019) (“Complaint”).

⁹ *Id.*

¹⁰ Employment Agreement Between David Beaty and University of Kansas, 1, December 8, 2014. On file with the author.

¹¹ *Id.*

¹² *Id.* at page 10.

payment in the total amount of \$2,580,000.00 payable in six equal installments commencing on the last day of the month immediately following the month in which the termination date occurs and continuing on the last day of each succeeding month thereafter; the payments under this Section 7 and under Section 12 shall be considered as Liquidated Damages with no other sums or damages of any kind whatsoever paid by Athletics to Contractor.

[Section 12] Athletics shall have the right to terminate this Agreement without cause at any time upon written notice to Head Coach. In the event Athletics terminates this Agreement without cause, Athletics, in addition to all amounts due and owing under this Agreement up to the date of termination, shall be liable to Head Coach for a Liquidated Damages total payment of \$420,000.00 payable in six equal installments; other than payments under Section 7 and payments under this Section 12, no other sums or damages of any kind whatsoever shall be paid by Athletics to Head Coach.

. . . The Liquidated Damages above shall be paid to Head Coach in six equal monthly installments commencing on the last day of the month immediately following the month in which the termination date occurs and continuing on the last day of each succeeding month thereafter.

The parties agree that such Liquidated Damages are in lieu of all other compensation and benefits owed to Head Coach, including annual and sick leave, otherwise owed to Head Coach under any and all other provisions of this agreement. . . ¹³

On the other hand, Beaty could also be terminated for cause. For cause termination would mean Kansas was responsible for compensation up to the termination date and would not have to pay the liquidated damages required with a termination without cause firing.¹⁴ “Cause” in the context of this Agreement would include, but not limited to:

1. the refusal, failure (other than the failure resulting from his incapacity due to physical or mental illness), fraud, or dishonesty of Head Coach in any material respect to comply with the reasonable directives of the Director or his designee or to perform the duties set forth in Section 3 above; or

¹³ *Id* at page 11.

¹⁴ *Id* at page 12.

2. serious criminal conduct by Head Coach, including any felony, as determined by Athletics or any criminal conviction involving dishonesty, fraud, misappropriation, or embezzlement; or
3. discreditable conduct that is inconsistent with the professional standards expected of a head coach of a collegiate sports team or that is seriously prejudicial to the best interests of KU or Athletics; or engaging in abusive or demeaning language or conduct to any student, including student-athletes, or employees, including employees of KU or Athletics; or be involved in conduct or activities that violate KU or Athletics' mission; or
4. violations by Head Coach of NCAA rules and regulations, as set forth in Section 8 above: or
5. failure by Head Coach to report promptly to the AD any violations known to Head Coach of governing athletic rules, including NCAA and/or Big 12 rules, or Athletics or KU rules, regulations or policies by assistant coaches, student-athletes or other persons under the direct control or supervision of Head Coach; or
6. fraud or dishonesty in preparing, falsifying, submitting, or altering documents or records of or for the NCAA, the Big 12 Conference, Athletics, or KU; or
7. commission of or participation in by Head Coach of any act, situation, or occurrence, or any conduct, which in Athletics' or KU's judgment brings Head Coach and/or KU into public disrepute, embarrassment, contempt, or ridicule or any public comments that disparage KU or Athletics, its personnel, programs, policies and/or departments, or that cause damage to KU's reputation.¹⁵

For the first few years it appeared that Beaty was turning the Kansas football program around. The team ended long victory droughts against The University of Texas and Texas Christian University.¹⁶ The team also had some players make the All-Big XII teams as well as players who made the Kansas record books.¹⁷ Off the field, graduation rates were at an all-time high. Beaty had the highest single season graduation rate of 95% of his seniors.¹⁸ Additionally, Beaty provided his

¹⁵ *Id.*

¹⁶ *Complaint, supra* note 8.

¹⁷ *Id.* at page 7

¹⁸ *Id.*

players with training for life outside the football field such as personal finance, healthy relationships, consent, and racial equality.¹⁹

It seemed as if Kansas and then athletic director Sheahon Zenger were content with the progress that Beaty had made, and they rewarded him by extending his contract another two years. When discussing the extension (2020-2021), Zenger mentioned that he was not worried about the record because he knew that Beaty had inherited a far from ideal situation.²⁰ [According to Sports-Reference.com, Beaty's record 2015-2018 included 6 wins and 42 losses (2015 0/12; 2016 2/10; 2017 1/11; and 2018 3/9).]²¹ He added to that stating, "[t]his is a commitment to the overall football program, that we believe he and the staff, and the players are headed in the right direction."²² Not only was the duration of the contract extended, but Zenger and Kansas also showed its content with Beaty by giving him a significant raise. Beaty's original contract had his salary at \$800,000 annually.²³ His extension would raise that number to \$1.6 million in 2017 and increasing his salary every year by \$100,000 until the end of his extension in 2021.²⁴ The extension was a symbol of Kansas Athletics continued faith in Beaty giving no indications of the messy split which would follow.

III. Termination and What Caused It

The hiring of new Athletic Director Jeff Long ("AD Long") in July of 2018 marked the beginning of the end for Beaty's time at Kansas. By November of that year, AD Long and Kansas

¹⁹ *Id.*

²⁰ Jesse Newell, *K.U. A.D. Sheahon Zenger explains reasons for David Beaty's raise, contract extension*, THE KANSAS CITY STAR (Dec. 12, 2016), <https://www.kansascity.com/sports/college/big-12/university-of-kansas/article120464853.html>

²¹ *David Beaty/ stats*, SPORTS-REFERENCE.COM, <https://www.sports-reference.com/cfb/coaches/david-beaty-1.html> (last visited August 18, 2021).

²² *Id.*

²³ First Amendment to Professional Services Agreement, 1, December 1, 2016, On file with the author.

²⁴ *Id.*

decided that they were going to move on from Beaty and go in a different direction.²⁵ Beaty found out that he was being terminated through a private meeting with AD Long on November 4, 2018.²⁶ AD Long told him that he was being terminated without cause and that Kansas would honor their Employment Agreement and pay Beaty the \$3 million owed to him.²⁷ AD Long later reiterated these statements in a press conference where he again affirmed that Beaty was being terminated without cause.²⁸ Additionally, at the end of the month, AD Long sent Beaty this memorandum once again affirming that he had been terminated without cause and that his contract would be honored:

As discussed in my office on November 4, pursuant to Section 12 of your Employment Agreement, your Agreement with Kansas Athletics Inc. was terminated without cause effective November 24, 2018. All liquidated damages payments owed to you will be paid out consistent with Section 12 of your current amended Employment Agreement and Section 7 (D) of your current amended Professional Services Agreement.

I appreciate your contributions to the University of Kansas, Kansas Athletics, and Kansas Football during your time as Head Football Coach and wish you success in your future endeavors.²⁹

Despite all the reassurances to Beaty, it appeared that AD Long and Kansas had other plans. On several occasions, Kansas employees heard AD Long and other high-ranking officials say that they needed to “find something on Coach Beaty” so they would not have to pay the \$3 million owed to him.³⁰ Other accounts say that those same officials said they needed to find “a dead hooker. . . in [Coach Beaty’s] closet” to have leverage over him and not pay him his dues.³¹

²⁵ *Complaint, supra* note 8.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at page 9.

³⁰ *Id.*

³¹ *Id.*

Kansas began by asking Beaty for an extended payment schedule for the amount owed to him.³² Beaty declined and demanded for the payments to be made as per the Agreement.³³ Kansas then sent a letter through KU General Counsel Brian White (“White”) letting Beaty know that he was being investigated for NCAA violations by one of his subordinates more than a year prior.³⁴ Because of NCAA Bylaw 11.1.2.1, Beaty was responsible for the actions of his subordinates. NCAA Bylaw 11.1.2.1 reads as follows:

NCAA Division I Bylaw 11.1.2.1 places the responsibility on the head coach to promote an atmosphere of NCAA rules compliance within his program and to monitor the activities of his staff to ensure compliance with the rules. This bylaw was enacted in 2005 at the request of the National Association of Basketball Coaches.

Pursuant to Bylaw 11.1.2.1, a head coach is presumed to have knowledge of what is occurring in his program and therefore, can be responsible for the actions of his staff and individuals associated with the program. In other words, if an allegation of Bylaw 11.1.2.1 is made against a head coach, then the coach must rebut the presumption that he had knowledge of what was occurring in his program and show that he did in fact set a proper tone of compliance and reasonably monitored the activities of his program.³⁵

Specifically, Beaty was being investigated for two charges. The first charge alleged that former video coordinator Jeff Love “provided on-field instruction to KU quarterbacks on two or three occasions in March of 2018.”³⁶ The second charge claimed that Love met with Kansas quarterbacks six to ten times and went over progressions, defenses, concepts, and instructional videos.³⁷ White’s letter mentioned Beaty as if he were still an employee and said that Kansas was determining if he would be terminated for cause or without cause which came as a shock to Beaty

³² *Id* at page 10.

³³ *Id.*

³⁴ *Id.*

³⁵ NAT’L COLLEGIATE ATHLETIC ASS’N, 2012-13 NCAA DIV. I MANUAL (March 29, 2011), http://fs.ncaa.org/Docs/AMA/legislative_actions_issues/LSDBi/HeadCoachControl.pdf

³⁶ Steven Godfrey, *So You Want to Fire Your Coach Without Paying His Buyout*, BANNER (Dec. 5, 2019), <https://www.bannersociety.com/2019/12/5/20997328/college-football-coach-buyouts-kansas-david-beaty>

³⁷ *Id.*

as it had been long established that he had already been terminated without cause.³⁸ The letter also stated that all payments were to be withheld until the investigation had concluded.³⁹

Beatty sent a letter replying to White indicating that he believed Kansas was using its own investigation as a way to avoid paying him the \$3 million owed to him.⁴⁰ The letter also let Kansas know that failure to pay was a material breach of the Employment Agreement for which legal action would be taken.⁴¹

Beatty and DB Sports, LLC filed suit against Kansas Athletics, Inc. in the United States District Court for the District of Kansas.⁴² The Complaint was filed on March 12, 2019.⁴³ Beatty alleged two causes of action. The first cause of action is for breach of Employment Agreement and states as follows:

70. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
71. As described above, Plaintiffs and Defendant are parties to fully executed contracts, whereby Defendant owes Plaintiffs guaranteed payments after electing to terminate the contracts without cause.
72. Plaintiffs fully performed their obligations under the contracts.
73. Defendant has materially breached the Contract by not making the guaranteed payments owed, which Defendant has previously confirmed multiple times in multiple ways are owed subsequent to its election to terminate without cause.
74. Plaintiffs have been damaged by Defendant's breaches of the contracts.⁴⁴

As a second Cause of Action, Beatty would also allege failure to pay wages under the Kansas Wage Act as follows:

75. Plaintiff David Beatty incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
76. Plaintiff David Beatty is an employee covered by and subject to the Kansas Wage Payment Act, K.S.A. 44-313, et seq.

³⁸ *Complaint, supra* note 8.

³⁹ *Id.*

⁴⁰ *Id.* at page 11.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

77. The Kansas Wage Payment Act provides that employers must pay employees all wages due.
78. The remaining amounts owed to Plaintiff David Beaty constitute wages under the Kansas Wage Payment Act because they are compensation for labor or services rendered by an employee.
79. Defendant has failed to pay Plaintiff David Beaty all wages due in violation of the Kansas Wage Payment Act.
80. Defendant's failure to pay all wages due to Plaintiff David Beaty is willful.
81. Plaintiff David Beaty is entitled to judgment in his favor and a monetary award to compensate him for all wages due, interest, and statutory penalties, and all other damages and remedies allowed by law under the Kansas Wage Payment Act, as well as an award of costs.⁴⁵

IV. Lawsuit Settled

In the United States District Court for the District of Kansas Beaty was seeking summary judgement on his breach of contract claim against Kansas.⁴⁶ The Court focused its reasoning on the ambiguity of the contract to determine if summary judgement was appropriate.⁴⁷ Beaty argued that the Employment Agreement unambiguously provides that Kansas cannot retroactively fire Beaty for cause after already having fired him without cause.⁴⁸ The Court disagreed saying that there is ambiguity in the agreement and that it does not explicitly state that Kansas cannot retroactively fire Beaty for cause.⁴⁹ Additionally, Beaty argued that the Employment Agreement is unambiguous in that Beaty's performance is limited to his head coaching duties which does not include complying with NCAA regulations.⁵⁰ The Court disagreed saying that the agreement unambiguously included taking best efforts to comply with NCAA regulations.⁵¹ With these

⁴⁵ *Id.*

⁴⁶ *Beaty v. Kansas*, 454 F. Supp. 3d, 1096 (D. Kan. 2020)

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

findings the Court rejected Beaty's motion for summary judgement.⁵² It appeared that Beaty and Kansas Athletics were headed towards a long and costly legal battle in Court.

Instead, more than two years after his termination, Kansas and Beaty reached a financial settlement of \$2.55 million dollars in June of 2020.⁵³ Even though Beaty was compensated, Kansas reinforced that they had not wronged Beaty and made the following statement:

"Despite the settlement, the University maintains the facts and principles behind its position remain intact. . . For the betterment of KU and driven by a willingness to move forward during a time of uncertainty in college athletics, the University has now put this matter behind us."⁵⁴

This claim comes despite reports of AD Long possibly costing Beaty a job at the University Texas ("Texas") while the dispute was going on. Beaty was being considered for a low-level analyst job by his good friend Tom Herman who was Head Football Coach of the Longhorns at the time.⁵⁵ Texas Athletic Director Chris Del Conte called AD Long as a courtesy and was cautioned about hiring Beaty stating "I wouldn't do that if I was you. His behavior is egregious, it was definitely Level I."⁵⁶ This ultimately led to Beaty not landing that job with Texas and was just one of the damages alleged done to Beaty's reputation.⁵⁷ In the end, while coach Beaty was paid most of the money he was owed, he was the subject of a distracting and damaging investigation that did no favors for his career.

⁵² *Id.*

⁵³ Mark Schlabach, *Kansas reaches \$2.55 million settlement with former coach David Beaty*, ESPN (Jun. 5, 2020), https://www.espn.com/college-football/story/_/id/29272910/kansas-reaches-255-million-settlement-former-coach-david-beaty

⁵⁴ *Id.*

⁵⁵ Brian Davis, *Kansas AD cautioned Texas about hiring former football coach David Beaty*, HOOKEM.COM (April 15, 2020), <https://www.hookem.com/2020/04/15/report-kansas-ad-cautioned-texas-hiring-former-football-coach-david-beaty/>

⁵⁶ *Id.*

⁵⁷ *Id.*

V. Conclusion

While Beaty's settlement marks an end to his bout with Kansas, there still exists a troubling issue for the rest of college athletics. That is that all of these colleges owing huge buyout payments to fired coaches still have the option to attempt to convert not-for-cause firings into for-cause firings. Beaty was not the only coach caught up in these converted firings. Jim McElwain, Kevin Stallings, and Mark Gottfried are all coaches who have had their not-for-cause terminations turned into for-cause terminations. The settlement between Beaty and Kansas has left this issue unanswered. However, it has surely left an idea in the minds of athletic directors everywhere on how they can save their programs from making these payments.

One way that Kansas is trying to cover its bases is by including very specific clauses in future contracts. After dealing with Les Miles and his sexual allegations, the school included a clause specifically in place for sexual misconduct claims when it hired new football coach Lance Leipold.⁵⁸ These provisions could extend far beyond sexual misconduct and would help colleges create unambiguous contracts that would hold up in court should it ever reach that point. This would help them avoid having to pay buyouts or costly settlements with terminated coaches.

Another possibility is adding what are known as clawback clauses. These clauses require an employee who has received compensation or value to return that compensation if an event occurs.⁵⁹ These are widely used in the business world as many of the Fortune 100 Companies have these clauses in their employment contracts.⁶⁰ These contracts could help create some clarity for what is to be expected if certain events occur. A college could include a clawback clause where a

⁵⁸ Greg Echlin, *KU Added Legal Safeguards in New Head Football Coach's Contract, Hoping to Avoid Les Miles Repeat*, *KCUR* (July 14, 2021), <https://www.kcur.org/sports/2021-07-13/ku-added-legal-safeguards-in-new-head-football-coachs-contract-hoping-to-avoid-les-miles-repeat>

⁵⁹ Martin Greenberg, *The Use of Clawback Clauses in College Coaches' Contracts*, *Marquette Law*, <https://law.marquette.edu/assets/sports-law/pdf/for-the-record/greenberg-v21no2.pdf>

⁶⁰ *Id* at page 4

coach will pay back any performance bonuses if his wins are taken away due to an NCAA violation. A primary example of this is John Calipari who had 38 wins vacated for fraudulent SAT by a player and paying over \$2000 in travel to Derrick Rose's brother.⁶¹ This could be an effective way to deter coaches from committing violations. However, there are a few questions that would need to be answered. The biggest question would be what incentive would the coach receive for agreeing to this clause that can only hurt him. Will he get incentives for not committing any violations?⁶² Other questions could be if the clawback clause would be triggered by the coaches' actions alone or if he was vicariously liable for his entire staff.⁶³ These would be discussions between college and coach that could help solve some of the issues and avoid future disputes.

A more extreme idea for avoiding these buyout payments highlighted by Steven Godfrey has gone as far as to suggest that colleges should just make up allegations saying "why not just bluff?"⁶⁴ If a school terminates a staffer with a substantial buyout, why not threaten a similar internal investigation in an effort to encourage the fired coach to negotiate a reduced buyout?"⁶⁵ Beaty's Attorney Michael Lyons feels that the settlement had a positive impact on the issue. He stated that the post firing investigation was in bad faith and had the following to say on the settlement:

Coach Beaty's settlement is a win for the Beaty family and for coaches everywhere. This result sends a clear message in response to the growing prevalence of institutions that contract to pay liquidated damages and then refuse to pay based upon manufactured stories about alleged NCAA violations. When an institution elects not to pay a coach in accordance with the contract, its leadership needs to understand the scrutiny it will invariably attract and the economic and reputational

⁶¹ Jay King, *John Calipari's Final Four Erased. . . Again*, <https://bleacherreport.com/articles/239659-john-caliparis-final-four-erasedagain>

⁶² *Id.* at page 10

⁶³ *Id.*

⁶⁴ *Godfrey*, *supra* note 36.

⁶⁵ *Id.*

impact it will have. I believe Coach Beatty's case highlights all the reasons not to take the route taken here.⁶⁶

Unfortunately, the current landscape of college athletics casts some doubt on Lyons claims. After a difficult year for all sports due to the COVID-19 pandemic, the financial state of many college programs makes the idea of trying to convert not-for-cause firings to for-cause firings seems more appealing. In a year that many thought would be a pass for struggling coaches, many programs have fired their coaches without cause and have forced themselves to pay huge buyouts despite claiming significant losses due to COVID-19. USA Today reports that FBS public schools have committed themselves to \$107.5 million in buyout related payments.⁶⁷ Many of these schools such as Auburn and South Carolina have also claimed excess of \$50 million in losses of revenue.⁶⁸

At the end of the day, desperation could be the deciding factor as to how this issue plays out. Universities in financial trouble will look to save every penny they have and being able to waive huge buyouts seems like a good place to cut costs. This will likely lead to a trend of college programs having these sorts of conflicts with their fired coaches and will leave the NCAA to figure out how it is going to tackle this problem.

⁶⁶ *LYONS & SIMMONS CONCLUDES FORMER UNIVERSITY OF KANSAS HEAD FOOTBALL COACH'S CONTRACTUAL DISPUTE WITH \$2.55 MILLION SETTLEMENT*, Lyons and Simmons LLP (Jun.9, 2020), <https://www.lyons-simmons.com/our-blog/2020/june/lyons-simmons-concludes-former-university-of-kan/>

⁶⁷ Brent Schrottenboer, *Colleges Still Have Millions to Fire Football Coaches Despite Claiming Financial Trouble from Coronavirus*, USA TODAY (Jan. 2, 2021), <https://www.usatoday.com/story/sports/2020/12/17/college-football-coach-firing-costs-rise-much-75-million/3930808001/>

⁶⁸ *Id.*

Giancarlo Mora is a second-year law student at Marquette University and a 2023 Sports Law Certificate Candidate. Giancarlo is a recipient of the Thomas More Law Scholarship and an active member of the Marquette Sports Law Society. In addition to working with Attorney Martin J. Greenberg, Giancarlo has also worked as a research assistant for Professor Chad Oldfather on topics concerning constitutional law in Wisconsin. Prior to his time at Marquette Law School, Giancarlo earned his bachelor's degree from Florida State University with a major in history and a double minor in business and criminology. Outside of the classroom, Giancarlo has experience in collegiate athletics and esports. Giancarlo will graduate with a J.D from Marquette University Law School in the spring of 2023.