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NFL Grapples With Allegations of Systemic Racial Discrimination in Suit by Ex-Coach

Brian Flores, the former head football coach of the Miami Dolphins who was fired on Jan. 10, filed an explosive lawsuit in U.S. District Court for the Southern District of New York against the league and three teams accusing them of discrimination against African American coaches in their hiring, denying them equal opportunity, and paying them less than white coaches.

By **Jeffrey Campolongo** and **Scott M. Badami** | February 16, 2022



(L-R) Scott Badami of Fox Rothschild and Jeffrey Campolongo, of Law Office of Jeffrey Campolongo. Courtesy photo

When the calendar flipped to February, the National Football League (NFL) was in the middle of an exciting playoff run with the Super Bowl scheduled in less than two weeks. Indeed, on Feb. 1, Tampa Bay Buccaneers quarterback Tom Brady confirmed what had been reported during the prior weekend: that he was retiring after winning seven championships (in 10 Super Bowl appearances) as well as holding any number of individual records, including completions (7,263), touchdown passes (624), and passing yards (84,520). Surely nothing could bump the Brady retirement from the 24/7 media cycle for a few days. The league was ready to bask in the glory of highlights of arguably its most accomplished player. It did not happen. Brady was not even the lead football story by the end of the day.

What changed? The NFL had counted out Brian Flores. Flores, the former head football coach of the Miami Dolphins who was fired on Jan. 10, filed an explosive lawsuit in U.S. District Court for the Southern District of New York against the league and three teams (the Dolphins, the New York Giants and the Denver Broncos) accusing them of discrimination against African American coaches in their hiring, denying them equal opportunity, and paying them less than white coaches. Flores, who identifies as Afro-Latino is the son of Honduran immigrants who grew up in Brooklyn's projects. In his class action complaint, Flores asserts the league remains "rife with racism, particularly when it comes to the hiring and retention of Black head coaches" and that the "racial discrimination has only been made worse by the NFL's disingenuous commitment to social equity."

While Flores hopes other African American coaches will join his lawsuit, he also recognized his future in the league could well be jeopardized by his claims of "systemic racism" and his assertion that "even when Black candidates get hired for head coaching positions, a rarity, they are discriminated against in connection with the terms and conditions of their employment and compensation and terminated even as far less successful white head coaches are retained." Interestingly, Flores (again, who was fired by the Dolphins on Jan. 10) had been interviewing for open head coaching positions around the league (at least as late as Jan. 27), but had this lengthy lawsuit filed four days later.

The NFL is left in the uncomfortable position of denying the allegations in the complaint and asserting they are "without merit," while at the same time acknowledging individual clubs have to improve how they hire and promote minority candidates for senior positions. The league will no doubt try to walk a fine line by contending that no laws were broken, but admitting that the NFL and its clubs must do a better job hiring minority coaching and team executive candidates. NFL Commissioner Roger Goodell, during his State of the League address this past weekend, essentially said as much when he declared the league has made tremendous amount of progress in pursuit of diversity but acknowledged those advances have not reached the head coaching ranks.

What are the claims? In short, Flores asserts his scheduled Jan. 27 interview with the Giants was a sham, set only as a pretext to comply with the league's Rooney Rule (requiring an interview of a minority candidate prior to hiring certain senior level positions). As proof, Flores provided texts he claims are from New England Patriots coach Bill Belichick, which according to Flores, demonstrate that the Giants had already decided to hire a white candidate prior to even interviewing Flores for the position. As both coaching candidates have the same first name (Brian), Flores asserts Belichick texted Flores by mistake, congratulating him on a job given to someone else with the same first name just days before Flores was set to be interviewed. In response, the Giants stated that "Flores was in the conversation to be our head coach until the 11th hour" and no final decision had been made.

Similarly, the Broncos are alleged to have not seriously considered Flores for their head coaching position in 2019, in that two team executives arrived late for the interview "looking completely disheveled," and making it "obvious [the team executives] had been drinking heavily the night before." The Broncos described Flores' claims as "blatantly false" and that the interview "began promptly at the scheduled time" by executives who flew through the night to meet with Flores in the morning.

Flores also claims that the owner of the Dolphins offered him \$100,000 for each game his team lost in the 2019 season so as to improve the Dolphins chances to get the first pick in the 2020 NFL draft. The Dolphins strongly denied this assertion as it goes to the heart of competitive integrity and will, if proven, likely result in severe penalties against the team and its owner. While this would concern any generation of NFL officials, particularly given the league now partners with various sports gambling sites, this claim raises even more red flags in 2022. Flores also claims the Dolphins owner wanted the coach to tamper with another NFL player in an effort to recruit that player to sign with Miami. The Dolphins denied that allegation as well.

So, what happens next? To be sure, the league will most likely file a motion to dismiss or a motion to refer the case to arbitration. NFL employment contracts typically contain arbitration clauses and the league and its member teams would certainly prefer this dispute not be litigated in the open light of federal court. Flores and his lawyers will vigorously

oppose any such effort. Filed as a class action for African American coaches, Flores seeks injunctive relief and other remedies to increase diversity in the executive offices and coaches throughout the league.

And if the Flores' lawsuit was not enough, on Feb. 2, the Washington Football Team had scheduled its announcement of a new nickname, a conclusion to an 18-month rebranding process. In addition to a former team name with a controversial past, Washington's owner and certain senior (now former) employees were previously accused of sexual misconduct and workplace harassment by a number of women who worked for the team over the past 10 to 15 years. The NFL, which had taken over the investigation into those allegations, was (and is still) facing a firestorm of criticism for entering into a joint defense agreement with the team, which (according to the league), prevents the NFL from releasing documents related to the investigation unless and until Washington agrees.

Furthermore, two days after the new Washington Commanders name was unveiled, other former team employees made additional sexual harassment and workplace misconduct claims against the team, this time focusing on owner Daniel Snyder. Snyder, who was relieved of his day-to-day ownership responsibilities by the league related to an initial set of claims (the team was also fined \$10 million), faces new claims that he specifically sexually harassed a former employee who brought the matter to a Congressional committee on Feb. 4. Although the Commanders denied the allegations against Snyder, the team announced it was hiring outside counsel to conduct another investigation. The NFL responded quickly and stated it was taking over the new inquiry of the now Washington Commanders owner.

Who wins? Well, in the short to medium term, employment lawyers for the league and its teams. There will be multiple investigations related to the Flores lawsuit (done by the NFL, the Giants, the Dolphins and the Broncos), an inquiry into the new harassment claims against the Commanders (which now has the attention of Congress), and likely by the other NFL clubs related to their individual interview and hiring processes. Although claims of racism in hiring have percolated around professional football for some time (notwithstanding league rules and policies put in place in an effort to level the playing field), this feels like we are still closer to the beginning of a chapter as opposed to the end of a book. In a league where 70% of its players are Black, having two Black head coaches among its 32 franchises seems, frankly, embarrassing.

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