

**REPORT OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE**

June 25, 2010

Report No. 302

Former Men's Basketball Head Coach

Southeast Missouri State University

Cape Girardeau, Missouri

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

The former men's basketball head coach at Southeast Missouri State University appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by the former men's basketball head coach (hereinafter referred to as former head coach).

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 302 August 13, 2009, in which the committee found violations of NCAA legislation in the men's basketball program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [August 13, 2009, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing playing and practice seasons, extra benefits and unethical conduct.

After the Committee on Infractions issued its report, former head coach filed a timely notice of appeal August 26, 2009. A written appeal was filed October 23, 2009. The Committee on Infractions filed its response December 2, 2009. The case was considered by the Infractions Appeals Committee April 30, 2010 (see Section VI below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions Southeast Missouri State University report dated August 13, 2009.]

B-2 IMPERMISSIBLE PRESENCE DURING SUMMER CONDITIONING ACTIVITIES; IMPERMISSIBLE OBSERVATION OF OUT-OF-SEASON PICK-UP GAMES. [NCAA Bylaws 13.11.2.2, 17.02.1, 17.02.13, 17.1.6.2.1.1 and 17.5.6 (2008-09 NCAA Manual)]

During 2006 and 2007, members of the men's basketball coaching staff were present during men's basketball student-athletes' participation in summer strength and conditioning activities and, at times, required the student-athletes to report back on their participation in such activities. Additionally, members of the men's basketball coaching staff briefly observed men's basketball student-athletes' participation in a few out-of-season pick-up games. Specifically:

- a. During the summer of 2006, members of the men's basketball coaching staff, including the former head coach, were present during, and in some instances, briefly observed men's basketball student-athletes' participation

in the team's strength and conditioning program. Additionally, student-athletes were sometimes required to report to a coach the reason they did not attend a conditioning session.

- b. During the summer of 2007, members of the men's basketball coaching staff, including the former head coach, regularly, but not to the extent of the prior summer, were present during, and in some instances briefly observed, men's basketball student-athletes' participation in the team's strength and conditioning program.

B-3 IMPERMISSIBLE EXTRA BENEFITS. [NCAA Bylaws 16.02.3 and 16.11.2.1 (2008-09 NCAA Manual)]

In October 2006 and August 2007, the former head coach and the former assistant coach arranged for the provision of extra benefits to two men's basketball student-athletes. Specifically:

- a. In August 2007, the former head coach instructed the former assistant coach to pay approximately \$239 in unpaid institutional fees for a men's basketball student-athlete ("student-athlete 2"). Failure to pay the fees was preventing student-athlete 2 from enrolling in fall classes.
- b. In October 2006, the former head coach instructed the former assistant coach to drive a men's basketball student-athlete ("student-athlete 3") from campus to Memphis, Tennessee, (a one-way distance of approximately 171 miles) so that student-athlete 3 could travel to Atlanta, Georgia, for the purpose of seeing his newborn child.

B-4 UNETHICAL CONDUCT. [NCAA Bylaws 10.01.1, 10.1, 10.1-(c) and 10.1-(d) (2008-09 NCAA Manual)]

The former head coach failed to deport himself in accordance with the generally recognized high standards of honesty and sportsmanship normally associated with the conduct and administration of intercollegiate athletics for (a) his knowing involvement in NCAA violations outlined in Finding B-3 and (b) providing false and misleading information to the institution and enforcement staff when questioned about his involvement in and knowledge of possible NCAA violations set forth in Finding B-3. Specifically:

- a. Regarding his involvement, the former head coach knowingly violated NCAA legislation, as set forth in Finding B-3.
- b. Regarding providing false and misleading information, during his May 23, 2008, and August 26, 2008, interviews, the former head coach provided false and misleading information to investigators:
 - (1) The former head coach reported to investigators that he was not aware that the former assistant coach paid institutional fees for student-athlete 2 when, in fact, he provided the former assistant coach cash to pay such fees, as outlined in Finding B-3-a.
 - (2) The former head coach reported that he was not aware that the former assistant coach, provided a ride to student-athlete 3 from campus to Memphis, Tennessee, when, in fact, he (the former head coach) had arranged the ride with the former assistant coach as outlined in Finding B-3-b.

IV. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The Committee on Infractions imposed additional penalties because of the involvement of the former head coach in a number of the violations. The penalty in which the former head coach was cited was D-8. [Please note that the cites below are the cites as they appear in the Committee on Infractions Southeast Missouri State University report dated August 13, 2009.]

- D-8 The former head coach was involved in the provision of extra benefits to two student-athletes intentionally and with knowledge that [sic] these actions were violations of NCAA legislation (Findings B-3-a B-3-b). Violations so committed are more serious than the same violations committed inadvertently or with lack of knowledge that they are violations. He acted unethically both in his commission of these violations and by providing false and misleading information to investigators. For these and other reasons, more fully set forth throughout this report, the committee imposes a three-year show-cause period beginning on June 30, 2009, and ending on June 29, 2012, during which, as set forth in (a) and (b) below, its penalties will restrict the athletically related duties of the former head coach at any employing NCAA institution.

- a. From June 30, 2009, through June 29, 2012, the former head coach shall not be allowed to have any in-person contact with any employing institution's men's basketball team members during the summer break periods encompassing the aforementioned period of time.
- b. If employed at a member institution during the period June 30, 2009, through June 29, 2012, the former head coach shall attend, at his own cost, an NCAA Regional Rules Seminar during each of the years he is employed at a member institution concluding in June 2012. He shall certify in writing which sessions of the seminars he attended and, within 30 days of his return to the campus of the employing institution, his employing institution shall send a letter to the committee certifying the attendance of the former head coach at the seminar.

V. ISSUES RAISED ON APPEAL.

The former head coach argued that the appealed findings of violations (B-2, B-2-a, B-2-b, B-3, B-3-a, B-3-b and B-4) should be reversed because: (a) the Committee on Infractions' factual findings (i) were clearly contrary to the evidence presented to the Committee on Infractions, and (ii) the facts found by the Committee on Infractions do not constitute a violation of NCAA rules; and (b) the reliability of the evidence was affected by procedural errors associated with (i) the participation in the case by a Committee on Infractions member who "had a conflict of interest arising from a professional relationship with 'counsel' for the former head coach's institution," and (ii) one Committee on Infractions member's absence "from the [hearing] room for approximately ten of the thirty minute presentation relative to" a particular portion of the hearing. (Former Head Coach Written Appeal Page No. 3.) Additionally, he asserts that the penalty D-8 imposed is excessive such that it constitutes an abuse of discretion. (Bylaws 32.10.4 and 32.10.4.1)

VI. APPELLATE PROCEDURE.

In considering the former head coach's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the institution's February 13, 2010, hearing before the Committee on Infractions; and the submissions by the former head coach and the Committee on Infractions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Committee April 30, 2010, in Indianapolis, Indiana. The former head coach was present and was represented by his attorney. The Committee on Infractions was represented by the appeal coordinator for the Committee on Infractions, chair of the Committee on Infractions and the director of the Infractions Committees. Also present were the vice president of enforcement, director of enforcement, associate director of enforcement and the assistant general counsel for the NCAA. A representative of Southeast Missouri State attended as a silent observer. An NCAA consultant attended as an observer. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

VII. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

Bylaw 32.10.4.2 provides that findings of violation by the Committee on Infractions shall not be set aside on appeal except on a showing that:

- a. A finding is clearly contrary to the evidence presented to the Committee on Infractions;
- b. The facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or
- c. There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation.

Finding of Impermissible Presence During Summer Conditioning Activities and of Impermissible Observation of Out-Of-Season Pick-Up Games (Findings of Violations B-2, B-2-a and B-2-b) and Finding of Impermissible Extra Benefit (Finding of Violations B-3, B-3-a and B-3-b).

This committee finds no basis on which to set aside these findings: The findings are not clearly contrary to the evidence presented, there was no procedural error which resulted in the findings, and the facts found by the Committee on Infractions do constitute a violation of NCAA rules.¹

¹ Despite this conclusion, this committee is compelled to address certain language in Committee on Infractions Report related to finding of violation B-2. Specifically, the report states as follows: "Although there was conflicting information with regard to the extent of 'observation', which occurred relative to the conditioning activities during the summers of 2006 and 2007, there was no dispute that the former head coach and the former assistant coach were

Committee Member's Absence From Hearing Room.

The former head coach argued that a particular Committee on Infractions member's absence from the hearing room "created the possibility of [the member] having missed relevant evidence that might have been exculpatory to [the former head coach]." (Former Head Coach Written Appeal Page No. 15.) While such an absence may have the potential to create the appearance of unfairness in the hearing, we find no basis in the argument on which to reverse any of the Committee on Infractions' findings. First, the record does not show when or for how long the Committee on Infractions committee member was absent from the hearing. However, the former head coach contended that the committee member left the room for some period of time, and the Committee on Infractions did not dispute the contention. Second, and in any event, there was no evidence to demonstrate that the member's absence constituted reversible procedural error, because the record otherwise reflects that the member was sufficiently informed on the issues that were discussed when the former head coach states that the member was absent from the room.

The Committee on Infractions Member's Prior Professional Association.

The former head coach argued that: (a) counsel for the former head coach's institution once represented an institution when a particular Committee on Infractions member served as commissioner of that institution's conference; and (b) accordingly, counsel's prior representation of that conference member "might have impacted [the] Committee on Infractions member . . . and might have impacted the conclusions drawn by the [Committee on Infractions]." (Former Head Coach Written Appeal Page No. 14.)

present before, after and, to a lesser extent, at the beginning and/or end of these sessions. Despite the assertion that any observation of these workouts was limited or 'brief', such a presence violates NCAA legislation and runs counter to the letter and 'spirit' of what constitutes 'voluntary' workouts in the eyes of the NCAA. The presence of coaches at 'volunteer' workouts, whether it is before, after or during the sessions (however brief) obviates the volunteer nature of such workouts...." (Emphasis supplied.) (Committee on Infractions Report Page No. 6) This committee understands that in this case, the Committee on Infractions determined that the coaches intended to be present before, after, or during the sessions to "keep tabs" on the student-athletes, or to engage them in countable athletically related activities. However, this committee is concerned by the potential reach of the Committee on Infractions' general statement, without context or an examination of the intent, that "[t]he presence of coaches at 'volunteer' workouts, whether it is before, after or during the sessions (however brief) obviates the volunteer nature of such workouts." The presence of a coach before or after an otherwise voluntary workout may be inadvertent, or occur with no intent by the coach to confirm the student-athletes' attendance or to otherwise engage the student-athlete in countable athletically related activities. Thus, while this committee does not set aside this finding, we note that this general statement in the report should not be construed as the mandatory interpretation of the relevant NCAA legislation without reference to coaches' intent and other pertinent facts in a given case.

Because this issue is not properly before us, we will neither consider nor decide it. Specifically, the issue was not raised before the Committee on Infractions. Accordingly, if the former head coach knew of the pertinent facts prior to the Committee on Infractions hearing, he waived the objection by failing to raise it within the time limit imposed by Bylaw 32.1.3.² Alternatively, if the former head coach learned of those facts only after issuance of the Committee on Infractions' report, the former head coach still was obligated to present such information to the Committee on Infractions pursuant to Bylaw 32.10.5. He made no such request.

Finding of Unethical Conduct.

The former head coach argued that there was no adequate basis for a finding of unethical conduct because: (a) such a finding "require[s] specific acts that require knowledge, intent and action;" and (b) "[n]one of those elements exist in this case, as it relates to [the former head coach's] conduct." (Former Head Coach Written Appeal Page No. 22.) We make no determination whether the former head coach's statement of what is required for such a finding is correct or not, because we find that, even if the statement is correct, the requirement was satisfied by the evidence before the Committee on Infractions. In that regard, the former head coach acknowledged at the hearing that the Committee on Infractions' determinations in this regard "boiled down to" a determination of credibility as between the former head coach and a former assistant coach. As we stated in the University of Mississippi case: "[I]t is the Committee on Infractions that is to determine whether the information presented to it, and upon which it bases its finding, is credible . . . and persuasive" [University of Mississippi Infractions Appeals Committee Report (May 1, 1995) Page Nos. 6 and 7]. We find no basis in the record here that the Committee on Infractions committed any error in its determinations of credibility.

² Bylaw: 32.1.3 - conflict of interest. Any member of the Committee on Infractions or the Infractions Appeals Committee shall neither appear at the hearing nor participate on the committee when the member is directly connected with an institution under investigation or has a personal, professional or institutional affiliation that reasonably would result in the appearance of prejudice. It is the responsibility of the committee member, or members, of the Infractions Appeals Committee, per Bylaw 19.2, to remove himself or herself if a conflict exists. Objections to the participation of a committee member or the Infractions Appeals Committee member per Bylaw 19.2 should be raised as soon as recognized, but will not be considered unless raised at least one week in advance of the affected hearing. (Emphasis supplied.)

VIII. CONCLUSION.

Findings of violations B-2, B-2-a, B-2-b, B-3, B-3-a, B-3-b, B-4 as well as penalty D-8 are affirmed.³

NCAA Infraction Appeals Committee

Christopher L. Griffin, chair
Susan Cross Lipnickey
Jack Friedenthal
Patti Ohlendorf
David Williams.

³ According to the Division I Infractions Appeals Committee Policies and Procedures (See III.A.2.d at Page No. 4), any penalty that is appealed is automatically stayed through the course of the appeal process. This stay begins with the filing of the notice of appeal by the appellant and ends with the public release of the committee's decision. Therefore, the appellant's affirmed penalty of a three-year show-cause period (D-8) shall be applied June 25, 2010, through June 24, 2013.