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2-2-2022

Brian Flores' NFL lawsuit: Can he prove systemic racism?

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Brian Flores' NFL lawsuit: Can he prove systemic racism? What we know about claims of 'sham inter...

By Kevin Seifert

Wednesday, February 2, 2022 4:54PM

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Former [Miami Dolphins](#) coach Brian Flores filed a class-action lawsuit against the NFL and its teams this week, accusing them of [sham interviews](#), [incentivizing losses](#) and [pressure to improperly recruit players](#). The league and three of the teams involved -- the Dolphins, [New York Giants](#) and [Denver Broncos](#) -- denied his allegations in short order, leaving two distinct tracks to follow.

The first, of course, is whether any laws were broken. The second is whether the NFL will react internally to Flores' allegations. Will it make further attempts to strengthen its diverse hiring policies for coaches? Would it discipline Dolphins owner Stephen Ross if he, as Flores alleges, [offered \\$100,000 bonuses](#) to lose games in an effort to secure the No. 1 pick in the 2019 draft? And what will become of Flores, who has risked his career at age 40?

Flores said in a statement that he hopes others will join his lawsuit to share stories of "systemic racism in the NFL." In its own statement, the league said "diversity is core to everything we do" and added that Flores' claims "are without merit." At the time the lawsuit was filed, the [Pittsburgh Steelers](#) were the only team that employed a Black head coach (Mike Tomlin), with [five spots still vacant](#) in this hiring cycle after four openings were filled by white men.

Let's consider where each track could go in the coming weeks and months, with the help of league sources as well as N. Jeremi Duru, a professor at American University's Washington College of Law and a former counsel to the Fritz Pollard Alliance, which advocates for diversity in the NFL. Duru called Flores' suit "a strong complaint" and not one that "throws spaghetti at the wall" or is "set forth just to make waves in the media."

What exactly is a 'sham interview'?

Flores put in a legal document what Black coaches [have said privately for years](#), specifically that they receive job interest to fulfill the NFL's Rooney Rule -- which requires teams to interview two external minority candidates for vacant head-coaching jobs -- and are not considered serious candidates for many openings. To illustrate the point, Flores stated that he received word three days before he interviewed for the Giants' vacant spot on Jan. 27 that the job would go to [Buffalo Bills](#) offensive coordinator Brian Daboll. As evidence, Flores produced screenshots of text messages from [New England Patriots](#) coach Bill Belichick, who appeared aware of Daboll's impending hire.

In addition, Flores said that Broncos officials arrived late to a head coach interview in 2019 and alleged they had been "drinking heavily the night before," suggesting they did not take his interview seriously before they hired Vic Fangio, who is white.

The Giants said in a statement that "Brian Flores was in the conversation to be our head coach until the eleventh hour," and the Broncos said the interview started on time and pointed to "notes, analysis and evaluations" that "demonstrate the depth of our conversation and sincere interest in Mr. Flores as a head coaching candidate."

Are 'sham interviews' illegal?

Flores' suit cites violations of federal and state civil/human rights statutes that are intended to ensure equal rights. It also reveals that he will file a complaint with the Equal Opportunity Employment Commission (EEOC), which Duru said is a prerequisite for a claim under Title 7 of the 1964 Civil Rights Act.

At that point, plaintiffs have two options, according to Duru. They can claim "disparate treatment," which requires proof of intentional discrimination. Or they could claim "disparate impact," which requires proof that a policy or standard impacts minorities differently than others.

So when does the trial start?

It doesn't work quite like that. First, it wouldn't be surprising to see the NFL move to dismiss the case and shift it to the league's internal arbitration system. That's how it responded to [a lawsuit filed last year](#) by former [Las Vegas Raiders](#) coach Jon Gruden, citing the league's constitution and bylaws.

If that fails, the case would move to discovery, which allows each side to view relevant documents in possession of the other. "If he can get past a motion to dismiss," Duru said, "then he could indeed get more concrete connections to a racially discriminatory aspect to the individual assertions that were made."

The NFL has managed to avoid discovery, or public disclosure of the discovery process, in several high-profile legal actions in recent years, including lawsuits filed by former quarterback Colin Kaepernick and the city of St. Louis, among others. The timetable at this very early stage is unknown, but significant legal proceedings often take months to get started in meaningful ways.

The Rooney Rule legislates interview policies, but is there really any way to force owners to make diverse

hires?

That's the central despair of advocates in this space, which has devolved into a split screen of sorts. On the one hand, NFL commissioner Roger Goodell and other league executives have pleaded publicly for change. On the other, owners [make their own decisions](#).

Troy Vincent, the NFL's executive vice president of football operations, has even made the public connection between disparate hiring practices and racism, saying last month on ESPN+: "There is no social justice without racial justice. And what we've seen, potentially, it suggests there is potentially a racial undertone."

Flores' attorneys used other public statements Vincent has made, as well as those of NFL chief diversity officer Jonathan Beane, as supporting evidence in the lawsuit.

NFL owners [haven't changed their hiring practices](#) on their own, or with urging from Rooney Rule initiatives that were designed to introduce them to a diverse candidate pool they might not otherwise seek out. So in essence, the complaint demands owners change because they are acting illegally.

"He's asking for unspecified damages and also hard-core systemic reform," Duru said. "If he is ultimately successful, then there will be court-ordered systemic reform that could ultimately produce the changes that advocates in this realm have been pursuing for years. It's very unfortunate that it came to a lawsuit, because the arguments Brian is making have been made many times. But the progress has not been consistent.

"His lawsuit alleges incontrovertible evidence that the league's equal opportunity initiatives were purposely and openly flouted. We've seen extraordinarily strong arguments that this has happened in the past, but there hasn't been this sort of paper trail before."

What is Flores seeking?

Flores' lawsuit states that he is seeking, among other changes:

- Increased influence of Black individuals in hiring

- Increased "objectivity" of hiring/terminating GMs, head coaches and coordinators
- Increased number of Black coordinators
- Incentivized hiring/retention of Black GMs, head coaches and coordinators
- Transparency of pay for GMs, head coaches and coordinators

What if Flores gets an NFL job? Would that disprove his allegations?

In a word, no. Flores' accusations are both specific and global. A job with one franchise wouldn't alter the facts of what Flores alleged happened at another. Nor would it materially change the pattern of hirings and firings laid out in the complaint.

"It wouldn't change his core argument," Duru said, "and I don't suspect that he would voluntarily withdraw the case."

Is it illegal to pay, or offer to pay, coaches money to lose games?

Duru did not rule out that possibility, especially as it relates to sports gambling. "If anyone were to get wind of an owner paying a player or coach to lose," he said, "then it opens up all sorts of possibilities."

But more concretely, Duru and other sources said that offering \$100,000 to a coach for losing games is an example of conduct detrimental to the league, which is prohibited under the NFL's personal conduct policy. "The possibility that owners are paying their coaches to lose," Duru said, "would mean that we don't have the product we thought they had."

The policy applies to everyone in the league, including owners, and states that "ownership and club or league management have traditionally been held to a higher standard and will be subject to more significant discipline when violations of the personal conduct policy occur."

Flores said at the time that it [would be "disrespectful" to try not to win games.](#)

But didn't the NFL say the allegations were 'without merit'?

It did, but that phrasing was in response to a lawsuit. The NFL statement could be read to be saying there was "no merit" to an accusation that laws were broken.

It is hard to imagine that the league decided in a matter of hours that Ross did not make the offer that Flores says he did, especially when Flores and his attorneys said they have evidence and witnesses. It will be very difficult for the NFL to brush aside this accusation. When it tried to minimize its public acknowledgment of a sexual harassment investigation in the Washington Commanders' workplace, the House Ways and Means committee got involved and will host a roundtable Thursday on the topic in Congress.

So what could happen to Ross?

The NFL has issued discipline to multiple owners in recent years, via fines and suspensions. But it has drawn well-deserved skepticism for its relative leniency and lack of transparency behind the preceding investigations and ultimate punishment, most recently with the Commanders and owner Dan Snyder, whom the NFL said would cede day-to-day operation of the franchise to his wife, Tanya, for an unspecified period. The team was also fined \$10 million.

The big question is whether the NFL would force Ross to sell the franchise. We can never say never, but there is no precedent for it in modern league history. Former [Carolina Panthers](#) owner Jerry Richardson sold his franchise in 2018 amid allegations of workplace misconduct, but he wrote at the time that [the decision was his own.](#)

Is Ross' alleged offer more common than we realize?

What we know for certain is that the NFL's system for drafting college players incentivizes tanking -- losing on purpose. The team with the worst record picks at the top of each round. No owner has ever faced such a specific accusation, and paying any contracted employee -- coach or player -- off the books is a violation of the NFL's constitution.

It's worth noting that Flores' attorneys made this a class-action lawsuit, which means others can join if they have evidence or accusations to make. Longtime NFL coach Hue Jackson suggested Wednesday on Twitter that he received a [similar offer](#) from [Cleveland Browns](#) owner Jimmy Haslam in 2016.

If it's already against the rules, what can be done?

One option is to consider the NBA/NHL's lottery for first-round picks. The lottery is weighted in favor of the teams with the worst record, but there are no guarantees that the worst teams will get the top picks.

Finally, what about the tampering accusation?

According to Flores, Ross set up a "chance" meeting in 2020 with a "prominent quarterback" who was under contract with another team. Flores did not take the meeting, nor did he reveal the identity of the quarterback.

Setting up a meeting with a contracted player would violate the NFL's anti-tampering policy, but league sources agree that chance meetings and innocuous conversations happen frequently. It's best to view this allegation in the context of Flores' effort to provide an alternative explanation for the Dolphins' decision to fire him after the 2021 season. Combating what he said were inaccurate reports that he is difficult to work with, Flores is saying that he was held in contempt by the Dolphins for refusing to tamper and tank.

So what's next?

The NFL presumably will respond with a legal filing, possibly to dismiss the case. And while Flores' chances to get a job have shrunk substantially, especially in this hiring cycle, two jobs for which he interviewed remain open: the [Houston Texans](#) and [New Orleans Saints](#).

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