



# Tulane University

## LAW SCHOOL

### 2016 Salary Arbitration Guide

Major League Baseball's current collective bargaining agreement divides all players into three groups: 1) players controlled under the reserve clause, 2) players eligible for salary arbitration prior to free agency, and 3) free agents. Generally, reserve-clause players are players with less than three years of Major League service-time, salary-arbitration-eligible players are players with more than three but less than six years of service-time, and free agents are players with more than six years of service-time.

What sets each group apart is the amount of leverage each group has with respect to their employer or potential employers. Players controlled under the reserve clause have no leverage. They are bound to one team (until free agency) and generally are paid the league minimum. That player's salary bears no resemblance to the player's market value. Free agents ability to consider multiple offers gives free agents substantial leverage and allows for contracts above market value. Salary-arbitration-eligible players occupy the middle group between players with no leverage and those with substantial leverage. The arbitration process offers these players an opportunity to earn a significant raise, but because clubs still retain control of these players compensation generally remains below market value.

#### *Inside MLB's Salary Arbitration Proceedings*

Under the league's current collective bargaining agreement, a player with at least three but less than six years of service time is eligible for salary arbitration. A player with more than two years but less than three years of service time may also qualify for salary arbitration as a "Super 2" if he has accumulated at least 86 days of service during the immediately preceding season and he ranks in the top twenty-two percent in total service of players who fit the service requirements for "Super 2" eligibility. Service time is recorded in years and days, separated by a period (e.g., three years and forty days of service time is written as 3.040). A year of service time is equal to 172 days despite there generally being around 183 total days in the major league calendar.

A salary-arbitration-eligible player that doesn't have a contract for the upcoming season (by means of a previously signed multi-year contract) can file for salary arbitration in early January. Subsequently, the player and the team exchange salary figures for the upcoming season and have a period of approximately two to three weeks to reach a contract. If the player and team are unable to reach a deal, the issue of the player's salary is resolved through final and binding arbitration in February. In the arbitration hearing, both sides present their case before a panel of three arbitrators. At the end of the hearing, the arbitrators award either the player's salary figure or the team's salary figure—there is no middle ground. If the arbitrators value the player a penny or more above the filing numbers' midpoint, the arbitrators must award the player's submitted salary figure. If the arbitrators value the player a penny or more below the filing numbers' midpoint, the arbitrators must award the club's submitted salary figure.

Article VI, Section E, Part 10 (a) & (b) of the CBA governs the scope of permissible information in a salary arbitration hearing:

(10) Criteria

(a) The criteria will be the quality of the Player's contribution to his Club during the past season (including but not limited to his overall performance, special qualities of leadership and public appeal), the length and consistency of his career contribution, the record of the Player's past compensation, comparative baseball salaries (see paragraph (11) below for confidential salary data), the existence of any physical or mental defects on the part of the Player, and the recent performance record of the Club including but not limited to its League standing and attendance as an indication of public acceptance (subject to the exclusion stated in subparagraph (b)(i) below). Any evidence may be submitted which is relevant to the above criteria, and the arbitration panel shall assign such weight to the evidence as shall appear appropriate under the circumstances. The arbitration panel shall, except for a Player with five or more years of Major League service, give particular attention, for comparative salary purposes, to the contracts of Players with Major League service not exceeding one annual service group above the Player's annual service group. This shall not limit the ability of a Player or his representative, because of special accomplishment, to argue the equal relevance of salaries of Players without regard to service, and the arbitration panel shall give whatever weight to such argument as is deemed appropriate.

(b) Evidence of the following shall not be admissible:

(i) The financial position of the Player and the Club;

(ii) Press comments, testimonials or similar material bearing on the performance of either the Player or the Club, except that recognized annual Player awards for playing excellence shall not be excluded;

(iii) Offers made by either Player or Club prior to arbitration;

(iv) The cost to the parties of their representatives, attorneys, etc.;

(v) Salaries in other sports or occupations.

The collective bargained language might make salary arbitration seem complex; however, the premise is simple: argue that a player's salary for the upcoming season should resemble a previous similarly situated player's salary.

For example, take the case of Texas Rangers relief pitcher Darren O'Day. At the end of the 2010 season, O'Day was eligible for salary arbitration for the first time (he had accumulated 3 years and 140 days of service time) and was unsigned for the 2011 season. In a salary arbitration hearing, O'Day and the Rangers will use the salaries, statistics, injuries and intangibles of previous similarly situated players to argue their respective submitted salary figures. In O'Day's case, a similarly situated player is a relief pitcher who is eligible for arbitration for the first time. There were six first-time arbitration eligible relief pitchers in 2010 (the previous year): Carlos Marmol, Ramon Ramirez, Brandon League, Mike Adams, Sean Marshall, and Carlos Villanueva.

Player	2010 Salary
Carlos Marmol	\$2,125,000
Ramon Ramirez	\$1,155,000
Brandon League	\$1,087,500
Mike Adams	\$1,000,000
Sean Marshall	\$950,000
Carlos Villanueva	\$950,000

The duty of the panel of arbitrators is to determine, based on the parties' arguments, where O'Day fits within this narrow market of similarly situated players (though more than just the previous year's market can be used). The panel must then award the salary figure that is closest to the panel's assessment.

While the CBA outlines the criteria in a salary arbitration case, almost anything is permissible at a hearing. Information that falls far outside the CBA's criteria, however, is unpersuasive. In general, the following criteria will come into play in a salary arbitration hearing:

*Player Comparisons (Look Backs)* – Using a player with more or less service time accumulated (in terms of how many times they have been eligible for arbitration) is unpersuasive because, all else equal, players with more service time command a higher salary. However, the sides can do a “look back.” For example, using Carlos Marmol's 2011 salary would be unpersuasive in O'Day's case because Marmol's 2011 salary is on a par with other second-year eligible relief pitchers, as opposed to other first-year eligible relief pitchers. Using Carlos Marmol's 2010 salary, on the other hand, would be persuasive because Marmol was a first-year eligible player in 2010. A corollary of this rule is that Marmol's 2010 statistics are irrelevant, since his 2010 salary was based on his pre-2010 statistics. Thus, a persuasive argument must be based on O'Day's 2011 salary and pre-2011 statistics and Marmol's 2010 salary and pre-2010 statistics.

*One-Year Contracts* – A persuasive argument is based on another player's one-year contract. Parties avoid using multi-year contracts in salary arbitration because they can be structured in different ways (e.g. frontloaded or backloaded) Using a single year's salary in a multi-year contract creates issues as the single year salary could be influenced by the overall contract structure.

*Position Comparison* – Comparing players with different field positions is generally unpersuasive. For example, comparing middle infielders to catchers is not as persuasive as comparing catchers to catchers. Exceptions (and thus persuasive arguments) can exist for certain position groups (e.g. center field and shortstop being “skill positions”) and types of players (e.g. corner outfielder and corner infielders who are “sluggers”).

*Simple Statistics* – Arbitrators are not “baseball people.” Therefore, parties generally avoid using advanced metrics. For the most part, arguments are based on traditional stats, with the likes of WAR rarely used in hearings and requiring significant explanation.

*Injuries* – A Club can persuasively argue that a player should receive a lower salary figure than a comparable player because, all else equal, the player is injury-prone and the comparable player is not. Conversely, a player can persuasively argue that he should receive a higher salary figure than a comparable player because, all else equal, the comparable player is injury prone and he is not.

*Intangibles* – Special qualities of leadership and “public appeal” can be used, although it is rare to find a persuasive argument based on these factors. The exception appears to be pitchers, who have been able to argue that when they pitched, attendance and television ratings were higher.