

The so-called holiday allowance case has been settled – The players are entitled to pension and holiday allowance

11 September 2012, the Danish Football Association's arbitral tribunal passed a ruling finding in favor of the Danish Football Players' Association in three trial cases regarding lack of payment of holiday allowance.

Summary

The case was brought to action by the Danish Football Players' Association on behalf of players Peter Madsen, Thomas Rasmussen and Martin Ericsson. The three players claimed that Brøndby IF be sentenced to pay holiday allowance and pension of bonuses and/or sign-on fees. Brøndby IF rejected the payment, referring to the agreement that the holiday allowance constituted a part of the bonus and therefore, had already paid to the players in question.

The Danish Football Players' Association asserted that Brøndby IF was not alone in not having paid certain parts of the players' wages, and that several clubs have acted in the same way. Furthermore, the Danish Football Players' Association has stated that from 2004 and ahead, Brøndby alone owes 57 players an amount of DKK 15,957,905 and interests of DKK 7,440,849, amounting to a total of DKK 23,398,754. Furthermore, the Danish Football Players' Association claimed a financial penalty.

The Legal Basis

According to the current collective agreement dated 14 October 2004 between the Danish Football Players' Association and the Danish Football Clubs' Association, the players are, inter alia, entitled to:

12,5% of all payments (e.g. sign-on fee, sign-off fee and payment of bonuses) in holiday allowance

4,8% of the basic wages in pension

1% of the wages that entitle to holiday allowance in holiday bonus.

According to the collective agreement, the players' rights of holidays correspond to the rules under the Danish Holidays with Pay Act. In accordance to the Danish Holidays with Pay Act, an employee is entitled to holiday and holiday allowance or paid holiday and holiday bonus. In accordance with the Act, the holiday allowance must be charged from all taxable income and any employee benefits that constitute payment of work during the employment.

A number of the rules under the Danish Holidays with Pay Act are mandatory means of protecting the employee and consequently, the Act cannot be derogated from to the disadvantage of the employee. This means that it is not possible to make an agreement where the employee receives the holiday allowance at an earlier time, because the employee may refer to the provisions under the Danish Holidays with Pay Act and demand that the holiday allowance be paid in accordance with the current rules thereunder.

The Decision of the Danish Football Association's Arbitral Tribunal

Danish Football Association's arbitral tribunal determined that the three players involved in the trial case are entitled to a back payment of a total amount of DKK 2,075,440 in holiday allowance, payment and pension from Brøndby, including the addition of interest of a total amount of DKK 1,594,174 (assessed during the period until 11 September 2012). Furthermore, Brøndby IF is required to pay 10% of the total amount in financial penalty amounting to DKK 366,961. In total, Brøndby IF must pay DKK 4,036,575.

The Danish Football Players' Association's claim of holiday allowance of 1% of bonuses and single payments was dismissed, and so was its claim regarding discrimination against foreign players.

The Consequences of the Decision

The decision implies that any players above the age of 20 who has at least 2 months' seniority is entitled to have his pension paid in arrears, if he has not had the mandatory pension scheme established. Both the employer contribution and the employee contribution must be paid. In addition, the clubs are required to make back payments of the holiday allowance constituting 12.5% of all single payments (e.g. sign-on and sign-off fees) and must also pay interests on all the above-mentioned amounts.

The decision will expectedly lead to significant financial consequences for Danish football due to the supposed fact that the derogations from the Danish Holidays with Pay Act are not uncommon amongst other professional football clubs. The financial situation of Danish football clubs taken into account, these clubs will hardly be able to procure the sufficient cash flow in order to settle all the back payments at the moment. Consequently, we expect that a number of clubs will be forced to collect external funding. After the decision was made, the CEO of the Danish Football Players' Association, Mads Øland, has, however, stated that the Danish Football Players' Association will be open to the possibility of making installment plans with the clubs involved.

The decision is also expected to imply a weakening of the sports standards for the Danish clubs. In addition to the financial consequences, the clubs will be forced to offer lower wages in the future, thereby making it more difficult to attract and retain the best players.

In any case, this correction of the current practice is necessary, seeing as for the most part, professional football players are subject to the common rules of employment in accordance with the current collective agreement, including the rules of the Danish Holidays with Pay Act governing the employee's mandatory right to holiday allowance. The decision by the arbitral court complies with the practice of the Danish Holidays with Pay Act and thus, has not come as a surprise.

Should you have any questions or wish further information on this matter, you are welcome to contact attorney Pernille Nørkær (pno@mwblaw.dk) or junior associate Mattias Wilhelm Warnøe Nielsen (mvn@mwblaw.dk).

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