



The *Micky VAN DE VEN* case and the dissolution of a football player's employment contract under Dutch Law



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→ **Royal Dutch Football Association (KNVB)
- Breach of contract - Player transfer -
Transfer fee - National law - Labour law
- Labour disputes**

*KNVB Arbitration Committee, 30 August 2021,
no. 1551, Van de Ven v. Stichting R.K.F.C. Volendam*

Under Dutch employment law, football players have an exceptional position compared to “ordinary” employees. In a recent award, the Arbitration Committee of the Dutch Football Association (KNVB) focussed on the dissolution of the employment contract of a professional football player, Micky VAN DE VEN.

On 30 August 2021, the Arbitration Committee of the KNVB (Arbitration Committee) issued an award in a dispute between *Micky VAN DE VEN*, a Dutch football player (Player) and *Stichting R.K.F.C. Volendam* (Volendam). The award provides a unique insight into today's transfer reality¹ and potentially raises some questions about a possible conflict between the ban on Third-Party Ownership in the FIFA Regulations on the Status and Transfer of Players (RSTP) and the fact that the technical staff of Volendam benefits from the transfer proceeds.² This contribution will, however, only focus on the main issue of the case: the request for dissolution of the employment contract by the Player. While the Player had already negotiated and agreed on the personal terms of an employment contract with German club *VfL Wolfsburg*, his employer *Volendam* did not accept the transfer fee offered by

VfL Wolfsburg in the amount of EUR 2 million. In these proceedings, *VAN DE VEN* requested the Arbitration Committee to dissolve his employment contract given the circumstance that he was able to make a transfer to *VfL Wolfsburg*, substantially increasing his financial and sporting position and because of his relationship with *Volendam* had allegedly been disrupted. In this respect, it must be noted that according to the jurisprudence of the Arbitration Committee, an employment contract may be dissolved under certain circumstances and, in its award, the Arbitration Committee reiterated the legal framework against which such request should be assessed in football under Dutch Law.

Requests for dissolution by employees under Dutch Law

As a background, it is important to note that under Dutch employment law, every employee can have his employment contract dissolved

for breach of contract. In addition, every employee, even those with fixed-term employment contracts, can have their employment contracts dissolved by a court “due to circumstances justifying, in fairness, that the employment contract should end immediately or after a short period of time.”³ However, in employment-related disputes between clubs and players, a problem arose when a judge dissolved a contract due to serious culpability or omission on the part of the player, as the ordinary provision in Dutch Law only allows awarding the residual value of the contract as a maximum. Therefore, malicious footballers would, in fact, always be able to dissolve their employment contract against the “residual value” of their contract, which in practice is often significantly lower than the “market value” that the club could receive as a transfer compensation. Because the Dutch football sector is to a large extent financially dependent on transfer fees, the legislator decided to amend the provision so that a judge could award compensation higher than

¹ This is embodied by extensive email correspondence in file between Mr *Mino RAIOLA* (*VAN DE VEN*'s agent), *Volendam* and interested new clubs.

² Art. 18ter RSTP.

³ Dutch Civil Code, Art. 7:671c.



the residual value of the contract in the case of a football player.⁴ In this way, the compensation related to the specificity of sport has been codified in Dutch employment law, which is an interesting feature in and of itself.

Requests for dissolution in football must be lodged in front of the Arbitration Committee. Such requests for dissolution have been filed numerous times and almost all requests have been dismissed. The basic premise of the Arbitration Committee is that employees with a fixed-term employment contract are also entitled to submit a request for dissolution of their employment contract. However, in contrast to civil jurisprudence, which indicates that a request for dissolution lodged by an employee must in principle be honoured,⁵ the case-law of the Arbitration Committee holds that fixed-term employment contracts of professional football players must be served in their entirety and therefore should not be dissolved too easily. The customary points of view used by the Arbitration Committee in this context are: i) whether or not the parties intended to include the possibility of premature termination; ii) whether there is an irreparably disrupted working relationship; iii) whether the player can significantly improve both his sporting and financial position; iv) the length of the employment contract concluded between the parties; v) the period the contract has already been in effect; vi) the player's age; vii) whether the employment contract was recently concluded or extended; and viii) the time at which and the date from which dissolution is sought. In its jurisprudence, the Arbitration Committee seems to attach the

most value to the first three points. If an employment contract is dissolved, the Arbitration Committee will determine the compensation *ex aequo et bono*. When doing so in previous cases, the Arbitration Committee *inter alia* takes into account the player's current and future salary, the remaining duration of the contract, the time the player has played for the club, the contribution the club has made to the player's development and the period remaining for the club to find a replacement for the player, the value of a player to the club, as well as the fact that a club must look for an equivalent replacement.

The outcome of the VAN DE VEN case

After applying the legal framework set out above, the Arbitration Committee was again unable to come to dissolution in this case. This may be considered remarkable, as the Player's financial and sporting position with the interested club, *VfL Wolfsburg*, would improve significantly; *Micky VAN DE VEN* could make a transfer from the second tier in the Netherlands to a club in the German *Bundesliga* that regularly participates in European competitions and earn around 16 (!) times as much, excluding bonuses. Despite this, the Arbitration Committee was of the opinion that the Player had not sufficiently demonstrated that he was able to improve his sporting and financial position significantly, as the offer of *VfL Wolfsburg* had formally expired.⁶ This marked the first time the Arbitration Committee required a "*sufficiently concrete and open offer*" for a player to join another club in its jurisprudence.

With regard to the "*irreparably disrupted working relationship*", the Arbitration Committee noted that while the "*game of supply and demand*" on the transfer market can lead to mutual frustration of clubs and players, this does not automatically result in ground for dissolution. Given the circumstance that *Volendam* had not acted in an unreasonable manner, the allegedly disrupted working relationship did also not result in ground for dissolution.

This case, once again, shows that the Arbitration Committee, unlike the civil courts, rarely dissolves an employment contract at a player's request. This upholds the principle that Dutch clubs are free to determine the amount of transfer compensation. This is justified in the football world by the importance of protecting Dutch football from being raided by foreign clubs for an amount which, at least according to the Dutch club concerned, is below the market price. The Arbitration Committee of the KNVB is more reluctant than the Dutch civil courts to dissolve an employment contract and subsequently come to a compensation calculation that is not incomprehensible given the lack of clarity surrounding the determination of the amount of compensation due to a football club. At an international level, the case-law seems to indicate that, in case a player's employment contract is dissolved, the "*positive interest*" of the old club should be compensated and it remains challenging for a judge to assess what value a player represents on the transfer market. In any event, it is clear that players should not expect too much from the (almost theoretical) possibility of dissolving their contracts before the Arbitration Committee.

⁴ Dutch Civil Code, Art. 7:671c par. 4.

⁵ Civil case-law indicates that requests for dissolution of an employee should in principle be granted, considering the fundamental right of employees to a free choice of employment as laid down in Article 19 (3) of the Dutch Constitution.

⁶ It is quite ironic that, one day after the decision, just before the closing of the transfer window, *VAN DE VEN* was definitively transferred to *VfL Wolfsburg* for a (speculated) transfer sum of EUR 3.5 million.