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**How to protect the employer's interests after the termination of
employment contracts – aspects of labour law in general and sports law
in particular**

Commission(s) in charge of the Session/Workshop:

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National Report of Sweden

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1. Sports and employment law in Sweden

The independency of sport clubs is based on the constitutional right to form associations, which is a fundamental right that may not be restricted. Swedish sport clubs has always had the freedom to stipulate its own rules. Despite this fact, the government has a structural influence, e.g. by employment law¹, and the courts in Sweden have tried disputes arisen within the field of sport in a few cases.²

It is common that clubs and athletes do not consider sport as part of the Swedish employment market.³ However, Swedish employment law is applicable on the relationship between clubs and athletes within all sports. Many sports make a distinction between athletes who are amateurs and professionals, often depending on the athletes' income. Whether an athlete is considered as an employee or not, is however determined on principles according to Swedish employment law and not on the sport definition of amateur/professional, although the definition of an employee and a professional athlete often overlap.⁴ Within the field of sports in Sweden, it is clear that athletes in the most commercialized team sports are regarded as employees, e.g. football and ice hockey.

Today it is only football and ice hockey that have a reasonably functioning employment market with different employment law participants, e.g. trade unions and employers' associations, who have entered into collective bargaining agreements. In sports where collective bargaining agreements do not exist, the general Swedish employment law regulates the relationship between clubs and athletes.

2. Collective bargaining agreement and player's contract

If athletes are considered to be employees, their employment provisions are generally not found in Swedish employment law, but in the collective bargaining agreement, the individual player's contract and in case law concerning sport employment matters.⁵

Often the athlete's ability to play for a club depends on the registration of a player's contract, containing the employment conditions, with the sport federation.⁶ The football player's contract, which is a standard contract, complements the collective bargaining agreement regarding salary, benefits, term of contract etc. The specific

¹ Bill Sund, "Fotbollen som arbetsmarknad", www.idrottsforum.org

² Jyri Backman, "Fotbollsfamiljens struktur och des tvistlösning, och frågan om demokrati och monopol", Svensk idrottsforskning nr 3 – 2005, http://www.gih.se/Documents/CIF/Tidningen/2005/3_2005/SVIF053%2060-63%20Backman.pdf

³ Advokat Jessica Stålhammar, "Idrottsklubbar står inte utanför svensk arbetsrätt", <http://www.dagensps.se/artiklar/kronikor/jessica-stalhammar/2014/03/06/57943763/index.xml>, published 6 March 2014

⁴ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 142-143

⁵ Jyri Backman, "Idrottsjuridik – en introduktion", idrottsforum.org 2008, p. 62

⁶ Chap. 2 § 15 Svenska fotbollsförbundets Representationsbestämmelser 2015 and § 4:2 Svenska Ishockeyförbundets Tävlingsbestämmelser 2014/2015

employment conditions in the ice hockey player's contract is not available to the general public, on the other hand, the collective bargaining agreement is rather detailed.⁷

According to Swedish employment law, the general rule regarding form of employment is an indefinite employment, although, temporary employments up to a fixed term of two years are accepted.⁸ However, exceptions from the temporary employment rule are possible, by agreeing on permission for longer temporary employment in a collective bargaining agreement. This exception has been utilised in both football and ice hockey. In comparison between the two collective bargaining agreements, football allows temporary employment for up to five years while in ice hockey the general principle is one or two year at a time. Nonetheless, parties to an ice hockey agreement may agree on a shorter or longer period subject to the athlete's age,⁹ but the length of the player's temporary employment contract is restricted for up to five years.¹⁰ It has been stated that it is in the interest of both parties in professional sports to be able to agree on several temporary employments, rather than an indefinite employment.¹¹

3. Post termination provisions

There are no specific employment provisions in Swedish employment law regarding post termination restrictive covenants, garden leave or the right to continue to work for athletes, nor in the collective bargaining agreement or in the player's contract within football and ice hockey.

According to the football's and ice hockey's collective bargaining agreement, the player's job assignments are to participate in all football/ice hockey business within the employment, which is imposed by the club. Further, the player is obliged to perform other tasks that the club imposes which has an immediate effect on the player's employment, e.g. sponsor and commercial activities.¹² It is uncertain if the player also has the right to participate in such tasks, e.g. practise and games etc., and thus may claim such right against the club if the player for any reason may not join practise or games.¹³

⁷ Please note that the collective bargaining agreement within ice hockey has a provision which regulate the salary for players between 18-21 years.

⁸ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 148-149

⁹ Jyri Backman, "Idrottsjuridik – en introduktion", idrottforum.org 2008 p. 63, § 5.1.1 Kollektivavtal mellan Föreningen Svensk Fotboll och Svenska Fotboll Spelare SFS avseende perioden 1 maj 2012-31 december 2015 ("Fotbollens kollektivavtal") and § 2 mom. 1 Tjänstemannaavtalen Arbetsgivaralliansen hockeyspelare i elitserien och Unionen 2013-11-06-2014-04-30 ("Ishockeyns kollektivavtal")

¹⁰ § 4:2 Svenska Ishockeyförbundets Tävlingsbestämmelser 2014/2015

¹¹ Jyri Backman, "Idrottsjuridik – en introduktion", idrottforum.org 2008, p. 63 and Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 148-149

¹² § 3.1.1 Fotbollens kollektivavtal

¹³ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 152 and Jyri Backman, "Idrottsjuridik – en introduktion", idrottforum.org 2008, p. 66

Similar to the employment market, it is common within sports to agree on non-competitive conduct clauses during the term of the contract,¹⁴ but no such comparable non-competitive provision post termination of the contract exists. On the other hand, the contract may include restrictive covenant clauses, although indirect and still during the term of the contract. They usually state that the player can only be registered for one club at the same time, i.e. only conduct its sports for one club.¹⁵

An after effect of the Bosman case has resulted in the length of the players' contract being increased. Nowadays, clubs often choose to place players within one year of their termination and unwilling to renew their contract on the bench or within the reserve squad. The clubs' action serves as a kind of garden leave without the parties having agreed on such provision.¹⁶

4. The Bosman case

Sport clubs and associations in Sweden have by large been self-regulated. But after the Bosman case the mentioned self-regulation has been restricted. Sports were now recognized as an employment market where athletes were entitled to a more far-reaching employment law protection. Thus, one consequence of the Bosman case has been that sport clubs and associations have adjusted their internal rules and regulation to comply with EU law.¹⁷ Clubs have also realised that they have to pay attention to athletes' rights in employment law.

Due to the Bosman case, it became harder for clubs to receive contributions for players after the contract terminated, which consequently lead to a desire for longer periods of contracts without the possibility of termination.¹⁸ Hence, the clubs are forced to pay more for players that are bound by contracts, i.e. the prices to transfer a player have increased.

Another more obvious impact of the precedent set out in Bosman is that the players near the end of their contract have received a greater bargaining power as a way to make the clubs renew their contract.¹⁹

The after effect of the Bosman case as stated above in item 3, serves as a kind of punishment against the players for leaving the club as a "Bosman" as this results in the club losing their transfer fee. Subsequently, this puts pressure on the players to

¹⁴ § 2.2 and § 3.2.1 Fotbollens kollektivavtal and § 3 mom. 3 Ishockeyns kollektivavtal

¹⁵ Chap. 2 § 15 Svenska fotbollsförbundets Representationsbestämmelser 2015 and § 4:2 Svenska Ishockeyförbundets Tävlingsbestämmelser 2014/2015

¹⁶ Robert Raul, "De vägrar förlänga", <http://www.aftonbladet.se/sportbladet/fotboll/landslagsfotboll/landslaget/article11626549.ab>, published 2009-01-24

¹⁷ Jyri Backman, "Idrottsjuridik – en introduktion", p. 51

¹⁸ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 149

¹⁹ Malki Afram, "After Bosman – the ramifications of the decision in Bosman", Idrottsjuridisk skriftserie nr 19 2014, p. 12

either extend their contract with the old club or agree to a transfer which the old club prefers. No player wants their market value to decrease due to less playing time.²⁰

In Consequence of the Bosman case, football took a giant leap and developed their own employment market with parties such as Swedish Football Association (*Sm. Svenska Fotbollsforbundet*), the Association Swedish Professional Football (*Sm. Foreningen Svensk Elitfotboll*) and the Players' Association (*Sm. Spelarforeningen*). The players have gained more influence over their contract and thus more negotiation power towards the clubs. Together with the increased globalization the transfer of players has increased and therefore the agents have obtained a major roll within Swedish football.²¹

5. Termination of agreements and the transfer system

The general principle regarding temporary employment states that the contract may only be terminated upon expiry of the contract or by mutual agreement, i.e. the parties can agree on a right to terminate the contract or to cancel the contract with immediate effect. Another possibility, according to employment law is to extinguish the employment relationship, if the employee has grossly violated its liabilities according the contract, i.e. ground for dismissal, or if the employer materially has violated its liabilities according the contract.²²

There are no specific laws or regulations of sports associations different from the general rules dealing with the termination of athletes' employment contracts. Any possibility of terminating an athlete's employment contract is found in the general rules (in case of no applicable collective bargaining agreement) or in the collective bargaining agreement (i.e. within football and ice hockey) or in the player's contract.

Within sports most athletes have a temporary employment without any provision regarding premature termination. This means that the parties cannot terminate the contract (or the athlete switch club) before the fixed date, unless a material violation of the contract has occurred or if the parties mutually agree to terminate the contract.

In the football player's contract, there is a mutual right to cancel the contract in case of a material breach.²³ Further, the football player has the right to cancel the contract if he during one season has played less than 1/10 of the games, so-called "sporting just cause".²⁴ In case of material breach or sporting just cause, the football player can

²⁰ Robert Raul, "De vägrar förlänga", <http://www.aftonbladet.se/sportbladet/fotboll/landslagsfotboll/landslaget/article11626549.ab>, published 2009-01-24

²¹ Bill Sund, "Bosmandomens arbetsmarkandsmässiga konsekvenser för svensk fotboll", <http://centrumforidrottsforskning.se/wp-content/uploads/2014/03/Bosmandomens-konsekvenser-svensk-fotboll.pdf>, published 2011

²² Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 157-158

²³ § 8.1 Spelaravtal Svenska Fotbollsforbundet and Chap. 2 § 16 Svenska fotbollsforbundets Representationsbestämmelser 2015

²⁴ Chap. 2 § 16 Svenska fotbollsforbundets Representationsbestämmelser 2015

cancel the contract and switch club without the consent from the former club and without agreeing on a transfer fee.²⁵

In one ice hockey player's agreement which became known to the public, the parties had agreed that the player had the right to terminate the contract before a specific date each season, in case of transfer to a foreign club.²⁶

The amount paid by the former club to a new club is not a price for the player, but a contribution to the former club due to the athlete's premature termination of the contract. Thus, the transfer of an athlete is conditional on the former club's consent.²⁷ An athlete who is party to a contract cannot simply demand release and leave for a new employment without consent from the former club. If an athlete switches club during the term of the employment and subject to no consent or a non-payment of an agreed transfer fee, the player would be liable against the former club for both pecuniary and general damage.²⁸ Further, disciplinary actions such as suspension of the player may also arise.²⁹

Within several sports the athletes may not, without the club's consent, enter into a contract or enter into negotiations with future employers regarding a transfer six months before the expiry date of their contract.³⁰ In comparison with the general employment market in Sweden, such anticompetitive clauses are unusual. A breach of the clause has not been regarded as a ground for the club to dismiss the athlete, but only a right to obtain general damages amounting to approximately SEK 5 000-10 000.³¹

6. Dispute resolution in employment matters

Within sports in Sweden it is common that the employment agreement contains an arbitration clause and the purpose of such a clause is to resolve disputes internally without any involvement of an ordinary court.³² The sports movement fundamental system of rules consists of the National Sports Association's (*Sw. Riksidrottsförbundet*) ("NSA"), the specific sports federation's (*Sw. specialidrottsförbundet*) and the club's statutes. By NSA's statutes the sports federations, clubs and athletes are bound to

²⁵ § 8.3 Spelaravtal Svenska Fotbollsförbundet

²⁶ Available due to the case with no. AD 2014 nr 13

²⁷ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 162-163

²⁸ According to general law of torts.

²⁹ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 160-162

³⁰ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 162 and § 2.3 Spelaravtal Svenska Fotbollsförbundet

³¹ Toivo Öhman, "Fotbollens kollektivavtal och anställningsvillkor – ett udda regelsystem", Idrottsjuridisk skriftserie nr 7 2002, p. 344

³² Jyri Backman, "Fotbollsfamiljens struktur och dess tvistelösning och frågan om demokrati och monopol", Svensk idrottsforskning Nr3-2005, http://www.gih.se/Documents/CIF/Tidningen/2005/3_2005/SVIF053%2060-63%20Backman.pdf

resolve their disputes by arbitration and disputes may not be arisen in an ordinary court and therefore the sports federation often have their own arbitration board.³³

In contrary to football³⁴, ice hockey permits dispute resolution regarding employment matters in an ordinary court. According to the arbitration rules, such disputes may only be settled by arbitration if the parties have expressly agreed upon such a clause, otherwise the dispute shall be resolved by an ordinary court.³⁵ The collective bargaining agreement within ice hockey states that a dispute regarding employment matters, that have been subject to negotiations, may be submitted to the labour court (a type of ordinary court).³⁶

7. Case on an employment matter in the ordinary court

Since most sports generally resolve their disputes by arbitration, there are only a few case law concerning employment and the sport movement. One recent noticed and heavily discussed case in the labour court dealt with an employment agreement between the ice hockey club Djurgården Hockey AB and the player Marcus Nilsson.

The club and the player entered into a temporary employment agreement for four years. When the club, two years after the parties signed the contract, was relegated to the second division the club terminated the contract with the player. Due to the heading of the contract, the player's high salary and the absence of the club's capacity to pay the player's salary, the club claimed that the player must have understood that the contract should only be in force as long as the club played in the first division. The court stated that when the parties entered into the contract they had presumed that the club hereafter was going to play in the first division. Despite this statement, the court came to the judgement that it did not mean that the contract contained a termination clause in case the club was relegated to a lower division. The court determined that the club's termination of the player's contract was a dismissal without any ground. Therefore, the club was obliged to pay pecuniary and general damages amounting to SEK 470 019 and 75 000 respectively. The labour court did not differentiate employment agreements within sports to the general employment market, i.e. a temporary employment agreements cannot be terminated before its fixed date.

In conclusion, the ratio from the case provides that if a club wants to terminate an employment, in case of relegation to a lower division or any other material situation, the parties have to agree on a premature termination clause. It is probably also imaginable to agree upon that the player's salary should depend on external factors, which would limit the club's potential liability for damages.³⁷

³³ Chap. 2 § 8 Riksidrottsförbundets stadgar

³⁴ § 13 Fotbollens kollektivavtal and § 10 Spelaravtal Svenska Fotbollsförbundet

³⁵ § 1 st. 2 Reglementet för Svenska Ishockeyförbundets skiljenämnd, 1998-12-11

³⁶ § 7 Avtal om förhandlingsordning Ishockeyns kollektivavtal.

³⁷ Johan Lindholm, "Idrottsjuridik", Norstedts Juridik AB 2014, p. 158