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FAT CATS AND FOOTBALL MANAGERS FACING THE BOOT

Sir Alex Ferguson's recent experience of having to move from the security of a two year contract to a twelve month deal shows yet again that there are few certainties for even the most high profile football manager. But football managers have always lived with the pressure of only being a good as their last game, so it is no surprise that even a manager as successful as Alex Ferguson needs to be dispensed with quickly if things are not going well.

At first glance there would seem to be few parallels between the treatment of football managers and directors or senior executives in the UK's leading companies, but according to Midlands based employment lawyers, Averta, pressure from institutional shareholders and changes in the approach to corporate governance mean that the picture is just the same across the wider world of business. Today directors are as likely to get 'kicked into touch' as football managers if the last quarter's profits are not what shareholders expect.

"Notice periods for even the most senior people are now down to twelve months or less from highs of as much as three years," says Averta partner, Alan Jones, "and it's also increasingly rare for compensation to be paid for the whole period if things go wrong. Companies increasingly assume that an individual will find new employment quickly when negotiating their departure and tend to be much less generous with items such as bonus payments, share options and company cars than in the past. At the same time, pressure from pension fund managers has reduced their ability to use an enhanced pension as part of a termination package."

Not only is corporate generosity drying up as an executive departs, but organisations seem to be more and more keen to find ways of avoiding paying compensation altogether. “It’s not beyond the realms of possibility that a football manager could be held responsible for a dramatic reduction in the owning company’s profits after a bad run of results, particularly if it is a Plc,” says Alan Jones. “and this could in turn be construed as a breach of contract that would wipe out any termination payment.”

However a dismissed executive in business or sport still has a number of ways of fighting back against this new hard-line regime. Since October 1st 2004, for example, employment tribunals have been able to penalise employers, who fail to follow proper procedures of warning and consultation when dismissing an employee, no matter how senior they might be. Executives can also challenge an employer’s refusal to pay a bonus during notice by arguing that the elements of ‘employer’s discretion’ must be exercised rationally and fairly. If the bonus is payable upon achievement of specific performance criteria, for example, then if they are met, payment must be made.

Restrictive covenants in an employment contract can turn into a two-edged sword. An employer who dismisses in breach of contract (which generally means without paying their full contractual package) runs the risk that these covenants will become unenforceable. For outgoing executives it’s an increasingly common and highly effective bargaining point.

According to David Sykes at Averta, the key issue, for football manager or company director is precisely how long it is likely to take them to find gainful employment again. “It’s hard fact of life that the more senior and highly paid the executive – whether they are running a major football team in Manchester or a widget manufacturer in Birmingham - the more difficult it is for them to secure employment at a similar level of remuneration. It remains a powerful legal argument for substantial compensation even in today’s tougher bargaining environment.”

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Averta Employment Lawyers specialise in handling employment law issues for senior executives and directors, issues include, negotiating severance terms, advising on boardroom disputes, compromise agreements, contractual problems, drafting service agreements or consultancy agreements, restrictive covenants, notice and garden leave, unfair dismissal, whistle blowing and discrimination issues.

Averta Employment Lawyers are based at Birmingham International Park, close to junction 6 M42, Birmingham International Station and Birmingham International Airport.