

Dutch FNV union makes employers pay up for work-related diseases

Workers with an occupational disease have almost no chance of enforcing their rights. Dutch trade union confederation FNV's Beroepsziekten Bureau helps members to prove employer liability and get compensation under the "polluter pays" principle.

Pien Heuts
Journalist

Marian Schaapman and Rinus van der Brug fight hard to get compensation for workers made ill by their work. An initiative launched in 2000 by the Dutch trade union FNV.
Image: © Merel Maissan



An accountant was recently awarded 370 000 euros compensation for burn-out. He had been working 60- to 80-hour weeks for close to 25 years, and by the age of 52 was washed out and sick from working. It took the FNV's Beroepsziekten Bureau (Occupational Diseases Bureau) nearly eleven years going through the courts to get the employer's insurer to pay compensation. The highest court in the Netherlands ruled that an employer cannot just dump all the risks of unrelenting work pressure onto workers.

Beroepsziekten Bureau Director Marian Schaapman sees it as a landmark ruling. "The court found that an employer has to protect his employees and use preventive practices even where workers do not own up to suffering badly from pressure of work. The case may have dragged on, but it has set a precedent. After years in the courts, our client finally got compensated for the harm done. The worst thing is that people suffering an occupational disease have not only lost their health, but also find themselves in dire financial straits".

This is one of the main reasons why a number of FNV affiliated unions set up the Beroepsziekten Bureau (BBZ) in 2000. An estimated 40 000 to 50 000 people fall sick due to their work each year in the Netherlands. Another 3 000-odd die each year from an occupational disease, i.e., a disease caused either by the work itself or by the working conditions. The radical roll-back of the work incapacity system in recent decades has left many occupational disease sufferers scraping by on paltry public assistance. But there is a body of tort law which gives workers the right to claim compensation for harm from an employer who has not taken the necessary steps to provide them with a healthy workplace.

However, the right is so complex that few sick workers assert it. In the case of a work accident, the harm to health as a direct result of the accident can readily be seen. Where an occupational disease is concerned, however, the causal link is often much harder to

establish (multi causality). How can an individual worker prove that work pressure rather than factors in their private life is what caused the burn-out? Or that exposure to toxic substances is what damaged their brain cells? Not to mention the costs of going to law. "In our civilized country, an ordinary worker affected by an occupational disease has almost no chance of asserting their rights", rages Marian Schaapman.

70% of cases won

Since 2000, the members of a few big branch federations affiliated to FNV have not been left to fend for themselves. The BBZ does its best to get recognition of their occupational disease and negotiate compensation. The extensive expertise developed in occupational disease matters makes the BBZ a big player in promoting prevention and securing recognition of "new" diseases. By systematically going to bat for members, BBZ also keeps up the pressure on employers to implement safe work systems. The Bureau's regular use of advertising also helps – firms and public bodies do not enjoy being named and shamed.

The results

Since being set up in 2000, the BBZ has dealt with 5 171 applications. After rigorous pre-selection, a claim for damages was made in 17% of cases (837). Of these 54% were won (315 settled out of court, 134 court awards), 27% lost (228), and 19% of cases (160) are still ongoing. Impressively, BBZ secures a favourable outcome in 80% of the cases taken to court.

The average value of compensation awards in the past three years has been 50 000 euros

"Insurers now know we won't give up and it's no use stalling."

Marian Schaapman, BBZ

– higher than in the years before – probably as a result of some big cases coming to an end after long drawn-out proceedings. Compensation awards vary from a few thousand to several hundred thousand euros, the biggest being 650 000 euros.

The average time to settlement of an occupational disease case is 4.2 years. Out-of-court settlements take an average of 3.7 years. If it has to go court, the average rises to 5.3 years. The quickest settlement achieved was in 7 months; the longest took 12 years.

Danny Veerman
Image: © Merel Maissan



"I can't even manage shopping on my own any more"

Danny Veerman, age 43

Danny Veerman occasionally comes home without his shopping. He's left it behind in the supermarket. His wife, Therese, sometimes finds dirty chopping boards carefully stacked away in the kitchen cupboards. He always takes the same route to walk the dogs, otherwise he gets lost. Danny says, "It's not right, this illness, however you look at it". Therese says, "He's not the same man any more".

Danny Veerman started work as a painter on his sixteenth birthday. The building firm that set him on was a contractor for new office and business buildings. He worked on construction sites and in the company's warehouses, working with huge paint vats in which templates, planks and floor elements were dipped. The warehouses had no ventilation, and gas heaters were sometimes used to speed up drying.

It was not long before he started getting headaches, light-headedness, fatigue, memory loss, and muscle pains. "It's not rocket science", he says, "I was breathing in solvents all day – thinner, xylene, red lead oxide, petroleum benzene, paint, lacquer, etc." Although in increasing pain, he kept on working. "I'm not a weakling. I was used to hard work. In my free time, I'd do 150 km bike rides, go-karting, play football and do ice skating".

At the age of 36 he was finally diagnosed with organic syndrome – "painter's disease" – where

years of exposure to organic solvents cause irreparable damage to the central nervous system. Therese says, "It hit us hard to hear that Danny would never be the same and we fell into debt. Work disability benefit isn't enough to pay off a mortgage and feed a family". Danny says, "The Beroepsziekten Bureau had to fight for five years to get compensation. Since 2010, we've been able to breathe again. The worst thing for me is that I can never work again. People look at me askance. Painter's disease doesn't show. They think I'm just idling around at home when I can't even manage shopping on my own any more".



Govert van der Kemp
Image: © Merel Maissan

"The annual lung X-ray is always a stressful time"

Govert van der Kemp, age 70

Electrical fitter Govert van der Kemp repeatedly sounded the alarm back in the 1980s – but to no avail. In 2004, he was diagnosed with asbestosis. The mucous membranes of both lungs are partially calcified. The asbestos fibres are continuing to slowly damage his lung tissues. He is increasingly short of breath.

Van der Kemp worked as a maintenance engineer at the Dikema Chabot foundry, now ArcelorMittal Staalhandel BV, for forty years. It was during the construction of a new office building in 1969 that he noticed a grey substance being sprayed onto the steel frame structure. "When we went into the crawl spaces between the ceilings to lay the cables, we came out covered with the white dust that was there. At the time, we didn't know what was going on".

When the risks of asbestos became better known in the 1980s, and after it was banned in the 1990s, Van der Kemp began asking questions, only to be told by the boss of the company that there were no problems. But the union member was able to read in the occupational health service reports that technical staff were running the risk of disease. "The company thought clean-up was too costly, so it only got done in 2000".

Too late for Govert van der Kemp. Asbestos is a silent killer: a single fibre can be fatal thirty years after. The first symptoms appeared in 1994: a cough, pain, shortness of breath. He was diagnosed with asbestosis just before retirement. Helped by the Beroepsziekten Bureau, he filed a complaint against Arcelor. As it soon became clear that his illness was due to his work, he won compensation.

"I would rather have kept my health", says Van der Kemp. "I was gutted to have to pack in my job as football coach for the youth team this year. I can't do it now – I go through some really difficult times. And I'm congested to the point where I nearly choke on my phlegm. The annual lung X-ray is always a stressful time".



Els Cremers
Image: © Merel Maissan

"They just dropped me after 25 years"

Els Cremers, age 60

Els Cremers spent ten years in the courts to get compensated for her occupational disease. Each time the court found for her, and every time the other side appealed – "even though the harm was obviously due to my work", she says.

Compensation was not the main thing for her, she would much rather have kept working. What Els Cremers can't stomach is that her employer was unwilling to look for a suitable alternative job. "They just dropped me after 25 years. I was given an honourable discharge".

Els Cremers worked for years on the financial staff of the U.S. Army's Schinnen base in Limburg (southern Netherlands). As a Dutch Ministry of Defence employee, she kept the accounts and processed demands, attended to the utility supplies and kept account of the energy consumption of the U.S. soldiers. "I worked as I wanted, but the atmosphere was to keep at it without complaining", she says. "Work pressure was high: correspondence had to be dealt with inside of 48 hours. As it was just me, I couldn't share my workload".

It was only after years of service in 2000 that she noticed the first symptoms– neck, shoulder and elbow pain. The occupational doctor concluded that her office was unsuitable and that she was working too long on the computer every day. She also had heavy boxes of files to lift. After a period of sick leave, she assumed that her workplace would be adapted and she would be eased back into work. Not a chance. "When I went back to work, I found a huge pile of correspondence. Nothing had changed".

Her health finally gave way in 2001 when she was diagnosed with Repetitive Strain Injury (RSI) – a generic term that covers pain in the neck, shoulders, elbows, wrists and hands generated by chronic overwork. The amount of computer work meant that the symptoms simply worsened. Work had become impossible. The Beroepsziekten Bureau claimed against the employer.

Since then, Els Cremers has learned to live with her pain. Her many job applications have had no result. "Who wants to hire someone with a work disability?".

"We help them and give them a face."

Rinus van der Brug, BBZ

The BBZ has come up with a winning formula in an area shunned by insurance companies. Understandably so, says its director, because occupational disease-related personal injury cases are complicated, long drawn-out and so costly, and of uncertain outcome. Marian Schaapman puts it mainly down to the case groundwork. "We choose cases carefully", she says. Union members have their case taken up. Occupational health experts determine the client's working conditions and check to see whether or not the employer has breached his statutory duty of care. If he clearly has, the medical advisor investigates whether the disease was caused by work and not other – specifically personal – factors. Only when all these steps are completed does the multidisciplinary team decide whether the employer might be liable. The "claims department" then engages negotiations with the other side.

"Our strength lies in the care we take putting cases together", argues Marian Schaapman. "It is much easier to negotiate from a well-documented case than just flinging out accusations of liability. But if the other side won't settle, it gives us a solid base on

which to sue. We win in about 70% of cases – either through a settlement or court judgement" (see box p. 36). The BBZ always tries negotiation first. "If that doesn't work out, we won't hesitate to go to court. When we take up a case, we don't give up easily. That's why some cases drag on. Insurers now know we won't give up and it's no use stalling".

David v Goliath

Rinus van der Brug is well-versed in the system. Endless discussions with the other side's insurer are the BBZ personal injury settlement manager's daily fare. It's a David v Goliath battle. "Insurers will do anything to wriggle out of paying compensation, including digging their heels in and trying to drag things out. Clients wanting to press their rights have to be very sure of themselves and thick-skinned". Van der Brug cites the example of three women workers who have been bogged down for almost fifteen years in a fight against their former employer.

Their nervous system had been slowly poisoned by endotoxins released by the grass seed plant they worked in. Knowing that the air extraction system was not working, the factory boss still let his staff work in a space where endotoxin levels were 5000 times above the permitted level. As a result, their lives have been turned upside down – they suffer impaired concentration and memory, chronic fatigue and sensory disorders. The BBZ lawyer won the case in the Supreme Court (Hoge Raad), but the legal battle on the amount of compensation has dragged on for two years. "These women are at the end of their financial tethers; they are ill and going through another painful ordeal. We help them and give them a face", says Rinus van der Brug.

The BBZ is not unhappy with the results. "The tally is positive", says Marian Schaapman. The reason is that it is based on a wealth of information. "In recent years, we have built up an extensive knowledge base on occupational diseases, enabling us to play into the guidelines on the 'new' occupational diseases like burnout and repetitive strain injuries (RSIs). We are also, for example, trying to establish a link between night work and breast cancer, and to demonstrate the risks from radiation and nanoparticles".

The BBZ emphasizes the need for prevention and an appropriate approach by employers and occupational doctors. "Our case files document the exact timeline from the first symptoms until the worker's health gives way. And what do we find? That the company doctor or family doctor rarely connects up working conditions and the health

complaints. There are few checks and little feedback". Schaapman knows that early intervention, such as in the case of RSIs, can avert permanent work disability. "The knowledge and data we have should be used to develop a tailored prevention programme. Each worker is different. A prevention programme can work for one worker but not for another. The ideal thing would be to keep following up on all clients partially or completely incapacitated by an occupational disease".

One aim in setting up the BBZ was to get a decent compensation system going for work accidents and occupational diseases, thus making itself redundant. But that is a long way off. The BBZ is lobbying for a schedule of recognized occupational diseases which would automatically qualify for compensation once exposure and breach of the duty of care for workers' health have been established. This would do away with the need to fight over each individual case and more workers would get compensated. But the current procedure would have to keep going for non-schedule diseases. Says Schaapman: "I favour the 'polluter pays' principle. Employers who neglect their duty to look after their employees' health must be answerable for the resulting problems. Employers plainly and simply have to show the exercise of care". ●

The top ten occupational diseases

1. Musculoskeletal and postural system disorders
2. Hearing disorders
3. Mental health problems
4. Skin disorders
5. Respiratory tract disorders
6. Cardiovascular disease
7. Nervous system diseases
8. Digestive diseases
9. Eye disorders
10. Others