

Decision of the Dispute Resolution Chamber

passed via videoconference, on 4 June 2020,

regarding an employment-related dispute concerning the player Henshaw Blessing
GODWIN

COMPOSITION:

Clifford J. Hendel (USA), Deputy Chairman
Elvis Chetty (Seychelles), member
Tomislav Kasalo (Croatia), member

CLAIMANT:

Mr Henshaw Blessing Godwin, Nigeria
Represented by Mr Adewale Ogunjimi

RESPONDENT:

Al Karmel, Jordan

I. FACTS OF THE CASE

1. The Nigerian player, Mr Henshaw Blessing Godwin (hereinafter: *the player* or *Claimant*) and the Jordanian club, Al Karmel (hereinafter: *the club* or *Respondent*) signed an employment contract (hereinafter: *the contract*) valid as from 27 January 2019 until the end of the 2020/2021 season. In this respect, art. 1 of the contract stipulated that *“in the event that there is a participation for the Club in any continental or regional championship, this Contract shall be extended to expire on the first day of the first registration period that follows the end of the season.”*
2. According to art. 17 of the contract, the Respondent undertook to pay to the Claimant, *inter alia*, a monthly salary of USD 2,500.
3. Pursuant to art. 6 of the contract, the Claimant *“undertakes to comply with the Club’s internal rules and regulations as well as those relating to professionalism so determined by the Committee. Both parties, the Club and the Player, must abide by the regulations and rules of the Status of Players issued by the Association which shall overrule in the event of any contradiction with the Club’s regulations or any agreement between the Club and the Player or his Agent”*.
4. Moreover, art. 22 of the contract stipulated that the Claimant *“undertakes to accept all the sanctions imposed upon him by the Club and Association in the event of committing any of the violations provided for under the prevailing Regulations”*.
5. In this context, the Respondent had the possibility, under art. 23 of the contract, to *“reduce the Player’s financial entitlements which are provided for under this Contract by not more than 50% of the Player’s entitlements provided for under this Contract which comprise the salary, signing up fee and any other financial entitlements if the Club is relegated to a lower Division. The Player shall also be entitled to terminate the Contract at the end of the season in which the Club is relegated provided that he pays 50% of the value of the entire period remaining from this Contract to the Club. The Club shall be entitled to increase such entitlements by the same rate if promoted to a higher Division”*.
6. Finally, art. 24 of the contract provided both parties with the possibility to terminate the contract, as follows:

“This Contract may be terminated at any time by the mutual agreement of the Parties hereof (the Club and Player) provided that the Players’ Status Committee at the Association so consents and also either Party shall be entitled to request the termination of the Contract by the Players’ Status Committee at the Association if there is a justified cause”.

7. On 13 February 2020, the Claimant lodged a claim against the Respondent in front of FIFA.
8. In his claim, the Claimant held that the Respondent failed to pay him his salaries since August 2019.
9. The Claimant further explained to have returned to his home country in May 2019 during a *"fifa break"* as the club was not paying him his salaries. However, in December 2019, *"the player went back to the club for resumption but he was put to hotel and registered for gyming separately from other players"*.
10. In this regard, the Claimant held that the president of the Respondent abandoned him in a hotel for more than 2 months and failed to pay for the hotel room. In these circumstances, *"the management of the hotel cannot tolerate attitude any longer, means they can chase him (Blessing) out anytime soon"*.
11. In this context, the Claimant mentioned that he tried to solve the situation with the president of the Respondent but that the latter never replied to his phone calls.
12. Moreover, the Claimant stated that the Respondent booked him a flight to return to Nigeria on 4 March 2020, in order for him to take care of his sick mother.
13. The Claimant further argued that his situation made it difficult for him to continue his career in other clubs. As such, the Claimant held that *"other clubs are showing interest in my client but he cannot leave Al Karmel FC without getting all his paper from the federation"*.
14. The Claimant also mentioned that before introducing his claim in front of FIFA, he had initially followed the procedure set out in art. 6 of the contract, by contacting *"the relevant Football Association"*, as provided in art. 24 of the contract.
15. In addition, the Claimant argued that *"the fine imposed on him by the club is unjustified and should not be deducted from the amount that is owed to him"*.
16. In light of the above, the Claimant requested the payment of his salaries from August 2019 until February 2021.
17. Finally, the Claimant claimed to have remained unemployed up to this day.
18. In spite of being invited to do so, the Respondent did not reply to the claim.

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as: *the DRC* or *the Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was first submitted to FIFA on 13 February 2020. Consequently, the November 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that, in accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (June 2020 edition), it is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension between a Nigerian player and a Jordanian club.
3. Furthermore, the DRC analysed which edition of the Regulations should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations (June 2020 edition) and considering that the present matter was submitted to FIFA on 13 February 2020, the January 2020 edition of said Regulations is applicable to the present matter as to the substance.
4. With the above having been established, the Chamber entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file. However, the Chamber emphasized that in the following considerations it will refer only to facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand. In particular, the Chamber recalled that, in accordance with art. 6 par. 3 of Annex 3 of the Regulations, FIFA may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in the FIFA Transfer Matching System (hereinafter: *TMS*).
5. In this respect, the Chamber firstly acknowledged that it was undisputed that the Claimant and the Respondent had signed an employment contract valid as from 27 January 2019 until the end of the 2020/2021 season. In continuation, the Chamber noted that it was also undisputed that the Claimant was entitled, *inter alia*, to a monthly salary of USD 2,500.
6. What is more, the Chamber further noted that the Claimant lodged a claim against the Respondent in front of FIFA, alleging that his salaries as from August 2019 have not been paid.

7. Subsequently, the Chamber observed that the Respondent failed to provide its reply to the claim.
8. In this context, the Chamber took particular note of the Claimant's position that the Respondent booked him a flight to return to Nigeria on 4 March 2020. This being said, the Chamber pointed out that the contract had not been formally terminated, by either party.
9. In view of the foregoing, the Chamber established that the main issue to be analysed in the present case is whether the contract has been unilaterally and prematurely terminated or not, if so with or without just cause. Subsequently, the Chamber shall establish the financial and/or sporting consequences to be borne by the party found to be in breach of contract.
10. In this respect, the Chamber was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.
11. Furthermore, the members of the Chamber deemed it appropriate to recall the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.
12. In this regard and based on the information and documentation on file, the Chamber pointed out that it appears that the Claimant did not return to Jordan and stopped playing for the Respondent, after returning to Nigeria on 4 March 2020. In these circumstances, the Chamber was of the opinion that the contract had been terminated by the Claimant on 4 March 2020.
13. Furthermore, the Chamber observed that it remained uncontested that the Respondent failed to pay the Claimant his monthly salaries from August 2019 until February 2020, *i.e.* 7 months, in the total amount of USD 17,500.
14. In continuation, the Chamber was eager to emphasise that the Respondent does not appear to have asked the Claimant to return to Jordan. As such, the Chamber was of the opinion that the Respondent was no longer interested in the services of the Claimant.
15. Therefore, the members of the DRC highlighted that, at the moment the Claimant terminated the contract, an amount equaling to 7 monthly salaries was outstanding. In these circumstances, the Chamber considered that the Claimant could have legitimately

lost faith in the ability and will of the Respondent to fulfill its contractual obligation in due course.

16. Consequently, and considering the situation of the player at the time of termination, the DRC came to the conclusion that the Claimant had terminated the contract on 4 March 2020, with just cause.
17. Having established that the Respondent is to be held liable for the early termination of the employment contract, the Chamber focused its attention on the consequence of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant employment contract.
18. First of all, the Chamber reverted to the Claimant's claim in which he requested his salaries from August 2019 until February 2021.
19. Consequently, taking into account that the contract was terminated on 4 March 2020, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of USD 17,500, corresponding to the monthly salaries of August, September, October, November and December 2019, as well as January and February 2020.
20. In continuation, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
21. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that the contract did not contain such a provision.
22. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of

- criteria to be taken into consideration when calculating the amount of compensation payable.
23. Bearing in mind the foregoing as well as the claim of the Claimant, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the contract until its term, *i.e.* the end of the 2020/2021 season. According to the information available on the TMS, the 2020/2021 season in Jordan would have ended on 5 November 2021. However, the Chamber noted that the Claimant, in his claim, limited his request for compensation until the month of February 2021.
 24. Consequently, the Chamber concluded that the amount of USD 30,000 (*i.e.* salaries of March 2020 to February 2021) serve as basis for the determination of the amount of compensation for breach of contract.
 25. In continuation, the Chamber verified as to whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
 26. In this context, the Chamber observed that the Claimant remained unemployed to this day and was thus not able to mitigate his damages.
 27. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Respondent must pay the total amount of USD 30,000 to the Claimant, which was considered reasonable and proportionate as compensation for breach of contract in the case at hand.
 28. Furthermore, the DRC referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
 29. In this regard, the DRC pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.
 30. Therefore, bearing in mind the above, the DRC decided that, in the event that the Respondent does not pay the amount due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three

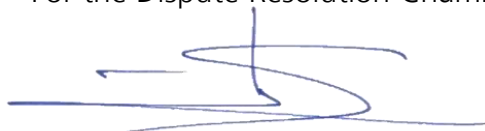
entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.

31. Finally, the DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amount, in accordance with art. 24bis par. 3 of the Regulations.

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Henshaw Blessing Godwin, is accepted.
2. The Respondent, Al Karmel, has to pay to the Claimant outstanding remuneration in the amount of USD 17,500.
3. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of USD 30,000.
4. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amounts mentioned under points 2. and 3. above.
5. The Respondent shall provide evidence of payment of the due amounts in accordance with points 2. and 3. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
6. In the event that the amounts due in accordance with points 2. and 3. above are not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
7. The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.
8. In the event that the aforementioned sums are still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

For the Dispute Resolution Chamber:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 par. 1 of the [FIFA Statutes](#), this decision may be appealed against before the [Court of Arbitration for Sport \(CAS\)](#) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may [publish](#) this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Procedural Rules).

CONTACT INFORMATION:

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