

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Kayode
Olanrewaju Ayobami

COMPOSITION:

Frans DE WEGER (The Netherlands), Chairperson
Alejandro ATILIO TARABORELLI (Argentina), Member
Roy VERMEER (The Netherlands), Member

CLAIMANT:

Kayode Olanrewaju Ayobami, Nigeria
Represented by Ercan Sevdimbaz

RESPONDENT:

Gazisehir GFK, Turkey

I. Facts of the case

1. On 2 March 2018, the Ukrainian club, FC Shakhtar Donetsk (hereinafter: *Shakhtar*), and the Nigerian player, Mr Kayode Olanrewaju Ayobami (hereinafter: *the player* or *the Claimant*), entered into an employment agreement valid as from 1 June 2018 until 31 May 2023.
2. The monthly salary of the player was fixed in the net amount of EUR 75,000.
3. On 9 August 2019, the player was transferred on loan from Shakhtar to the Turkish club, Gazisehir GFK (hereinafter: *the club* or *the Respondent*) until 31 May 2020.
4. In accordance with the loan agreement signed by the parties (hereinafter: *the loan agreement*), the club undertook to pay the player's salaries until the end of the loan period.
5. Article 3 of the loan agreement provided that:

"An employment contract binding FC Shakhtar and the player shall be suspended for the Loan Period. It is acknowledged and agreed that during the Loan Period FC Shakhtar will be released from its respective obligations under the FC Shakhtar Playing Contract and no other additional payments shall be due or payable to the player by FC Shakhtar during or in respect of the Loan Period, including but without limitation any salary, bonuses, travel expenses, subsistence, accommodation expenses and any other benefits of any nature. To the extent, the player had any claim or entitlement to any payments from FC Shakhtar during or in respect of the Loan Period, whether known or unknown at the date hereof, the player hereby waives them unconditionally. Further, any failure by FC Gaziantep to honor its payment obligations to the player under or in connection with the FC Gaziantep Contract shall not give a rise to any liability FC Shakhtar to the player".

6. In parallel, the player and the club concluded an employment contract valid as from 15 August 2019 until 31 May 2020 (hereinafter: *the employment contract*).
7. Under clause 3 of the employment contract, the club undertook to pay the player a total fixed remuneration of EUR 1,115,000 net, payable as follows:
 - a. EUR 220,000 net as sign-on fee on the signing date;
 - b. EUR 15,000 net as a lump sum on 21 August 2019; and
 - c. EUR 880,000 net in 10 monthly instalments of EUR 88,000 each, due by the end of each month starting on 30 August 2019 and ending on 30 May 2020.

8. Between 23 and 28 May 2020, Shakhtar and the club agreed on the extension of the loan agreement until *"the end of the TFF Super League matches"* previously suspended because of the disruption caused by the COVID-19 pandemic. The respective instruction was inserted and confirmed in the Transfer Matching System (TMS).
9. On 1 June 2020, the player sent Shakhtar a notice by means of which he: (i) acknowledged that there was *"no financial obligation on Gaziantep FC related to the months after the loan contract expires"*; and (ii) recalled that *"it is agreed between the clubs in accordance with the emergency rules of FIFA and Turkish FA, [the player]'s loan contract will end on the date the season 2019-2020 ends in Turkey but the salaries of June 2020, July 2020 and the forthcoming months must be paid by Shaktar Donetsk in line with the employment contract between the parties"*.
10. On 2 June 2020, the player and the club signed a private agreement (hereinafter: *the Agreement*) to also extend the duration of the employment contract until the official end of the season.
11. Article 3 of the Agreement read as follows:

"Article 3 – Remuneration

3.1. The monthly instalments owed by the club according to the employment contract, with maturity date on 30.03.2022, 30.04.2020 and 30.05.2020 (264.000 Euros net in total), are due at the present date and will be paid by the club as follows:

- *132.000 Euros net no later than 30.06.2020;*
- *132.000 Euros net no later than 28.07.2020;*

3.2. The club doesn't have to pay any monthly instalment for the football services provided by the player during the extension period.

3.3. Considering the concessions made by the player on 3.2 above, the club hereby agrees that if it fails to pay in full and on time any of the instalments from article 3.1 above, then the player will be paid also the months of June and July 2020 with the full monthly remuneration, respectively 88.000 Euros net for each month. For the sake of good order, the parties clearly specify that any delay (even one day) to the payment dates established on 3.1 will trigger the application of the present article, independently of the quantum of the amount that the club failed to pay.

3.4. All other financial rights of the player, such as performance bonuses, etc. agreed within the employment contract will be paid as they have been established by the parties.

3.5. In addition, the fine of 64.705.88 euros dated 25.10.2019 which was issued by the decision of the administration board will be canceled".

12. On 21 July 2020, the player lodged first a claim against Shakhtar before the FIFA Dispute Resolution Chamber (DRC). The player claimed to be entitled to EUR 150,000 corresponding to his salaries of June and July 2020 (EUR 75,000 each). The case was filed under reference no. 20-01034.
13. On 10 March 2021, the DRC issued its decision in the cited case and ruled that the claim of the player should be rejected (hereinafter: *the DRC Decision*). In synthesis, the DRC considered that the player failed to prove the club's liability to pay his salaries of June and July 2020 taking into consideration the extension of the loan agreement (and the consequent suspension of the employment agreement dated 2 March 2018).
14. On 12 May 2021, the player appealed the DRC Decision to the Court of Arbitration of Sport (CAS). The case was filed under ref. CAS 2021/A/7956.
15. On 18 January 2022, CAS issued its award in the cited case (hereinafter: *the CAS Award*). Accordingly, the player's appeal was dismissed, and the DRC Decision entirely confirmed.

II. Proceedings before FIFA

16. On 24 May 2022, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Claim of the player

17. In his claim, the player referred to the DRC Decision and to the CAS Award, and argued that the club should be liable to pay his salaries for the extended period of June and July 2020.
18. In particular, the player requested to be awarded the following amounts:
 - a. EUR 88,000 as the salary of June 2020, plus 5% interest *p.a.* as from 30 June 2020;
 - b. EUR 88,000 as the salary of July 2020, plus 5% interest *p.a.* as from 31 July 2020.

b. Reply of the club

19. On 13 June 2020, the club filed its reply to the player's claim.
20. The club submitted a copy of the player's notice of 1 June 2020 and the Agreement, and highlighted that he expressly agreed that no additional payment would be due by the club for the period of the extension.

21. In addition, the club stressed that the content of clause 3 of the employment contract was clear to establish that the remuneration therein stipulated – despite divided in instalments – was due for the whole 2019/2020 season. Likewise, all the amounts were undisputedly paid to the player and the only remaining debt was settled via Agreement.
22. As to the content of the Agreement, the club maintained that the amounts mentioned in clause 3 were timely delivered as follows: (i) EUR 44,000 on 22 June 2020; (ii) EUR 44,000 on 16 July 2020; and (iii) EUR 88,000 on 28 July 2020.
23. Based on the above, the club concluded that it had already fulfilled its financial obligations and requested the player's claim to be dismissed.

c. Unsolicited correspondence of the player

24. On 14 June 2022, the FIFA general secretariat acknowledged receipt of the club's reply and informed the parties that the submission phase in the current proceedings was closed and no further submission would be admitted to the file (cf. art. 23 of the Procedural Rules Governing the Football Tribunal).
25. On 16 June 2022, the player filed additional comments on this matter.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

26. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 24 May 2022 and submitted for decision on 21 July 2022. Taking into account the wording of art. 34 of the June 2022 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
27. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22, par. 1 lit. b) of the Regulations on the Status and Transfer of Players (July 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Nigerian player and a Turkish club.
28. At this point, the DRC recalled that the player filed additional comments on 16 June 2022, once the submission phase of the present proceedings was already closed, and without

being invited to do so by the FIFA general secretariat. As a consequence, the Chamber referred to art. 23 of the Procedural Rules and emphasized that parties to the proceedings are not authorised to supplement or amend their submissions or requests for relief or produce new evidence once the submission phase is closed. Therefore, the DRC established that said submission was inadmissible.

29. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (July 2022 edition), and considering that the present claim was lodged on 24 May 2022, the March 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

30. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 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. Likewise, the Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

31. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

32. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that it pertains to a claim for outstanding remuneration only. Specifically, the parties strongly disputed whether the coach is entitled to receive an additional remuneration for the extended period of the employment contract (*i.e.* for the months of June and July 2020), as a result of the COVID-19 outbreak.
33. The DRC observed that the player, on his part, claimed that he provided extra services for the club until the official end of the season and shall be remunerated accordingly. On the other hand, the club argued that: (*i*) the remuneration described in the employment contract corresponds to the amount due for the whole season, regardless of an eventual

extension such as the one caused by the pandemic; and *(ii)* the player expressly agreed that no additional remuneration would be due for the extended period of June and July 2020.

34. In view of this dissent between the parties, the members of the Chamber turned their attention to the documentation on file and carefully analysed the wording of clause 3 of the employment contract in combination with article 3 of the Agreement. In this respect, the DRC was mindful of the following:
 - a. under the employment contract the parties expressly agreed that: *(i)* their employment relationship would be valid until the end of the 2019/2020 season; and *(ii)* the player was entitled to receive a total remuneration of EUR 1,115,000, payable in five instalments but in consideration of the services provided for the club during the whole season; and
 - b. under the Agreement: *(i)* the parties agreed upon the payment of the outstanding amounts due to the player; and *(ii)* the player clearly and expressly confirmed that no extra payments would be due for the months of June and July 2020.
35. By considering the above, the DRC was already convinced that the player's claim for outstanding remuneration lacked contractual basis. Notwithstanding and for the sake of completeness, the Chamber also deemed important to highlight that the player's own behaviour demonstrates that he was aware and in agreement with the fact that the club would not be liable to pay any extra remuneration for the additional months.
36. In particular, the Chamber found it noteworthy that: *(i)* the player never contested the validity of the Agreement and did not file any evidence that it was signed against his will (*i.e.* under duress); *(ii)* the player did not advance any evidence that he has ever claimed outstanding salaries against the club, let alone that he put the latter in default; *(iii)* on the other hand, the player filed a claim and appeal against Shakhtar for overlapping period and different amounts under the employment agreement signed between them on 2 March 2018. Moreover, the DRC inferred that the player has only decided to claim against the club after having his claim (and appeal) against Shakhtar rejected.
37. It follows from the above, in the Chamber's view, that there was no room to depart from what the parties had agreed to beforehand.
38. Lastly, the DRC wished to point out that – even if the additional comments of the player were admitted to the file – they would not have an impact on the aforementioned conclusion, insofar as the player did not dispute that the payments were properly received as described in clause 3 of the Agreement, but limited himself to argue that said document was signed under pressure without filing convincing evidence to this extent.

39. In light of all the foregoing, the members of the DRC decided that the claim of the player should be rejected.

d. Costs

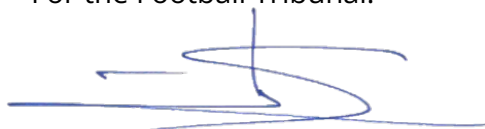
40. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

41. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Kayode Olanrewaju Ayobami, is rejected.
2. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 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 17 of the Procedural Rules).

CONTACT INFORMATION

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