

Decision of the Players' Status Chamber

passed on 16 August 2022

regarding an employment-related dispute concerning the coach Mouaine Chaabani

BY:

Thulaganyo GAOSHUBELWE (South Africa)

CLAIMANT:

Mouaine Chaabani, Tunisia

RESPONDENT:

Club Al Masry, Egypt

I Facts

1. On 24 January 2022, Mr Moauine Chaabani ("technical director"), Mr Majdi Ben Mohammed Traoui ("coach assistant") and the club Al Masry concluded an employment contract valid as from 12 September 2021 until the end of the season 2022/2023.
2. According to art. 2 of the contract, the employees were entitled to a monthly salary of USD 80,000, "excluding taxes".
3. Art. 3 of the contract stipulated the following:

ARTICLE 3

The two parties (the second and the third parties together) shall receive the amount of **80,000 USD** (eighty thousand US dollars only) as a down payment to be paid on **February 12th, 2022** to be deducted over 10 months at a rate of **8,000 USD** (eight thousand USD) per month, free of taxes, as of the date of payment of the down payment, in addition to the deduction of a monthly amount of **6,000 USD** (six thousand USD) relating to the previous contract concluded on **September 12th, 2021** until the completion of the collection of the down payment relating to the previous contract.

4. Art. 9 of the contract stipulated the following:
*"In case the first party decides to terminate the contract before its end, he must pay the value of two months' remuneration to (the second and third parties together).
 In case the second or third party decides to terminate the contract before its end, he must pay the value of two months' remuneration (according to the contract) to the first party."*
5. According to the coach, his assistants informed him on 3 June 2022 that the entire technical team was dismissed.
6. On 3 June 2022 (13h21), the coach sent a letter to the club, explaining that, during his trainings with the club, he was informed that all his assistants were dismissed, and asked for a meeting in order to receive further information.
7. On 3 June 2022 at 22h36 the coach sent a new letter asking for further explanations.
8. On 4 June 2022, the club invited the coach for a meeting on 5 June 2022.
9. On 11 June 2022, the club sent a letter to the coach, indicating the following:
*"We would like to inform you that due to the poor performance witnessed in the first football team under your leadership, the club's position was retreated and the club may lose its position Football Premier League and start playing for lower classes, which violates the clear terms of the contract between us, namely the fifth article which states:
 Both the second and third parties undertake to put forth the greatest possible efforts with the first football team to reach the highest possible level.
 (...)
 Accordingly, due amounts relating to the contract signed between us are detailed as follows:*

*1. The total amounts of the remuneration of Captain MOUINE CHAABANI and Captain / MAJDJ TRAOUI for the period from the beginning of the contract on September 12th, 2021 to May 29th, 2022: 608000 USD
2. The amount already paid to the above-mentioned parties for the aforementioned period: 554000 USD
3. Deduction of the CAF penalty for Captain / MAJDJ TRAOUI: 10000 USD
4. Net due amount to the above-mentioned parties: 44000 USD
Therefore, we invite you to come to the club's office to receive the rest of the due amounts by mutual consent and discharge all the parties from liability according to the above-detailed information."*

10. On 12 June 2022, [the club posted in the social media](#) that Mr Housseem Hassan was appointed as the new coach.
11. On 22 June 2022, the coach sent a letter, noting that neither he nor his assistant received his salaries from September to May 2022, i.e. "80,000 x 2 = 160,000", while noting that he received a sign-on fee of USD 60,000. The coach stated that the club owed him USD 100,000.
12. The coach informed FIFA that he remained unemployed.
13. On 27 June 2022, the Claimant lodged a claim before FIFA for outstanding remuneration and breach of contract without just cause, and requested the payment of the following amounts:
 - USD 100,000 as outstanding remuneration, plus 5% interest p.a., corresponding to his salaries of April and May 2022 (i.e. 80,000*2 = USD 160,000) minus USD 60,000 which he received as an advance.
 - USD 580,000 as compensation for breach of contract without just cause, plus 5% interest p.a.
14. Despite being invited to do so, the Respondent failed to reply to the claim.

II Decision of the Players Status Chamber

a. Competence and applicable legal framework

1. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 27 June 2022 and submitted for decision on 16 August 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.
2. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (June 2022 edition) is competent to deal with the matter at stake, which concerns an employment-related dispute between a club and a coach of an international dimension.
3. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (June 2022 edition), and considering that the present claim was lodged on 27 June 2022, the June 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

4. The Single Judge 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 Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he 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

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

i. Main legal discussion and considerations

6. The Single Judge first noted that, on 24 January 2022, the Claimant, Mr Moauine Chaabani (“technical director”), his assistant and the Respondent, Al Masry concluded an employment contract valid as from 12 September 2021 until the end of the season 2022/2023.
7. Thereafter, the Judge observed that, the Claimant lodged a claim before FIFA for outstanding remuneration and breach of contract without just cause, arguing, *inter alia*, that on 11 June 2022, the club dismissed him without just cause and subsequently appointed a new coach.
8. In this respect, the Single Judge observed that that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so.
9. Consequently, the Single Judge deemed that the Respondent had renounced to its right of defence. In particular, the Single Judge referred to art. 21 par. 1 of the Procedural rules, according to which If the respondent fails to submit a response to the claim within the time limit, a decision will be made based on the file.
10. In view of the above, the Single Judge considered that the main legal issue at stake is to determine whether the club had a just cause to terminate the contract on 11 June 2022.
11. In this regard, the Single Judge recalled the contents of the letter sent by the club on 11 June 2022 and observed that, in particular, the club decided to terminate the contract of the Claimant due to, in particular, “poor performance witnessed in the first team”.
12. In this context, the Single Judge acknowledged that it had to examine whether the reason put forward by the Respondent could justify the termination of the contract in the present matter.
13. In this respect, the Single Judge referred to his well-established jurisprudence and emphasised that, as a general rule, only a breach or misconduct which is of a certain severity justifies the termination of a contract without notice. 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 in order for an employer to ensure the employee’s fulfilment of his contractual duties, 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.
14. As such, the Single Judge also recalled that, still in accordance to its longstanding jurisprudence, sporting team results / sporting team performance cannot be retained as a valid reason to justify an early termination of an employment contract.
15. As a consequence and considering the above, the Single Judge held that the reason put forward by the Respondent, cannot be considered as a valid reason for unilateral contract termination.

16. In view of all the aforementioned, the Single Judge was of the firm opinion that the club did not have just cause to prematurely terminate the employment contract with the coach and that, as a result, the coach is entitled to compensation.

ii. Consequences

17. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.

18. In this respect, the Single Judge first emphasized that the Claimant is entitled to his outstanding remuneration up until the date of termination of the contract.

19. In particular, the Single Judge noted that the Claimant requested the payment of his salaries of April and May 2022 (i.e. $80,000 \times 2 = \text{USD } 160,000$) minus USD 60,000 which he received as an advance.

20. On the other hand, given that the Respondent failed to reply to the claim, the Single Judge understood that this request is uncontested.

21. Consequently, in strict application of the principle of *pacta sunt servanda*, the Single Judge of the PSC established that the Respondent has to pay to the Claimant, the total outstanding amount of USD 100,000, as claimed.

22. Moreover, taking into account the request of the Claimant as well as the longstanding jurisprudence in this regard, the Single Judge of the PSC decided to award 5% interest p.a. over said amount as from the due dates.

23. Subsequently, the Single Judge went on to calculation of the payable compensation by the Respondent to the Claimant.

24. In this regard, the Single Judge took note of the wording of clause 9 of the contract, which established the following:

"In case the first party decides to terminate the contract before its end, he must pay the value of two months' remuneration to (the second and third parties together). In case the second or third party decides to terminate the contract before its end, he must pay the value of two months' remuneration (according to the contract) to the first party."

25. After analysing the content of the aforementioned clause, the Single Judge concluded that it fulfilled the criteria of reciprocity and proportionality, in line with the Single Judge's longstanding jurisprudence, and therefore was to be applied in the case at hand to determine the amount of compensation payable by the Respondent to the Claimant.

26. Consequently, the Single Judge decided that the amount of USD 160,000 (i.e. $80,000 \times 2$, as per the compensation clause agreed between the parties in the contract, is due to the player by the club.

27. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest on said compensation at the rate of 5% p.a. as of the date of the claim until the date of effective payment.

iii. Compliance with monetary decisions

28. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 2 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 Single Judge highlighted 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. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
30. Therefore, bearing in mind the above, the Single Judge decided that the club must pay the full amount due (including all applicable interest) to the coach within 45 days of notification of the decision, failing which, at the request of the creditor, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the club in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
31. The club shall make full payment (including all applicable interest) to the bank account provided by the coach in the Bank Account Registration Form.
32. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

d. Costs

33. The Single Judge 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 Single Judge decided that no procedural costs were to be imposed on the parties.
34. Furthermore, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
35. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.

III Decision of the Players Status Chamber

1. The claim of the Claimant, Mouaine Chaabani, is partially accepted.
2. The Respondent, Al Masry, has to pay to the Claimant, the following amounts:
 - **USD 100,000 net as outstanding remuneration** plus interest as follows:
 - 5% interest p.a. over the amount of USD 20,000 as from 1 May 2022 until the date of effective payment;
 - 5% interest p.a. over the amount of USD 80,000 as from 1 June 2022 until the date of effective payment.
 - **USD 160,000 net as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 27 June 2022 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
7. 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 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

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777