

Decision of the Dispute Resolution Chamber

passed on 4 August 2022

regarding an employment-related dispute concerning the player
Mychell Ruan Da Silva Chagas

BY:

Omar Ongaro (Italy), Deputy Chairperson

Laurel Vaurasi (Fiji), member

Khadija Timera (Senegal), member

CLAIMANT:

Mychell Ruan Da Silva Chagas, Brazil

Represented by Mr Ludovic Deléchat

RESPONDENT:

Chongqing Liangjiang Athletic FC, China PR

I. Facts of the case

1. Allegedly, on 1 April 2020, the Brazilian player Mychell Ruan Da Silva Chagas (hereinafter *the Claimant* or *the player*) and the Chinese club Chongqing Liangjiang Athletic FC (hereinafter *the Respondent* or *the club*) sent a draft employment agreement (hereinafter *the Draft*) regarding the potential employment agreement.
2. The respective Draft contained, *inter alia*, the following elements:
 - The duration of the potential Employment Agreement: from 1 April 2022 until 31 December 2022;
 - The remuneration of USD 864,000 from 1 April 2022 until 31 December 2022 *“before tax, which shall amount to USD 500,000 after tax for reference”*;
 - *“Party B accepts the employment by Party A as a professional football player of Party A.”*;
 - *“Party A shall provide Party B with (2) round-trip economy class flight tickets from Chongqing China to Zurich Switzerland for each contractual year (every 12 months from the signing date of this Contract constitutes a contractual year).”*;
 - Signature of the **player only**. (emphasis added)
3. Allegedly, the Claimant received communication from the Respondent *via* WhatsApp that it could not honour the contract.
4. On 10 June 2020, the Claimant signed a new employment agreement with the Indonesian club, PSS Sleman, valid as from the signing date until 9 April 2023.
5. As to the financial obligations stipulated therein, the player shall be entitled to USD 140,000 per 10 months, i.e. a down payment of USD 28,000 and a monthly salary of USD 11,200.

II. Proceedings before FIFA

6. On 1 June 2022, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.
 - a. **Position of the Claimant**
7. In his claim, the Claimant requested USD 500,000 as a compensation for the breach of contract, plus 5% interest *p.a.* (due date not specified).

8. The Claimant argued that parties concluded an employment contract, nonetheless, the Respondent decided not to honour its obligations.
9. In view of the above, and in line with the “positive interest principle”, the Claimant shall be compensated.

b. Position of the Respondent

10. The Respondent rejected the claim of the Claimant, arguing that the parties have never *“negotiated the matters of employment and signed any employment contract.”*
11. In this respect, the Respondent argued that the *“Claimant hasn’t provided evidence to proof when and by which method he has returned the employment he signed. The Claimant never negotiated with the Respondent about the employment and the Claimant also hasn’t provided evidence to proof the negotiation and any consensus which both parties had reached.”*
12. Furthermore, the Respondent rejected that the WhatsApp messages were sent from someone affiliated to the club. In this respect, the Respondent pointed out that the Claimant *“hasn’t proof the two person’s identity in exhibit 3 and exhibit 3 wasn’t showed who are the two persons. The Respondent also doesn’t know the two persons as they are not the club’s staffs.”*
13. Finally, the Respondent asserted that the Draft is not a genuine document and that the Claimant’s behaviour *“is a kind of criminal act as he pretend to use a false contract to gain huge profits.”*

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. 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 1 June 2022 and submitted for decision on 4 August 2022. Taking into account the wording of art. 34 of the June 2020 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.
15. 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 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 Brazilian player and a Chinese club.

16. 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 1 June 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

17. 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

18. 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

19. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the Parties strongly dispute if the Draft can be considered a valid employment agreement.
20. In this context, the Chamber started by recalling the well-established jurisprudence which dictates that, in order for an employment contract to be considered valid and binding, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration payable by the employer to the employee.
21. After thoroughly analysing the documentation on file, the DRC acknowledged that the respective Draft does not bear any signature of the Respondent. In this respect, the Chamber equally recalled the arguments provided by the Respondent in the matter, i.e.

that it contested to have *“negotiated the matters of employment and signed any employment contract.”*

22. Equally, the Chamber turned its attention to the factual framework involving the negotiations between the parties and, specifically, to the correspondence allegedly exchanged.
23. In particular, analysing the documentation provided, the DRC was of the opinion that the Claimant failed to provide sufficient evidence to unmistakably convey the parties' agreement to the establishment of a valid and binding employment relationship in line with art. 13 par. 5 of the Procedural Rules.
24. In this respect, the DRC was of the opinion that the Claimant should have clarified the identity of the persons involved in the WhatsApp conversation, their respective timeframe as well as any further evidence that, e.g. he tried to contact the Respondent to arrange his arrival and to sign an official employment agreement.
25. Finally, the Chamber highlighted that no documentation whatsoever was made available by the Claimant to support his argument in this respect as the latter failed to provide any evidence to have ever contacted the Respondent.

ii. Consequences

26. Based on the above, the Chamber decided to reject the Claim of the Claimant due to its lack of a contractual basis.

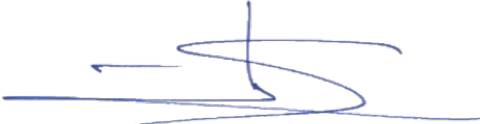
d. Costs

27. 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.
28. 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.
29. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Mychell Ruan Da Silva Chagas, 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

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