

# Decision of the Dispute Resolution Chamber

passed on 4 August 2022

regarding an employment-related dispute concerning the player Fabrice Watson Hounkpe

**BY:**

**Omar ONGARO (Italy)**, Deputy Chairperson  
**Khadija TIMERA (Senegal)**, member  
**Laurel VAURASI (Fiji)**, member

**CLAIMANT:**

**Club Alodo Sport FC, Benin**

**RESPONDENT 1:**

**Fabrice Watson Hounkpe, Benin**

**RESPONDENT 2:**

**Msida St Joseph FC, Malta**


**RESPONDENT 3:**

**Mqabba FC, Malta**

## I. Facts

1. On 1 July 2019, the player Fabrice Watson Hounkpe, born on 31 July 2001 (the Respondent 1) and Club Alodo Sport FC (the Claimant) concluded an initial employment contract valid as from the date of signature until 30 June 2022.
2. On 14 August 2020, Club Alodo Sport FC and Fabrice Watson Hounkpe concluded an employment contract valid as from 15 August 2020 until 30 June 2025.
3. According to the contract, the player was entitled to a monthly salary of EUR 1,500.
4. Art. 13 of the contract stipulated the following:  
*"The Player and the Club must comply with the procedure for resolving disputes provided in the Statutes of association, the procedure regulating the status and transfers of Players, and other documents of FBF in all football-related disputes arising from the Contract and/or the annexes thereto.  
If an agreement is not reached, then the disputes are resolved pursuant to the law of the Republic of BENIN."*

5. The contract included the following signatures:



6. On 14 August 2020, Alodo and the Czech club, 1. FK Příbram (Příbram), concluded an agreement for the loan of the player from 15 August 2020 until 30 June 2023.
7. The aforementioned loan agreement stipulated the following:  
*"the Player and Alodo shall agree to suspend any contracts in force between the Player and Alodo for the aforementioned duration."*
8. Accordingly, the player was "released on loan" from Alodo to Příbram (TMS Ref. Nr. 304577 / 305237)
9. On 15 August 2020, the player signed a "suspension contract" with Alodo (the suspension contract is not signed by Alodo), with the following conditions:  
*"As from 15.08.2020, the employment contract between the Player and the Club shall be suspended  
The Parties explicitly agree that the employment contract shall remain suspended until 30 June 2023 regardless of the employment situation of the Player with the Czech Republic Club 1.FK Příbram or any other club.  
For the avoidance of doubt, the Parties explicitly confirm that in case the employment contract between the Player and the Czech Republic Club 1.FK Příbram, or any other club, is prematurely terminated, no matter the reason, the Club shall be under no obligation to register the Player, or to pay him any remuneration before 1 July 2023"*
10. On 2 September 2020, Příbram and the Maltese club, Mosta FC, concluded an agreement for the sub-loan of the player, valid as from 10 September 2020 until 30 June 2021.
11. Accordingly, Mosta FC and the player concluded an employment contract valid as from 10 September 2020 until the end of the season 2020/2021, for a monthly salary of EUR 800.

12. On 12 January 2021, Mosta and Pribram concluded an agreement for the mutual termination of the sub-loan.
13. On 12 October 2021, the player and Pribram concluded a mutual termination agreement of their employment contract, effective as from 30 August 2021.
14. On 13 October 2021, the player and the Maltese club, Msida SJ concluded an employment contract valid as from 13 October 2021 until the end of the season 2021/2022, for a monthly salary of EUR 200.
15. On 18 October 2021, Alodo sent a correspondence to the player, asking him to resume his duties within 14 days.
16. In particular, Alodo indicated the following:  
*Nous venons d'être informés de la résiliation du contrat de travail qui te liait à 1.FK Pribram et donc la fin de votre prêt audit club.*  
*Dès lors, le contrat de travail conclu le 14 août 2020 entre vous-même et notre club est redevenu pleinement exécutoire.*  
*Par conséquent, nous vous invitons à rentrer au Bénin dans un délai de 14 jours et reprendre les entraînements avec notre club.*

Free translation into English :

*"We have just been informed of the termination of the employment contract between you and 1.FK Pribram and therefore the end of your loan to said club.*  
*Therefore, the employment contract concluded on August 14, 2020 between yourself and our club has become fully enforceable.*  
*Therefore, we invite you to return to Benin within 14 days and resume training with our club."*

17. On 13 October 2021, the player signed a contract with the Maltese club, Msida St Joseph (Msida) valid as from the date of signature until the last competitive match of the season 2021/2022.
18. Accordingly, the player was entitled to a monthly salary of EUR 790 gross.
19. On 9 November 2021, Alodo (via its legal representative) sent a correspondence to the player with, inter alia, the following contents:  
*« Le 14 août 2020, notre client et vous-même avez conclu un contrat de travail (...)*  
*Ce contrat a ensuite été suspendu en raison de votre prêt à 1.FK Pribram. Toutefois, suite à la résiliation anticipée de votre prêt au sein dudit club, le Contrat est redevenu pleinement exécutoire.*  
*(...)*  
*Notre client s'est donc renseigné et a été très désagréablement surpris d'apprendre par voie de presse que vous vous aviez conclu un contrat de travail avec le club maltais de Msida St Joseph FC.*  
*(...) vous vous êtes rendu coupable d'une rupture du Contrat sans juste cause. En outre, le club de Msida St Joseph FC doit être tenu responsable d'incitation à ladite rupture.*  
*Par conséquent, en vertu de l'article 17 RSTJ, vous et Msida St Joseph FC êtes solidairement redevables (...)*  
*du paiement d'une indemnité de rupture calculée comme suit :*  
*- La somme de 67.500 EUR correspondant à la valeur résiduelle du Contrat entre octobre 2021 et juin 2025*  
*;*  
*- La somme de 9.000 EUR à titre de spécificité du sport conformément à la jurisprudence constante du TAS.*

*Dès lors, nous vous mettons en demeure par la présente de procéder au règlement de la somme de 76.500 EUR dans un délai de 10 jours. »*

Free translation into English :

*"On August 14, 2020, you and our client entered into an employment contract (...)*

*This contract was then suspended due to your loan to 1.FK Příbram. However, following the early termination of your loan at the said club, the Contract has become fully enforceable again.*

*(...)*

*Our client therefore made inquiries and was very unpleasantly surprised to learn through the press that you had concluded an employment contract with the Maltese club Msida St Joseph FC.*

*(...) you are guilty of breach of contract without just cause. Furthermore, Msida St Joseph FC must be held responsible for inducing the said breach.*

*Therefore, pursuant to Article 17 RSTJ, you and Msida St Joseph FC are jointly and severally liable (...) for the payment of a compensation for breach calculated as follows:*

*- The sum of EUR 67,500 corresponding to the residual value of the Contract between October 2021 and June 2025 ;*

*- The sum of EUR 9,000 as a sport specificity in accordance with the constant jurisprudence of the CAS.*

*Therefore, we hereby give you formal notice to pay the sum of EUR 76,500 within 10 days.*

20. On 31 January 2022, the player transferred from Msida to the Maltese club, Mqabba FC.
21. Accordingly, the player concluded a contract on 20 January 2022, valid as from "the end of January" 2022 until the last competitive match of the season 2021/2022, for a monthly salary of EUR 800.
22. On 26 November 2021, Club Alodo Sport FC lodged a claim before FIFA for breach of contract without just cause and requested the payment of compensation in the amount of EUR 76,500, plus 5% interest p.a. as from the date of the breach, further detailed as follows:
  - EUR 67,500.00 corresponding to the residual value of the contract, from October 2021 until 30 June 2025;
  - EUR 9,000.00 corresponding to 6-month salary in accordance with the specificity of sport.
23. The Claimant underlined that instead of resuming duties as per the contract it had with him, the Player decided to sign an employment contract with Msida.
24. The Claimant considered that the player breached art. 18 par. 5 of the Regulations, according to which a professional cannot enter into more than one contract covering the same period.
25. The Claimant argued that, being served a notice, Msida could have raised the argument that it did not know about the Contract.
26. However, according to the Claimant it has not even answered the notice, thereby implicitly acknowledging that it was aware of the Contract and its content, but deliberately decided to execute the contract concluded with the Player.
27. The Claimant argued that "it is important to highlight the fraud committed by the Malta FA and Msida, which deliberately omitted to mention in TMS that the Player's last club was Alodo, thereby preventing Alodo from the right to object to the issuance of the ITC in favour of the Malta FA."

28. The Claimant requested the imposition of sporting sanctions against the player as well as against Msida.
29. In its reply to the claim, the player contested the competence of FIFA.
30. The player considered that he had a just cause to terminate the contract.
31. In the opinion of the player, the contract concluded on 14 August 2020 shall be deemed as null and void.
32. In this respect, the player underlined that the contract was concluded in English, even though his language and the language of the club are French.
33. The player explained that the Claimant is a modest football academy and not a proper professional football club. In this respected, the Claimant explained that during his stay with Alodo, his conditions were precarious.
34. On this note, the player explained that the minimum salary in Benin is EUR 60 per month, and that therefore he would have not renounced to an alleged salary of EUR 1,500. However, the player explained that this salary of EUR 1,500 is fictitious.
35. The player further underlined that his contract with FK Pribram was signed on 13 August 2020, whereas the loan agreement was signed on 14 August 2020.
36. In the opinion of the player, the suspension contract with the Claimant is of an abusive nature and was signed in bad faith.
37. The player considered that the suspension contract undermines his rights as a professional athlete as it prevents him from immediately joining the club in case of terminating his contract with Pribram.
38. The player further complained about his living conditions following his sub-loan to Mosta.
39. The player stated that his contract with Msida did not have any financial interest, as he only concluded it in order to obtain a work permit.
40. The player therefore argued that *"the leonine nature of the suspension contract has had the effect of rendering the August 14, 2020 contract meaningless"* and that *"the Suspension Agreement was a defence, or rather a legal shield that the Applicant had built for itself the Claimant against any hazard, to his detriment."*
41. In view of the above, the player considered that the Claimant and his Agent, Mr Andreas Goller, shall be held liable for the *"bad or non execution of the contracts"*.
42. As a result, the player requested the following:
  - To find that he did not terminate the contract without just cause
  - To find that the suspension Agreement is valid and enforceable
  - To hold that the contract of 14 August 2020 is illegal due to the Suspension Agreement.

- To find that the effect of the Suspension Agreement is to release him from all contractual relationship with the Claimant until at least 30 June 2020,
- To find that, as a result, he is free and entitled to sign with the club of his with the club of his choice

43. In this regard, the player requested the payment of compensation corresponding to the following amounts:
- EUR 13,650 corresponding to the residual value of salaries from the loan agreement with FK Příbram from October 2021 to June 30, 2023
  - EUR 36,000 corresponding to the residual value of the salaries under the contract of August 14, 2020 from July 2023 to June 30, 2025
  - EUR 4,800 corresponding to the salaries that he never received during the 6 months of loan to Mosta
  - EUR 9,000 corresponding to 6 months salary according to the specificity of the sport
  - EUR 15,000 corresponding to the moral prejudice
  - EUR 10 000 for personal injury
  - EUR 2 150 for professional injury
44. In its reply to the claim, Msida stated that the player was registered with it following a termination of contract and TMS confirmation released by the Czech Republic Association. Msida argued that it was not aware of any pending employment dispute with the player's former club.
45. Msida denied having induced the player in terminated the contract.
46. The Respondent 2 rejected the application of art. 17 par. 2 of the Regulations for the following reasons:
- The player only registered with Msida in October 2021, whilst the alleged termination/breach of contract was effective as at the 30th August 2021 - thus in no manner can Msida be deemed to have contributed to such termination;
  - The new club should be considered 1. FK Příbram since the player remained so registered until the effective release in October 2021
47. In its replica, the Claimant insisted in the competence of FIFA noting that, in any case, art. 13 of the contract does not refer to a specific decision-making body.
48. The Claimant underlined that the matter at stake concerns a dispute concerning the player and two club from Malta, and is therefore related to an ITC request.
49. The Claimant requested to extend the claim to the Maltese club, Mqabba FC.
50. The Claimant considered that the transfer of the player from Msida to Mqabba is a bridge transfer in accordance with art. 5 bis par. 1 RSTP.
51. In the opinion of the Claimant, by providing for a temporary registration with Msida on the basis of a derisory contract, the parties aimed to protect Mqabba FC, which is to be deemed as the professional club and final destination of the player.
52. In relation to the suspension agreement, the Claimant denied its validity as it was not signed.

53. The Claimant insisted in the validity of the employment contract it concluded with the player, insofar it contains all the essentialia negotii.
54. In his duplica, the player insisted in his initial position and considered that "the Claimant's allegations are, to say the least, dilatory, misleading confusing, cynical and, above all, unfounded."
55. The player denied that his transfer to Mqabba is a bridge transfer.
56. In its duplica, Msida complained that the Claimant decided to unilaterally mutate the proceedings and involve a third-party club, which club is not a party to the current proceedings.
57. In the opinion of Msida, the Claimant did it follow the appropriate procedures in accordance with the procedural rules for a joinder to become a party to ongoing proceedings.
58. The Respondent 2 denied that it colluded with Mqabba "as erroneously and maliciously alleged by the claiming club".
59. According to the Respondent 3 (Mqabba), it was not aware until this date that the player was engaged in any form of dispute.
60. Mqabba stated that, for all intents and purposes, and in accordance with the FIFA regulations, it cannot and should not be considered to the 'new club' as defined in article 17 of the FIFA RSTP;
61. "Without imputing any liability on any other third party club", Mqabba argued that "the documents presented by FIFA show that the new club is 1. FK Pribram and thereby MFC cannot and should not be deemed as such".
62. Mqabba stated that the Claimant never requested it to be held jointly and severally liable, and therefore the DRC would be acting ultra petita if it pronounced itself accordingly.

## **II. Considerations of the Dispute Resolution Chamber**

### **a. Competence and applicable legal framework**

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *the Chamber*) 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 26 November 2021 and submitted for decision on 4 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 Chamber referred to art. 2 par. 1 and art. 24 par. 1 lit. a) of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit. a) of the Regulations on the Status and Transfer of Players (June 2022 edition), it is competent to deal with the matter at stake, which concerns a dispute in relation to the maintenance of the contractual stability where there has been an ITC request and a claim from an interested party in relation to said ITC request between a Beninese club, a Beninese player and two Maltese clubs.
3. 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 (June 2022 edition), and considering that the present claim was lodged on 26 November 2021, the October 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

### **b. Admissibility**

4. The Chamber wished to emphasize once again that, in the present matter, its competence is on the basis of art. 22 par. 1 a) of the Regulations, which grants competence to FIFA to hear disputes the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract. The Chamber noted that, unlike art 22 par. 1 b) of the Regulations, art. 22 par. 1 does not foresee the possibility for the parties to explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Moreover, the Chamber further underlined that it could not deny its own competence on the basis of art. 22 par. 1 a) of the Regulations due to a possible incorrect use of the Transfer Matching System (TMS) in relation to the procedure that must be followed to request the International Transfer Certificate (ITC).

### **c. Burden of proof**

5. 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).

**d. Merits of the dispute**

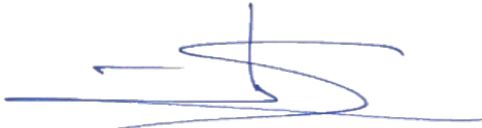
6. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that 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.
7. The Chamber first noted that, on 1 July 2019, the player Fabrice Watson Hounkpe, born on 31 July 2001 (the Respondent 1) and Club Alodo Sport FC (the Claimant) concluded an initial employment contract valid as from the date of signature until 30 June 2022, and that, on 14 August 2022, Club Alodo Sport FC and Fabrice Watson Hounkpe concluded an employment contract valid as from 15 August 2020 until 30 June 2025.
8. The Chamber then observed that the player went on loan to the Czech club, 1. FK Příbram (Příbram). In particular, the Chamber observed that Alodo and Příbram concluded an agreement for the loan of the player from 15 August 2020 until 30 June 2023.
9. Subsequently, the Chamber observed that the player went on a sub-loan to the Maltese club, Msida. The Chamber further observed that the player ultimately signed a contract with another Maltese club, Mqabba.
10. Given the above, the Chamber took note of the fact that Club Alodo Sport FC lodged a claim before FIFA for breach of contract without just cause, as it considered that instead of resuming duties as per the contract it had with him, the Player decided to sign an employment contract with Msida. In particular, Alodo underlined that it had a contract with the player until 30 June 2025.
11. Within the context of the loan, the Chamber noted that, on 15 August 2020, the player signed a "suspension contract", which was nevertheless not signed by Alodo. Hence, the Chamber pointed out that, under any circumstance, said "*suspension contract*" cannot be deemed as a valid and binding agreement.
12. Nevertheless, the Chamber understood that the main legal question at stake is to determine whether Alodo could have requested the player's return on the basis of the contract of 14 August 2020, which was in principle valid until 30 June 2025.
13. Therefore, for the sake of legal certainty and in order to clarify the legal and contractual obligations of the parties towards each other, the Chamber assessed the validity of the contract of 14 August 2020.

14. In this regard, the Chamber observed that said contract would be valid, in principle, for 5 years, but that from said period, the player would have been on loan for 3 years. In the opinion of the Chamber, this circumstance would serve as an indication that the club was never interested in his services and only wanted to bind him for the future in order to obtain a purely financial gain.
15. Moreover, and although the Chamber considered that, in principle, the contract of 14 August 2020 appears to be valid, *de facto*, Alodo incurred in an abusive conduct by means of which it exposed that it only wished to gain financially for a future transfer of the player, but never wished to rely on his services as a professional football player.
16. Consequently, the Chamber decided that the contract of 14 August 2020 had to be disregarded and set aside. As a result, given that said contract became null and void, the Chamber decided that the claim of Alodo could only be rejected.
17. Moreover, since the contract with Alodo FC was set aside, the Chamber established that no breach of contract. Hence, as a logical consequence of the above, the Chamber further established that any counterclaim lodged by the other parties had to be rejected.
18. In addition, the Chamber rejected the request of the player for moral damages due to a lack of evidence.
19. 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.
20. Furthermore, 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.
21. Lastly, the Chamber concluded its deliberations by rejecting any other requests for relief made by any of the parties.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, Club Alodo Sport FC, is admissible.
2. The claim of Club Alodo Sport FC, is rejected.
3. The counterclaim of Mr Fabrice Watson Hounkpe is rejected.
4. This decision is rendered without costs.

For the Football Tribunal:



**Emilio García Silvero**

Chief Legal & Compliance Officer

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**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](http://www.fifa.com) | [legal.fifa.com](http://legal.fifa.com) | [psdfifa@fifa.org](mailto:psdfifa@fifa.org) | T: +41 (0)43 222 7777