

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Hamid Naguez

BY:

Frans DE WEGER (Netherlands), Chairperson

Alejandro ATILIO TARABORELLI (Argentina & Italy), member

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CLAIMANT:

Hamdi Naguez, Tunisia

RESPONDENT:

Al Ahli, Saudi Arabia

I Faits

1. According to the information contained in the Transfer Matching System (TMS), the player Hamdi Naguez transferred from the Tunisian club, ES Tunis, to the Saudi Arabian club, Al Ahli (Ref. 440243).
2. On 10 October 2021, the player Hamdi Naguez and Al Ahli concluded an employment contract valid as from the date of signature until 30 June 2022.
3. According to the contract, the player was entitled to the following:

"5.1 Fixed monthly remuneration
The Club shall pay the following fixed monthly remuneration to the Player (net of any taxes, bank fees and foreign exchange charges):
Season 21/22: Monthly salary over 09 months USD 88,889
The Club shall pay to the Player each monthly salary payment by the last day of each month for a total of (1,100,00) one million and one hundred thousand US Dollar to be paid during the duration of the contract.
(...)
5.5.
1. The Player shall be entitled to paid annual leave of [MINIMUM 28 CALENDAR DAYS]. In all circumstances, the Player shall have the right to paid leave of a minimum length of 28 calendar days per 12-month period, with a guarantee that at least two weeks of paid leave may be taken uninterrupted after the first part of the season and at least two weeks after the last official match of the season. Where the duration of this Contract is less than 12 months, the periods of paid leave referred to above shall apply on a pro rata basis."
4. Art. 12 par. 2 of the contract stipulated the following:

"If either Party terminates the Contract with just cause, compensation for breach of contract is payable in accordance with Art. 17 of the FIFA Regulations."
5. On 25 January 2022, the player sent a default notice, requesting the payment of USD 335,556 and corresponding to his salaries from October to January 2022, i.e. 89,889*4 within 15 days.
6. On 30 January 2022, the club sent a termination notice with the following contents:

"Reference to the Employment Agreement signed between you and Al Ahli FC on 10/ 10/2022, we hereby inform you that Al Ahli FC terminates the above-mentioned contract with effect from 30/01/2022."
7. The player informed FIFA that he subsequently remained unemployed.
8. On 3 February 2022, Hamid Naguez lodged a claim before FIFA for outstanding remuneration and breach of contract without just cause, and requested the following:

USD 335,556 as outstanding remuneration, corresponding to the salaries from October 2021 until January 2022 (i.e. 89,889*4), plus 5% interest p.a. ;
USD 809,000 as compensation, plus 5% interest p.a., corresponding to the residual value of the contract (USD 89,889, plus three additional salaries in the amount of USD 269,667 – 89,889*3);
USD 89,889 as outstanding holidays, in accordance with art. 5.5 of the contract.

9. In its reply, the club acknowledged that it terminated the contract on 30 January 2022 *"in view of the impossibility of continuing the the contractual relationship in view of the serious offences committed by the player which player that could have led to disciplinary and sporting sanctions detrimental to the club."*
10. The club explained that it registered the player in accordance with art. 6 of the Regulations, insofar he argued that he amicably terminated his contract with the Tunisian club, ES Tunis.
11. According to the club, the player did not inform that he was under a contract with Zamalek SC.
12. The club therefore argued that it was misled by the player and that, as a result, he terminated the contract with just cause.
13. The Respondent acknowledged that "it is true that the notice of termination was given directly without prior notice" but argued that "this was justified by the seriousness of the player's infractions."
14. In view of the above, the club lodged a counterclaim against the player and requested the payment of compensation in the amount of USD 1,100,000.
15. In his replica and reply to the counterclaim, the Claimant explained that, on 9 October 2021, Al Zamalek confirmed that it had no contract with the player.
16. Moreover, the player explained that he in fact participated in 8 matches with Al Ahli.
17. The player explained that the SAFF Disciplinary Committee cleared him from any wrongdoings as to his registration.
18. The player considered that the real reason for this termination was the desire of the club to free up a place for an eighth foreign player recruitment. However, the player argued that this intention that did not come to fruition at the last minute given that 30/01/2022 was the last day before the closing of the registration period in Saudi Arabia.
19. The player further argued that the club prevented him from attending trainings already since 13 January 2022.

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 3 February 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.
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. b) 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 an employment-related dispute with an international dimension between a Tunisian player and a Saudi club.
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 3 February 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 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

5. 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

6. Entering into the substance of the matter, the Chamber first noted that the claimant and the respondent concluded an employment contract valid as from the date of signature until 30 June 2022.
7. Subsequently, the Chamber observed that the player lodged a claim against the club, arguing that the club terminated the contract on 30 January 2022, without providing any specific reasons (cf. point 6 above).

8. However, the Chamber observed that the Club, in its reply to the claim, while acknowledging the termination of the contract on 30 January 2022, explained that it did so since the player was already under another contract with the Egyptian club, El Zamalek.
9. On this point, the Chamber referred to the related matter "*El Zamalek, Egypt / Player Hamdi Naguez, Tunisia Ref. FPSD-5481*", which was subject to a decision on 8 June 2022.
10. In said matter, the Chamber observed that, indeed, the player and El Zamalek concluded a "*preliminary employment contract*", but also observed that said contract was mutually terminated on 7 October 2021. At the same time, the Claimant and the Respondent to the present matter concluded a contract on 10 October 2021, i.e. after the player and El Zamalek parted ways.
11. Therefore, the Chamber confirmed that the player was free from any contract until he signed a contract with Al Ahli. In view of the above, the Chamber established that the argument of Al Ahli cannot be upheld.
12. Moreover, the Chamber further underlined that the termination letter sent by Al Ahli indicated no reasoning and the club did not try to find an amicable solution to the alleged and potential issue concerning the player's registration.
13. In view of the above, the Chamber established that the Respondent terminated the contract without just cause and consequently the player is entitled to compensation.

ii. Consequences

14. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
15. First of all, the Chamber established that, in addition to compensation, the player is entitled to his outstanding dues prior to the termination of the contract, i.e. until 30 January 2022.
16. In this regard, the Chamber noted that the player requested the payment of USD 335,556 as outstanding remuneration, corresponding to the salaries from October 2021 until January 2022 (i.e. 89,889*4).
17. On this note, the Chamber observed that the Respondent did not contest the existence of this outstanding amount.
18. Consequently, in strict application of the principle of *pacta sunt servanda*, the Chamber established that the Respondent has to pay to the Claimant, the total outstanding amount of USD 335,556, as explained in the previous paragraphs.
19. In addition, the Chamber further noted that the Claimant requested the payment of USD 89,889 as outstanding holidays, in accordance with art. 5.5 of the contract, equivalent to one monthly salary.
20. In this regard, the Chamber noted that the contract stipulated that the player was entitled to "paid annual leave" equivalent to one monthly salary.

21. In relation to said amount, the Chamber also took note that the Respondent did not deny the player's request.
22. Consequently, in strict application of the principle of *pacta sunt servanda*, the Chamber established that the Respondent has to pay to the Claimant, the total outstanding amount of USD 89,889, corresponding to outstanding paid leave.
23. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, 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.
24. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment 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.
25. In this respect, the Chamber observed that, indeed, clause of the contract stipulated in its art. 12 par. 2 that "If either Party terminates the Contract with just cause, compensation for breach of contract is payable in accordance with Art. 17 of the FIFA Regulations."
26. As a consequence, the Chamber determined that the amount of compensation payable by the Claimant to the Respondent had to be assessed in application of the 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.
27. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract until its term. Consequently, the Chamber concluded that the amount of USD 444,445 (i.e. USD 88,889*5) serves as the basis for the determination of the amount of compensation for breach of contract.
28. In continuation, the Chamber verified whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Chamber as well as art. 17 par. 1 lit. ii) of the Regulations, 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.
29. In this respect, the Chamber noted that the player remained unemployed since the unilateral termination of the contract.

30. The Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which, in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.
31. In this respect, the Chamber decided to award the player compensation for breach of contract in the amount of USD 444,445, as explained above.
32. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% p.a. as of the date of claim until the date of effective payment.

iii. Compliance with monetary decisions

33. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24 par. 1 and 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.
34. In this regard, the Chamber 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.
35. Therefore, bearing in mind the above, the Chamber decided that the club must pay the full amount due (including all applicable interest) to the player 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. 24 par. 2, 4, and 7 of the Regulations.
36. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form.
37. The Chamber 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. 24 par. 8 of the Regulations.

d. Costs

38. 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.
39. 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.
40. 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, Hamdi Naguez, is partially accepted.
2. The Respondent, Al Ahli, has to pay to the Claimant, the following amounts:
 - **USD 335,556 as outstanding salaries** plus interest as follows:
 - 5% interest p.a. over the amount of USD 88,889 as from 1 November 2021 until the date of effective payment;
 - 5% interest p.a. over the amount of USD 88,889 as from 1 December 2021 until the date of effective payment;
 - 5% interest p.a. over the amount of USD 88,889 as from 1 January 2022 until the date of effective payment;
 - 5% interest p.a. over the amount of USD 88,889 as from 1 February 2022 until the date of effective payment.
 - **USD 89,889 as outstanding remuneration (holidays)** plus 5% interest as from 1 February 2022 until the date of effective payment;
 - **USD 444,445 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 3 February 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. 24 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 with art. 24 par. 7 and 8 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 Garcia 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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