

Decision of the Dispute Resolution Chamber

passed on 6 July 2022

regarding an employment-related dispute concerning the player Tomas Martins Podstawski

BY:

Jorge Gutiérrez (Costa Rica), Single Judge of the DRC

CLAIMANT:

Tomas Martins Podstawski, Portugal
Represented by Nelson Soares, Clara Santos Soares

RESPONDENT:

Bnei Yehuda Tel-Aviv FC, Israel

I. Facts of the case

1. On 1 February 2022, the Portuguese player, Tomas Martins Podstawski (hereinafter: *Claimant* or *player*) and the Israeli club, Bnei Yehuda Tel-Aviv FC (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid as from the date of signature until 31 May 2023.
2. According to the contract, the Respondent undertook to pay the Claimant the following monies:
 - EUR 10,000 as monthly salary for the season 2021/2022, payable in 4 instalments between 10 March 2021 and 10 June 2021;
 - EUR 14,000 as monthly salary for the season 2022/2023, payable in 10 instalments between 10 September 2022 and 10 June 2022.
3. On 4 April 2021, the club terminated the contract with the player due to “*repeated severe discipline violations, the demoralization you cause and the bad influence over the young players*”.
4. According to the information contained in the Transfer Matching System (TMS), the player remained unemployed up to date.

II. Proceedings before FIFA

5. On 6 April 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

6. In his claim, the player requested payment of the following monies:
 - EUR 100 as outstanding part of his salary related to February 2022;
 - EUR 170,000 as compensation for breach of contract, corresponding to the residual value of the contract (March 2022 until May 2023; 3x EUR 10,000 and 10x EUR 14,000).The Claimant requested payment of interest of 5% p.a. as of 4 April 2022 (date of termination).
7. Furthermore, the player argued that the club did not have just cause to terminate the contract since the allegations raised in the termination letter are “*false*”.
8. In this context, he pointed out that he had not committed any disciplinary offense and that no disciplinary procedure was opened against him.

b. Position of the Respondent

9. The Respondent failed to reply to the claim.

III. Considerations of the Single Judge of the DRC

a. Competence and applicable legal framework

10. First of all, the Single Judge of the Dispute Resolution 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 6 April 2022 and submitted for decision on 6 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.
11. Subsequently, the Single Judge 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 (March 2022 edition), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Portuguese player and an Israeli club.
12. 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 (March 2022 edition), and considering that the present claim was lodged on 6 April 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

13. 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 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

14. Its competence and the applicable regulations having been established, the Single Judge 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 Single Judge 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

15. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the Claimant's argumentation that the club terminated the contract without just cause on 4 April 2022.
16. The Respondent, for its part, failed to present its response to the claim of the player, in spite of having been invited to do so. In this way, the Chamber considered that the Respondent renounced its right of defence and, thus, accepted the allegations of the Claimant.
17. Furthermore, as a consequence of the aforementioned consideration, the Single Judge concurred that in accordance with art. 21 par. 1 of the Procedural Rules it shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
18. In this scenario, the Single Judge started to analyse the circumstances of the termination issued by the club on 4 April 2022 and recalled the long-standing jurisprudence of the Football Tribunal, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect the 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 assure 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 be an *ultima ratio*.
19. In this context, the Single Judge acknowledged that the Claimant's allegations remained uncontested. Taking into account that a contract termination has to be the *ultima ratio*, the Single Judge concluded that the club had no just cause to terminate the contract on 4 April 2022, without a previous warning and/or any previous disciplinary proceeding.

ii. Consequences

20. Having stated the above, the members of the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
21. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, amounts to EUR 100.
22. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination, i.e. EUR 100.

23. In addition, 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 at the rate of 5% p.a. on the outstanding amounts as from 4 April 2022 until the date of effective payment.
24. Having stated the above, the Single Judge 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 Single Judge 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.
25. In application of the relevant provision, the Single Judge held that it first of all had to clarify as to 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. In this regard, the Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
26. As a consequence, the members of the Single Judge determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Single Judge 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 Single Judge proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Single Judge concluded that the amount of EUR 170,000 serves as the basis for the determination of the amount of compensation for breach of contract.
28. In continuation, the Single Judge verified as to 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 DRC 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 fact, the player has not yet found new employment and was therefore not able to mitigate his damages.

30. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of EUR 170,000 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
31. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the player interest on said compensation at the rate of 5% p.a. as of 6 April 2022 until the date of effective payment.

iii. Compliance with monetary decisions

32. Finally, taking into account the applicable Regulations, the Single Judge 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.
33. 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.
34. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, 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 Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
35. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
36. 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. 24 par. 8 of the Regulations.

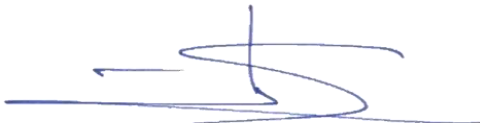
d. Costs

37. 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 Chamber decided that no procedural costs were to be imposed on the parties.
38. Likewise and for the sake of completeness, 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.
39. Lastly, the Single Judge 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, Tomas Martins Podstawski, is partially accepted.
2. The Respondent, Bnei Yehuda Tel-Aviv FC, has to pay to the Claimant, the following amount:
 - EUR 100 as outstanding remuneration plus 5% interest p.a. as from 4 April 2022 until the date of effective payment;
 - EUR 170,000 as compensation for breach of contract plus 5% interest p.a. as from 6 April 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 the ban shall be of 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 article 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 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