

Decision of the Players' Status Chamber

passed on 2 August 2022

regarding an employment-related dispute concerning the player
Damon Shaw

BY:

Kristy Hill (New Zealand)

CLAIMANT:

Damon Shaw, England

RESPONDENT:

WKS Slask Futsal Wroclaw, Poland

I. Facts of the case

1. On 7 June 2021, the English futsal coach Damon Shaw (hereinafter *the Claimant*) and the Polish futsal club Slask Futsal Wroclaw (hereinafter *the Respondent*) concluded an employment agreement (hereinafter *the Employment Agreement*) valid as from 1 September 2021 until 30 June 2024.
2. In Clause 3 of the Employment Agreement, the Claimant and the Respondent (hereinafter jointly referred to as *the Parties*) agreed upon the following remuneration and bonuses for the season 2021/2022:
 - Remuneration in a total amount of PLN (“Polish Zloty”) 30,000, payable in ten equal instalments of PLN 3,000;
 - Bonuses:
 - Single room;
 - Dietic catering box 1800 kcal per day, from Monday to Friday;
 - Gym membership or multisport card;
 - Extra 1-month salary bonus for promotion;
 - Bonus for participating in Polish Cup.
3. In Clause 6.3 of the Employment Agreement, the Parties agreed that *“the contract may be terminated by the club if the team finishes season 2021/2022 without promotion.”*
4. Allegedly, in November 2021, the Respondent requested to renegotiate the Employment Agreement due to the lack of sponsors. The Claimant requested any adaptation to be made in writing.
5. On 12 November 2021, the Respondent sent the Claimant a proposed change to the Employment Agreement, which was rejected by the latter.
6. On 9 December 2021, a meeting was held between the Parties and a proposal was made to pay the outstanding amount of PLN 7,358 (*i.e.* salary and food until 30th November 2021) by no later than 31st December 2021.
7. The Claimant agreed to discuss a termination and compensation upon receiving this amount.
8. As of 18 December 2021, Claimant left Poland and did not return back.
9. Between 20 December 2021 and 14 March 2022, various emails were exchanged by the Parties trying to reach a mutual termination.
10. Until today, no mutual termination has been concluded between the Parties, whereas the Claimant no longer renders his services to the Respondent.

II. Proceedings before FIFA

11. On 19 May 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

12. In his claim, the Claimant requested the amount of **PLN 23,153**:

- *“As the club didn’t achieve promotion, the contract would be terminated after season 2021/22 and according to Polish Labour law, 3 months’ notice will be given, which would take the contract up until 19th May 2022, if notice was given on 19th February 2022 (end of the season). Therefore, I am claiming all monies owed up until 19th May 2022. This would equal 8 months, therefore on a pro-rata basis, I am owed 24,000 PLN, of which to date 9,000 has been paid. Total owed – **15,000 PLN***
- *As food allowance was also included in the contract, I am owed 3,750 PLN of which 1,600 PLN was paid. Total owed **2,150 PLN**.*
- *Gym was included in the contract at a cost of 129 PLN per month. 1032 PLN is owed, of which 129 was paid. Total owed **903 PLN**.*
- *A single room was included in the contract and I had a room until 18th December. I am claiming 5 months of accommodation at 1000 PLN per month. Total **5,000 PLN**.*
- *An outstanding bonus of **100 PLN** is owed for 2 victories.”*

b. Position of the Respondent

13. Despite being invited to do so, the Respondent failed to reply to the claim.

III. Considerations of the Players’ Status Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge of the Players’ Status Chamber (hereinafter also referred to as the *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 19 May 2022 and submitted for decision on 2 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.

15. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (July 2022 edition), she is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an English futsal coach and a Polish club.
16. Subsequently, the Single Judge 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 19 May 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 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, she stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which she 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. Her 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 she 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

19. The foregoing having been established, the Single Judge moved to the substance of the matter and noted that this is a claim of a futsal coach against a club, which remained undisputed by the latter.
20. Considering the evidence on file, the Single Judge observed that between November 2021 and March 2022, the Parties were constantly discussing to mutually terminate the employment relationship, however, to no avail.

21. In this context, the Single Judge pointed out that no explicit termination occurred in the matter at hand. Nonetheless, the Single Judge observed that the Claimant admitted in his claim that he never returned to Poland as from 18 December 2021, when he left for Christmas break.
22. Based on the above, the Single Judge concluded that as from January 2022, the Claimant stopped rendering services to the Respondent.
23. In this respect, the Single Judge deliberated that the Parties mutually departed from the execution of the employment contract as from the end of December 2021 and, consequently, there is no entitlement to any potential compensation in the present matter.
24. Nonetheless, the Single Judge turned her attention to any outstanding amounts under the Employment Agreement during the Claimant's presence in Poland. In this respect, the Single Judge recalled that the Claimant acknowledged that only PLN 9,000, corresponding to three-monthly salaries were duly paid by the Respondent, *i.e.* the salaries of September 2021 until November 2021.
25. Based on the evidence on file, the Single Judge concluded that the salary of December 2021 remained outstanding and shall be paid by the Respondent in line with the legal principle *pacta sunt servanda*.
26. As to any further requests of the Claimant, the Single Judge concluded that the Claimant failed to provide any evidence to support his claim and, consequently, rejected those requests of the Claimant.

ii. Consequences

27. Having stated the above, the Single Judge recalled that it remained undisputed by the Parties the amount of PLN 3,000, corresponding to the salary of December 2021 remained outstanding.
28. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the respective amount.
29. Finally, the Single Judge concluded not award any interest to the Claimant, as the latter failed to request it (*ne ultra petita*).

iii. Compliance with monetary decisions

30. 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.
31. 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.
32. 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. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
33. 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.
34. 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.

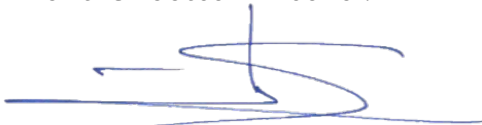
d. Costs

35. 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.
36. 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.
37. Lastly, the Single Judge concluded her deliberations by rejecting any other requests for relief made by any of the Parties.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Damon Shaw, is admissible.
2. The claim of the Claimant, Damon Shaw, is partially accepted.
3. The Respondent, WKS Slask Futsal Wroclaw, has to pay to the Claimant, the following amount:
 - PLN 3,000 as outstanding remuneration.
4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. 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.
7. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
8. 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

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