

Decision of the Players' Status Chamber

passed on 19 August 2022

regarding an employment-related dispute concerning Mr Bojan Trkulja

BY:

Javier Vijande Penas (Argentina), Chairperson

CLAIMANT:

Bojan Trkulja, Bosnia and Herzegovina

Represented by Tarik Trbić

RESPONDENT:

Club Al Arabi SC, Kuwait

I. Facts of the case

1. On 1 August 2020, the Bosnian national, Mr. Bojan Trkulja (hereinafter: *the Claimant*) and the Kuwaiti Club, Al Arabi SC (hereinafter: *the Respondent*) signed a “contract agreement” valid as from the “*first day of the [Claimant’s] work*” until the end of the 2020/2021 season (hereinafter: *the contract*).

2. In accordance with article 2 of the contract:

“The [Claimant] accepts to join the technical staff of the [Respondent] in the position of assistant coach for first football team and fitness coach in the [Respondent] for one season (2020/2021) (...)”.

3. In accordance with clause 4 of the contract, the Respondent undertook to pay to the Claimant *inter alia* the following amounts:

- a. KWD 1,250 as monthly salary;
- b. 4 round trip economy flights;
- c. Furnished apartment.

4. In accordance with article 7 of the contract:

“The [Claimant] agreed to carry out therapy and rehabilitative programs for the players during this contract and produce a monthly report about the physical condition of players to the [Respondent’s] management”.

5. In accordance with article 12 of the contract:

“The [Claimant] owns the right to appoint the [Respondent] to rehabilitation and treatment of any players from the club without any additional financial payments on the [Claimant]”.

6. On an unspecified date, the 2020/2021 season was suspended in Kuwait due to the COVID-19 pandemic. Contextually, the Respondent sent the Claimant a letter instructing him to resume his duties on 1 August 2020.

7. On 23 June 2021, the Claimant put the Respondent in default of the following:

“Outstanding remuneration (salaries) as per Clause 4 of the Contract:

KWD 1.250,00 (one thousand two hundred and fifty Kuwait dinars) as payment due on 31 January 2021, with 5% interest p.a. as from 01 February 2021;

KWD 1.250,00 (one thousand two hundred and fifty Kuwait dinars) as payment due on 28 February 2021, with 5% interest p.a. as from 01 March 2021;

KWD 1.250,00 (one thousand two hundred and fifty Kuwait dinars) as payment due on 31 March 2021, with 5% interest p.a. as from 01 April 2021;

KWD 1.250,00 (one thousand two hundred and fifty Kuwait dinars) as payment due on 30 April 2021, with 5% interest p.a. as from 01 May 2021;

KWD 1.250,00 (one thousand two hundred and fifty Kuwait dinars) as payment due on 31 May 2021, with 5% interest p.a. as from 01 June 2021;

KWD 1.250,00 (one thousand two hundred and fifty Kuwait dinars) as payment due on 30 June 2021, with 5% interest p.a. as from 01 July 2021;

Compensation for termination of the Contract as per Clause 13 of the Contract:

7) KWD 2.500,00 (two thousand five hundred Kuwait dinars) as payment due on 30 June 2021, with 5% interest p.a. as from 01 July 2021;

Outstanding remuneration for the premium for winning the Emir Cup:

8) KWD 3.000,00 (three thousand Kuwait dinars) as payment due on 30 June 2021, with 5% interest p.a. as from 01 July 2021;

Outstanding remuneration for the "self-money" in accordance with the laws of Kuwait:

9) KWD 1.762,00 (one thousand seven hundred sixty-two Kuwait dinars) as payment due on 30 June 2021, with 5% interest p.a. as from 01 July 2021;"

8. On 3 August 2022, the Claimant lodged the claim at hand against the Respondent requesting payment of outstanding remuneration of KWD 16,260, broken down as follows:

Needed to be paid	Paid
Salary August 2020 KWD 1 250	KWD 1 250 on 28th October 2020.
Salary September 2020 KWD 1 250	KWD 1 240 on 15th November 2020.
Salary October 2020 KWD 1 250	KWD 1 000 on 17th December 2020.
Salary November 2020 KWD 1 250	
Salary December 2020 KWD 1 250	
Salary January 2021 KWD 1 250	
Salary February 2021 KWD 1 250	
Salary March 2021 KWD 1 250	
Salary April 2021	

KWD 1 250		
Salary May 2021 KWD 1 250		
Salary June 2021 KWD 1 250		
Emir Cup Bonus KWD 6 000		
TOTAL TO BE PAID	KWD 19 750	PAID IN TOTAL: KWD 3490
TOTAL OUTSTANDING:		KWD 16 260

9. On 11 August 2022, the FIFA general secretariat informed the Claimant that the Football Tribunal did not appear to be competent to deal with the case at stake in the Claimant was a fitness coach.
10. Subsequently, the Claimant reiterated his position and referred to clause 2 of the contract. As such, the Claimant remarked that FIFA is competent to hear the dispute.
11. On 12 August 2022, the FIFA general secretariat informed the Claimant that the matter was affected by a preliminary procedural matter and would be sent for a decision of the Chairperson of the Players' Status Chamber in accordance with art. 19 of the Procedural Rules Governing the Football Tribunal.

II. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

12. First of all, the Chairperson of the Players' Status Chamber (hereinafter also referred to as *Chairperson*) analysed whether he was competent to deal with the case at hand.
13. In this respect, he took note that the present matter was presented to FIFA on 3 August 2022 and submitted for a preliminary decision on 19 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.
14. At the same time, the Chairperson confirmed that, in accordance with art. 19 par. 1 and 2 of the Procedural Rules, he is competent to decide, in an expedited manner, whether the case at stake is affected by any preliminary procedural matter (i.e. if the Football Tribunal obviously does not have jurisdiction or if the claim is time-barred). Likewise, the Chairperson highlighted that, in case the claim is not affected by any preliminary procedural matters, the FIFA general secretariat would be ordered to continue the procedure (cf. art. 19 par. 3 of the Procedural Rules).

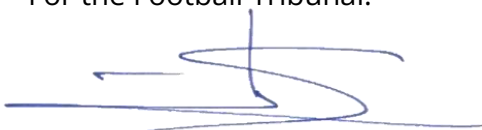
15. Subsequently, the Chairperson referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23, par. 1 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (edition July 2022), the Players' Status Chamber would be in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an alleged Bosnian coach and a Kuwaiti club.
16. Thereafter, the Chairperson referred to art. 2 par. 1 of the Procedural Rules and determined that in accordance with art. 23 par. 1 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (July 2022 edition), the aforementioned edition of said regulations (hereinafter: *the Regulations*) is also applicable to the matter at hand.
17. In continuation, the Chairperson 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 Chairperson stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).
18. The foregoing having been established, the Chairperson turned his attention to the Claimant's statement of claim and recalled that it concerns an employment-related dispute between a Bosnian fitness coach and a Kuwaiti club.
19. In this context, the Chairperson first of all wished to outline that on 1 January 2021 FIFA introduced a new regulatory framework governing the labour relations between coaches and clubs, and coaches and member associations. In particular, the amendment package included a proper definition of "coach" for the purposes of FIFA regulations (cf. definition item no. 28 of the Regulations).
20. Accordingly, the Chairperson acknowledged that said definition identifies a coach as an individual employed in a "*football-specific occupation*". This means that a coach shall be engaged in activities inherent to football that do not exist in the same way in other sports. Consequently, individuals practising activities that are not inherent to football are excluded from FIFA's jurisdiction, such as nutritionists, sports scientists, fitness coaches, and the like.
21. Taking into consideration the above, and having analysed the Claimant's submission as well as the documentation brought forward in support of his allegations, the Chairperson acknowledged that he was employed with the Respondent as a "fitness coach" – in spite of the fact that the contract also mentions "assistant coach".

22. In particular, the Chairperson was observant of the fact that clauses 7 and 12 of the contract describes solely obligations of a fitness coach, in spite of the fact that the contract mentions the Claimant as “assistant coach”, i.e. all related to physical preparation. In other words, the duties of the Claimant as established under the contract do not refer to the selection, training, or coaching of players as determined by the Regulations.
23. In light of the above and conversely to the Claimant’s argumentation in this regard, the Chairperson was firm to conclude that the Claimant’s occupation was not considered to be football-specific in accordance with the Regulations and the well-established jurisprudence of the Players’ Status Chamber. Furthermore, the Chairperson outlined that no evidence to further support the Claimant’s assertion that he was an assistant coach has been filed by the Claimant.
24. Based on all the abovementioned considerations, the Chairperson concluded that the Football Tribunal does not have jurisdiction to hear the dispute at stake since it falls outside the scope of art. 22, lit. c) of the Regulations.
25. Therefore, the Chairperson decided that the Claimant’s claim is inadmissible.
26. Lastly, the Chairperson 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 Chairperson decided that no procedural costs were to be imposed on the Claimant.

III. Decision of the Players’ Status Chamber

1. The claim of the Claimant, Bojan Trkulja, is inadmissible.
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

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