

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning
the player A

COMPOSITION:

Frans DE WEGER (the Netherlands), Chairperson
André dos Santos MEGALE (Brazil), Member
Khadija TIMERA (Senegal), Member

CLAIMANT:

A, Country A
Represented by

RESPONDENT:

B, Country B

I. Facts of the case

1. The parties to the dispute are the Country A player, A (hereinafter: *the player* or *the Claimant*) and the Country B club, B (hereinafter: *the club* or *the Respondent*).
2. On 10 June 2021, the Respondent issued a mandate in favour of Mr. X (hereinafter: *the Club's agent*). The mandate reads, *inter alia*, as follows (hereinafter: *the mandate*):

"This mandate is being provided to Mr. X (LICENSE No:0XX), following his contact with [the Respondent] with the clear declaration that [the Claimant] born on 12.05.1996 in Country A is a free agent (no compensation payable to his previous club and his latest employment agreement being already expired). Strictly subjected to the condition above, this document is provided to certify that Mr. X is hereby authorized until, 15.07.2021 to contact, mediate and negotiate with [the Claimant] about the possible employment conditions of the Player, on behalf of [the Respondent].

This document does not authorize Mr. X to sign any kind of agreement on behalf of [the Respondent].

In order to be entitled to an intermediary fee, a separate intermediary agreement must be signed between the Intermediary and the Club. This instrument and services of the intermediaries in accordance with this instrument will not give the right to the intermediaries to claim fee or expenses from [the Respondent].

The final conditions of the employment are subjected to the approval of the Executive Board of [the Respondent]."

3. On 20 June 2021, the player via his agent allegedly received a non-official offer from the Club. It is to be noted that no copy of such offer was provided in these proceedings.
4. On 21 June 2021, the club sent the player an "official proposal for employment conditions" (hereinafter: *the offer*), as follows:

"We are contacting [the Claimant] to provide [the Respondent] proposal for the possible conditions for [the Claimant's] employment.

If the Parties agree on the conditions thereof, [the Respondent] would like to conclude an employment contract valid for the following season, i.e., up until 31.05.2023.

The non-binding proposal for the conditions of a possible employment are as follows:

2021/2022 Season:

The Player shall be paid the total basic salary amount of 350.000.-Euro net for the 2021/2022 season, to be paid in ten equal instalments.

In case the Club actually competes in UEFA Champions' League group stages at the end of the 2021/2022 season, the player will be entitled to receive an extra bonus payment in the amount of 50.000.-Euro, subject to the condition that the Player is included in the match roster in at least half of the official league matches played during the 2021/2022 season.

In case the Club actually competes in UEFA Europa League group stages at the end of the 2021/2022 season, the player will be entitled to receive an extra bonus payment in the amount of 35.000.-Euro, subject to the condition that the Player is included in the match roster in at least half of the official league matches played during the 2021/2022 season.

2022/2023 Season:

The Player shall be paid the total basic salary amount of 350.000.-Euro net for the 2022/2023 season, to be paid in ten equal instalments.

In case the Club actually competes in UEFA Champions' League group stages at the end of the 2022/2023 season, the player will be entitled to receive an extra bonus payment in the amount of 50.000.-Euro, subject to the condition that the Player is included in the match roster in at least half of the official league matches played during the 2022/2023 season.

In case the Club actually competes in UEFA Europa League group stages at the end of the 2021/2022 season, the player will be entitled to receive an extra bonus payment in the amount of 35.000.-Euro, subject to the condition that the Player is included in the match roster in at least half of the official league matches played during the 2023/2023 season.

Please note that the proposal stipulated above is a non-binding offer at this stage and the final conditions must be negotiated and approved by the Executive Board of B.

In any case, the conditions mentioned above are subject to the fulfilment of a successful medical check of the Player and the conclusion of an employment contract.
The essential conditions highlighted above might be drafted upon your counter proposals" (Emphasis in the original).

5. It is to be noted that the specimen of the offer available on file is only signed by the club and does not contain any designated space for the player's signature or expression of acceptance.
6. Following the reception of the offer, the parties allegedly held a conference call in which the club allegedly requested the player to not accept any other offer.

7. On 29 June 2021, the player received an electronic visa for Country B valid for 30 days as from 30 June 2021.
8. On 30 June 2021, the Player allegedly received a non-signed contract (hereinafter: **the contract**) from the club via the player's agent, valid from 10 July 2021 until 31 May 2023.
9. In accordance with the contract, the club allegedly undertook to pay the player the following amounts:
 - Guarantee payment of EUR 350,000: payable in 10 monthly instalments of EUR 35,000 from 25 August 2021 to 25 May 2022.
 - Guarantee payment of EUR 350,000: payable in 10 monthly instalments of EUR 35,000 from 25 August 2022 to 25 May 2023.
 - Housing allowance of Currency Country B 3,000.
 - Personal car for the player
10. On 4 July 2022, the player allegedly received a flight ticket reservation to travel to Country B.
11. On 17 July 2021, via the WhatsApp communication, the Club's agent allegedly informed the player's agent the following, *inter alia*:

*"Tell [the Claimant] he will sign with B
Trust me
He will sign
And he will be happy bro".*
12. On 29 July 2021, the player sent the signed contract to the club.
13. In accordance with the information available in the Transfer Matching System (TMS), the Country B 2021/2022 season started on 1 July 2021 and ended on 30 June 2022.
14. Between 11 and 12 July 2022, three different media outlets published articles indicating that the player would join the club.
15. On 20 December 2021, the player signed an employment contract with the Country C club C (hereinafter: *the new club*) valid as from 1st January 2022 until 30 June 2023, including a total salary of EUR 117,000.
16. On 6 September 2022, the player and the new club terminated the contract, and contextually the player received an indemnity of EUR 50,000.

II. Proceedings before FIFA

17. On 28 February 2023, 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

18. The player claimed having concluded with the club a valid employment contract and that following that its conclusion, the contract was not executed by the club.

19. The player argued that during the negotiations with the club, he received other offers from other clubs, however, he did not accept them relaying on the negotiations with the club. The player provided different offers received from different clubs in support of the above as evidence.

20. The Player also mentioned the following: *"Je suis resté sans nouvelle du club jusqu'à ce que je décide de signer mon contrat le 29/07/21 et l'envoyer au club B sur leur e-mail (...).*

Freely translated to English:

"[the Claimant] had no news from the club until [the Claimant] decided to sign [the Claimant's] contract on 29/07/21 and send it to [the Respondent] on their e-mail."

21. The player claimed the full amount of the contract EUR 700,000 for loss of opportunities plus 5% interest.

b. Position of the Respondent

22. In its reply, the Respondent requested FIFA to dismiss the claim.

23. According to the Respondent, the facts provided by the player are ambiguous and did not constitute any evidence as to the formation of a contract.

24. The Club stated that there are 2 documents, the mandate dated 10 June 2021 and the offer dated 21 June 2021 and considered that there is not a contract between the parties. Additionally, the club referred to the wording of the mandate that mentions that the Club's agent does not have any authority to abide the club and that the executive board has the power to stipulate the contract of the player.

25. As to the offer, the club mentioned that it is a non-binding proposal and is subject to conditions.

26. Finally, the club argued the following:

"The Club never had extended an offer which was binding. It is very clear that it is non-binding. On the other hand, the Player neither did accept the offer nor performed a

medical check. There is not an agreement executed by the board of Club which is why the contract shared by the Player does not bear the signature of the Club. We believe the Player executed the contract before filing the claim with FIFA.

The alleged whatsapp correspondence, visa, or any other contracts or proposal attached to the application are irrelevant and do not constitute any evidence to formation of a contract with the Club. There is no invitation by the Club for the visa either, and it is clear that the Player had different options on table to discuss with D, and it may be the case that he did have meetings with other clubs during his travel to Country B".

c. Rejoinder of the Claimant

27. The Claimant stated that all *essentialia negotii* are included in the contract which was provided by the club. Additionally, the arrival of the Player was indicated on the Instagram of the club which was then available in the media.
28. The Claimant considered that the contract sent was liable to the parties and the non-execution is a fault from which the Club must compensate.
29. The request for relief remained the same.

d. Final comments of the Respondent

30. The Respondent argued that some documents provided by the Claimant should not be taken into account as those documents were sent after the parties were not allowed to send further documentation.
31. The arguments of the Respondent remained unchanged. In particular, the club concluded the following:

"There is no contract executed by the Club.

-There is no medical check of the player.

-There is no ticket purchased for the player to come and speak with the Club.

-There is no mandate given to anybody including [the Club's agent] to bind the Club.

-There is no visa invitation for the Player.

On the contrary, it is clear that:

-There was a non-binding proposal

-There is no final contract approved by the Executive Board of [the Respondent].

-The Player did not have an intention to execute a contract with the Club, therefore did not attend a medical check."

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

32. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 28 February 2023 and submitted for decision on 7 July 2023. Taking into account the wording of art. 34 of the March 2023 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.
33. Subsequently, the members of the Chamber 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 par. lit. b) of the Regulations on the Status and Transfer of Players (May 2023 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Country A and a club from Country B.
34. 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 (May 2023 edition), and considering that the present claim was lodged on 28 February 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
35. For sake of clarity, the Chamber remarked that the Respondent argued that some documents provided by the Claimant were sent after the deadlines established by FIFA general secretariat. However, the Chamber noted that said documents were sent by the Claimant within the stipulated timeframe. Thus, the Chamber rejected the Respondent's objection on this point.

b. Burden of proof

36. 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 TMS.

c. Merits of the dispute

37. The 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

38. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that this is a claim of a player against a club for alleged non-execution (or performance) of a contract by the club.
39. In brief, the player claimed that he had a valid and binding contract with the club, consisting of the offer sent by the club on 21 June 2021 and subsequently the contract sent on 30 June 2021 and accepted by him on 29 July 2021. The Club for its part deemed that there was not a binding offer extended to the player. The Club further added that *“the alleged whatsapp correspondence, visa, or any other contracts or proposal attached to the application are irrelevant and do not constitute any evidence to formation of a contract with the Club”*.
40. Subsequently, the DRC confirmed that the main issue in the present claim is to determine whether the offer and the contract can be considered as a valid and binding employment contract. In doing so, the Chamber started by recalling its well-established jurisprudence which dictates that, in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee (or the corresponding proof of consent of both parties), it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration payable by the employer to the employee.
41. From the arguments of the parties and the documentation on file, the Chamber was able to establish that:
- Various elements argued by the Player cannot be corroborated, such as who sent the contract to the player, who issued the proposal of the ticket flight –there is only a document with proposed flights, but it cannot be established the sender-, the communications with the club regarding the WhatsApp/calls communications.
 - According to the mandate on behalf of the club, the Club’s agent could not conclude any contract, prior the consent of the club.
 - The offer sent by the club was not a binding contract considering that (i) it was an unilateral offer; (ii) the offer does not contain any designated space for the player’s signature or expression of acceptance; and (iii) the clear wording of the offer stipulated as follows: *“Please note that the proposal stipulated above is a non-binding offer at this stage and the final conditions must be negotiated and approved by the Executive Board of [the Respondent]”*.

- The contract that the player has in its possession was not signed by the club, and it is not possible to determine the communications handled between the parties regarding this contract. There is no evidence that the club directly sent this contract to the player. Additionally, the Club does not recognize this document.
 - Even if it was a binding contract, the player only accepted the conditions of the contract a month later of the issuance and 20 days after the contract would have started.
 - There are media reports indicating that the player would join the club, however it cannot be established that this information was provided by the club. The Chamber did not identify any Instagram post of the club regarding this information.
 - As to the visa, it cannot be established who sent or requested this visa. The club challenged this point, and the Player has not provided additional evidence, failing to meet his burden of proof.
42. Considering the above, the Chamber concluded that (i) the offer was not meant to be a bilateral document (i.e., an employment contract), but solely a unilateral offer to the player; (ii) the Player did not provide any evidence capable of demonstrating that the conditions of the offer were met; (iii) the sender of the contract and whether this was sent by the Club representatives; and (iv) in the event the contract was directly sent by the club, the contract was only accepted 20 after it would have started.
43. On the basis of the foregoing, the Chamber concluded that the player could not meet his burden of proof to demonstrate that an employment relationship was ever initiated with the club and therefore his claim lacked any contractual basis whatsoever. Accordingly, the Chamber found that the claim must be entirely rejected.

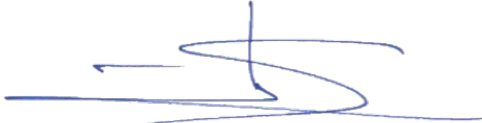
d. Costs

44. 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.
45. Likewise, and for the sake of completeness, 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.
46. Lastly, the DRC 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, A, is rejected.
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 Governing the Football Tribunal).

CONTACT INFORMATION

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