

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning
the player Zaid Jamal Ahmad Abu Abed

BY:

Frans DE WEGER (The Netherlands), Chairperson

Khadija TIMERA (Senegal), member

André DOS SANTOS MEGALE (Brazil), member

CLAIMANT:

Zaid Jamal Ahmad Abu Abed, Jordan

Represented by Mr Hamouda Bouazza

RESPONDENT:

Erbil Sports Club, Iraq

I. Facts of the case

1. The parties concluded an employment contract valid as from 1 January 2023 until 1 July 2023.
2. According to art. 1 of the contract, the player was entitled to a total remuneration of USD 39,000, payable as follows:
 - USD 10,000 upon signature;
 - USD 29,000 in 6 equal instalments of USD 4,833 each.
3. According to art. 5 of the contract, the player was entitled to "two-way air tickets on economy class to his country for one time for him".
4. Following art. 11 of the contract, the player was "*subject to Iraqi laws*" and bound to "*respect Customs and traditions and the club Board members and Fans with full Sportsmanship.*"
5. Art. 15 of the contract stipulated the following:
"The Second party is not allowed to leave the country without a written permission from the Erbil Club."
6. On 1 April 2023, the player sent a default notice to the player, requesting the outstanding amount of USD 9,666, corresponding to his salaries of February and March 2023, and granted 15 days to remedy the default, in accordance with art. 14 bis of the RSTP.
7. On 17 April 2023 at 08:43, the player sent a termination letter and referred to his previous default notice.
8. On 8 June 2023, the player informed FIFA that he remained unemployed.

II. Proceedings before FIFA

1. On 5 May 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and breach of contract without just cause and requested the payment of the following amounts:
 - USD 9,666 as outstanding remuneration for his salaries of February and March 2023, plus 5% interest p.a. as from the due dates.
 - USD 19,332 as compensation, plus 5% interest p.a. as from 17 April 2023;
 - USD 168.70 as air tickets for the journey Erbil-Jordan, in accordance with art. 5 of the contract. In this respect, the player provided a copy of an air ticket for the journey Erbil – Amman on 17 April 2023 (departure at 04:00).
2. In its reply, the club argued that the player *“violated the laws of the Iraqi state, and among these laws is the prohibition of smoking in public places”*.
3. As a result, the club stated that it fined the player with USD 5,900.
4. The club attached two “administrative orders” with the penalty, as well as video of the player smoking in a restaurant.
5. The club further highlighted that the player left Iraq on 17 April 2023, whereas the termination was made a day after.
6. The club accused the player of having *“missed a large number of official matches in the Iraqi Football League because of his lack of commitment”*.
7. In his replica, the Claimant insisted that he respected his contractual commitments and that, in any case, the club did not meet its burden of proof.
8. The player denied having been informed about any official disciplinary procedure.
9. The player explained that he only left Iraq after notifying the termination of the contract.
10. In its *duplica*, the Respondent insisted in its previous arguments, noting that the player *“continues to smoke in public places despite warning him more than once”*.
11. The club referred to the following video: <https://www.youtube.com/shorts/CdLLIVFyATU>
12. The club argued that the player violated art. 15 of the contract.

III. 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 *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 5 May 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.
2. 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 lit. b) of the Regulations on the Status and Transfer of Players (March 2022 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 Jordan and a club from Iraq.
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 (March 2023 edition), and considering that the present claim was lodged on 5 May 2023, the March 2023 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. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties concluded a contract valid as from 1 January 2023 until 1 July 2023 and that, on 17 April 2023 at 08:43, the player unilaterally terminated the contract after having served a default on 1 April 2023 by means of which he requested the payment of his salaries of February and March 2023.
7. In this context, the Chamber acknowledged that its task was to determine whether the unilateral termination of the contract was with or without just cause.
8. In this regard, the Chamber noted that the player terminated the contract for two outstanding salaries with reference to art. 14 bis of the Regulations. In particular, the Chamber noted that the player granted a 15-days deadline before terminating the contract, since the default notice was sent on 1 April 2023 and the termination letter on 17 April 2023.
9. As to the outstanding amounts, the Chamber took note that the club argued that it withheld part of the player's remuneration, as it imposed a fine of USD 5,900 for the player as he was smoking in public places.
10. In relation to said fine, the Chamber wished to recall that, based on the jurisprudence of the Football Tribunal, a club should not offset a player's salary with the imposition of fines. Moreover, the Chamber further noted that the amount of the fine is clearly disproportional and lacks any legal or contractual basis.
11. Additionally, the Chamber thoroughly examined the available information and found no evidence to suggest that the player was involved in any disciplinary proceedings or that his procedural rights were properly respected. Therefore, the Chamber decided that said fines should be disregarded.
12. The Chamber acknowledged the club's argument that the player terminated his contract shortly after leaving Iraq, and this fact appears to be supported by the evidence on file. However, it is essential to note that, at the time of termination (17 April 2023), the 15-day deadline granted on 1 April 2023 had already expired, and the club did not respond to the default notice nor attempted to settle the outstanding amount before the deadline's expiration. The Chamber concurred that the club had seriously neglected its financial contractual obligations towards the player.

13. Therefore, the Chamber determined that the unilateral termination of the contract was with just cause and the player is entitled to compensation, in addition to his outstanding dues.

ii. Consequences

14. Having stated the above, the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
15. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to his salaries of February and March 2023, amounting to USD 9,666 (i.e. 4,833*2).
16. 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. USD 9,666.
17. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the due dates until the date of effective payment.
18. The Chamber also decided to award the player with the amount USD 168.70 for air tickets pertaining to journey from Erbil to Jordan. The Chamber based this request on the grounds of the evidence presented and remained in strict accordance with the provisions outlined in the contract.
19. 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.
20. In application of the relevant provision, the Chamber 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 Chamber

established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

21. As a consequence, the members of the Chamber 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 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.
22. 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 from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of USD 14,499 (i.e. the 3*4,8333, corresponding to the salaries from April 2023 until 30 June 2023) serves as the basis for the determination of the amount of compensation for breach of contract.
23. In continuation, the Chamber 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.
24. In this respect, the Chamber noted that the player declared, on 8 June 2023, that he remained unemployed.
25. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of USD 14,499 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
26. 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 termination of the contract until the date of effective payment.

iii. Compliance with monetary decisions

27. 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.

28. In this regard, the DRC 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.
29. Therefore, bearing in mind the above, the DRC 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.
30. 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.
31. The DRC 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

32. 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.
33. 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.
34. 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, Zaid Jamal Ahmad Abu Abed, is partially accepted.
2. The Respondent, Erbil Sports Club, must pay to the Claimant the following amounts:
 - **USD 9,666 as outstanding remuneration** plus interest *p.a.* as follows:
 - 5% interest *p.a.* over the amount USD 4,833 of as from 1 March 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount USD 4,833 of as from 1 April 2023 until the date of effective payment;
 - **USD 168.70 as reimbursement for air tickets.**
 - **USD 14,499 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 17 April 2023 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 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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