

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning
the player Chijioke Nnamdi Akuneto

BY:

Frans de Weger (the Netherlands), Chairperson
Khadija Timera (Senegal), member
André dos Santos Megale (Brazil), member

CLAIMANT:

Chijioke Nnamdi Akuneto, Nigeria
Represented by Mr Johnny Precious

RESPONDENT:

Club Sportif Sfaxien, Tunisia

I. Facts of the case

1. On 21 September 2022, the Nigerian player Chijioke Nnamdi Akuneto (hereinafter: *Claimant* or *player*) and the Tunisian club CS Sfaxien (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *the Contract*) valid as from the date of signature until the end of the season 2024/2025.
2. According to art. 6 of the Contract, the Respondent undertook to pay the Claimant the following remuneration:
 - USD 6,000 net per month for the season 2022/2023 (July 2022 – June 2023);
 - USD 7,000 net per month for the season 2023/2024 (July 2023 – June 2024);
 - USD 8,000 net per month for the season 2024/2025 (July 2024 – June 2025).
3. Furthermore, in accordance with the same provision, the following performance-based bonuses were stipulated:
 - Season 2022/2023: performance bonus of up to USD 100,000 net, in direct proportion to how many matches the Claimant participated in (e.g. if he participated in 80% of matches, USD 80,000 net shall be the bonus).
 - Season 2023/2024: performance bonus of up to USD 110,000 net, in direct proportion to how many matches the Claimant participated in (e.g. if he participated in 80% of matches, USD 80,000 net shall be the bonus).
 - Season 2024/2025: performance bonus of up to USD 120,000 net, in direct proportion to how many matches the Claimant participated in (e.g. if he participated in 80% of matches, USD 80,000 net shall be the bonus).
 - Goalscoring bonus each season of USD 20,000 net for scoring at least 20 goals.
4. At an unclear date, the Respondent had a registration ban imposed against it.
5. On 5 October 2022, the Respondent made a payment of USD 1,000 in TND, in cash, and separately provided a cheque for TND 30,000 (corresponding to USD 9,000) which the Claimant refused to cash. The Claimant specified having received said payment in cash and refused to accept the cheque as he did not have a bank account in Tunisia where he could redeem it.
6. On 24 October 2022, the Claimant's legal representative contacted the Respondent, outlining that the Respondent had signed the Contract with the Claimant in bad faith, as it was subject to a transfer ban and unable to register the Claimant, and that the Respondent equally failed to comply with the financial terms of the Contract and to purchase a flight ticket for the Claimant to travel to Nigeria.

7. On the same day, the Respondent, via its secretary general (phone number matching TMS entry), replied, stating that the Claimant *"has received the amount equivalent to his signature bonus on 5 October 2022 by payment in cash and back check"*. Furthermore, the Respondent specified that it has *"undertaken the necessary procedures to obtain the player's technical license and work permit"* and that *"pending this approval, the club will pay the player's salary for the month of October by bank transfer to the account of the player's brother"*. The Respondent continued that the Claimant should *"please refrain from undertaking future collaboration based on this kind of misplaced threats, insofar as [it] fully respect [its] commitments and in a framework of good faith."*
8. On 24 November 2022, the parties allegedly signed a mutual termination agreement (hereinafter: the Termination Agreement), in accordance with which the Contract was mutually departed from and the parties declared not having any further obligation to claim from each other.
9. On 3 December 2022, the Claimant went to Nigeria during the World Cup 2022 / winter break.
10. On 5 December 2022, the Claimant put the Respondent in default of payment of the salaries between September 2022 and November 2022, granting the latter a deadline of 15 days to remedy the alleged breach.
11. On 29 December 2022, the Claimant unilaterally terminated the Contract.
12. On 2 January 2023, the Respondent indicated to the Claimant in a correspondence that the Contract never took legal effect, as it was not approved by the "sports authorities", and that he was still registered with another club in Nigeria at the time the Contract was signed.
13. On 7 March 2023, the Claimant signed a new employment contract (hereinafter: *the New Contract*) with Nigerian club Enyimba FC (hereinafter: *the New Club*), valid until the date of signature until 6 June 2023.
14. In accordance with the New Contract, the Claimant was entitled to receive a monthly salary of NGN 600,000.

II. Proceedings before FIFA

1. On 13 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

2. In his claim, the Claimant argued that the Respondent failed to pay several salaries as from September 2022, despite having been put in default and granted a 15-day deadline. Furthermore, the Claimant outlined not having been registered, and consequently misled, as he signed the Contract when the Respondent, unbeknownst to him, was subject to a registration ban by FIFA. Therefore, in any event, the Claimant argued that he had just cause to terminate the Contract on 29 December 2022.
3. The Claimant equally outlined that the fact that he was registered on TMS with a Nigerian club bore no impact on the duty to respect the terms of the Contract, given that said TMS entry was based on his previously expired contract, and in reality he was a free agent when the Contract was signed.
4. The Claimant also argued in any event that the validity of the Contract cannot be made subject to additional documentation or a work permit, in accordance with longstanding FIFA jurisprudence.
5. The Claimant requested a total compensation of USD 605,000, corresponding to the entire value of the Contract (including guaranteed salaries and conditional bonuses), minus USD 1,000 which was already received in cash, as well as USD 10,000 legal fees.
6. Lastly, the Claimant requested interest of 5% *p.a.*

b. Position of the Respondent

7. In its reply, the Respondent acknowledged having signed the Contract while under the imposition of a registration ban, but argued that the Claimant was aware of this, as it was information in the public domain, and that he should have been patient until January 2023, when he could be registered and the Contract “homologated” with the FA.
8. Furthermore, the Respondent purported that the Claimant agreed to delay the beginning of the Contract until January 2023.
9. The Respondent further argued that all outstanding salaries until the signature were remitted with the payment of TND 33,000, and further stated that it is the Claimant’s responsibility and own decision not to cash the cheque, and that the Respondent had

complied with the contractual obligations providing said cheque, which represented monetary value.

10. Lastly, the Respondent submitted that, in light of the above complications, the Claimant allegedly agreed to mutually depart from the Contract via the Termination Agreement.
11. The Respondent, therefore, in short requested for the claim to be rejected.

c. Replica of the Claimant

12. In his replica, the Claimant outlined that the Respondent had assured him that the registration ban to which it was subject was “related to a contractual dispute with the former committee for unilateral termination of a contract, which has been resolved for months already”. The Claimant thus maintained that the Respondent acted in bad faith when signing the Contract.
13. The Claimant equally pointed to the lack of evidence that he purportedly agreed to delay the beginning of the Contract until January 2023, and stated that there is also no contractual provision indicating this.
14. Moreover, the Claimant outlined that said amount corresponded to the “signature bonus” payable at the beginning of the Contract, thereby not affecting the payment of salaries.
15. The Claimant equally emphasised having informed the Respondent of his expired contract in Nigeria, thereby mitigating any possible confusion caused by his TMS status, and providing evidence of correspondence exchanged with the general secretary of the club in this regard.
16. The Claimant further stressed that he never signed the Termination Agreement, and that the signature on said document is clearly different from the signature contained in other documents which are undisputed.
17. The Claimant also pointed out that any indication that he would have done so is contrary to the reality that he was owed several salaries and that he was authorised by the Respondent to leave for Nigeria during the World Cup break. Furthermore, it is argued, had the Termination Agreement been valid, the Respondent would have replied to the default notice sent on 5 December 2022, two days after his departure, and approximately two weeks after the alleged signature of the Termination Agreement.
18. In conclusion, the Respondent reiterated his request for relief.

d. Duplica of the Respondent

19. In its duplica, the Respondent largely reiterated its previous arguments and emphasised that the Termination Agreement contains the Claimant's authentic signature and should be considered valid and binding.
20. In this regard, the Respondent pointed out that the Termination Agreement was allegedly notarised by an official agent of the municipality of Sfax, and provided a witness statement by an agent who facilitated the transfer of the Claimant to the Respondent, which specified that the Claimant signed the Termination Agreement consensually and was not misled in any way.
21. The Respondent stressed that, due to the above, it was the victim of a scam conducted by the Claimant.

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 13 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.
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 (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 Nigeria and a club from Tunisia.
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 (May 2023 edition), and considering that the present claim was lodged on 13 February 2023, the October 2022 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 strongly dispute the validity of the Contract, as well as the subsequent compliance with certain terms thereunder by the Respondent.
7. In this context, the Chamber acknowledged that it its task was to determine whether the Contract was at all executed, if so, whether the Termination Agreement which was purportedly signed between the parties was valid and binding, and if not, whether the Contract was terminated by the Claimant with or without just cause.
8. The Chamber briefly revisited the arguments of the parties, starting with the Claimant, who argued that he terminated the contract with just cause due to outstanding remuneration and failure of the Respondent to register the Claimant. The Chamber equally took note of the line of argument that the amount of TND 33,000 corresponded to the Claimant's signature bonus, as confirmed by the Respondent in correspondence exchanged with the Claimant. The Chamber also observed the Claimant's assertion that the Respondent signed the Contract in bad faith, knowing that it was affected by a sanction imposed by FIFA and thus unable to register the Claimant. Lastly, the Chamber remarked the allegation that the Termination Agreement is a forgery and that he never signed such document.
9. On the other hand, the Chamber recalled the submission of the Respondent, who purported that the Claimant agreed to delay the beginning of the Contract until January 2023, and that he was aware of the registration ban imposed on the Respondent. Therefore, in the Respondent's opinion, the Contract never became valid. Moreover, the Chamber took note of the Respondent's assertion that it paid the sum of TND 33,000 to the Claimant, representing the salary for October 2022 and November 2022, and that the Claimant's refusal to cash the relevant cheque does not detract from the fact that the obligation of the Respondent was met. Lastly, and in any case, the Respondent argued that the Claimant had agreed to mutually terminate the Contract, and that as a consequence any claim on the basis of the Contract should be rejected.
10. Having established the above, the Chamber referred to the wording of art. 13 par. 5 of the Procedural Rules, according to which a party asserting a certain fact also bears the burden of proving its veracity.
11. Thus, the Chamber moved to consider firstly whether the Contract had at all been executed by the parties. In this respect, it observed that it remained undisputed that both parties signed the Contract, and that the Claimant had travelled to Nigeria to train at the Respondent's facilities.

12. Equally, the Chamber noted that the Respondent acknowledged that it was indeed subject to a registration ban from FIFA, and that, in the end, it only relied on an alleged oral agreement concluded with the Claimant to delay the beginning of the Contract, which was not supported by any corroborating evidence.
13. Based on the above, in particular the fulfilment of the necessary formalities to establish a valid and binding contract, the clear ratification thereof by the parties, as well as the lack of evidence adduced by the Respondent to undermine such position, the Chamber firstly held that the Contract was valid and binding.
14. Subsequently, the Chamber turned to consider the validity of the Termination Agreement.
15. In this respect, the Chamber wished to emphasise the context surrounding the signature – the Claimant had not been paid two monthly salaries, corresponding to the months of October 2022 and November 2022, given that the payment of TND 33,000 had, as visible from the correspondence exchanged between the parties, related to a discretionary signature bonus remitted by the Respondent. In such circumstances, the Chamber considered, the Claimant could not be seen to have earned any consideration from signing a mutual departure from the Contract, and waiving his right to receive salaries for which he has already performed the corresponding obligation.
16. Furthermore, the Chamber noted that there were some inconsistencies, albeit minor, between the Termination Agreement and various other undisputed documents, related to the shape of the letter “A” and the subsequent loops around the signature. The Chamber wished to stress, in this regard, that although the Football Tribunal is not a criminal court which is competent to determine matters such as the potential forgery of documents, its layman assessment regarding the present signature further cemented the previous conclusion about the validity of the Termination Agreement.
17. Lastly, the Chamber acknowledged the allegation that the Termination Agreement was notarised by the municipality of Sfax, as well as the witness statement provided by the alleged intermediary facilitating the transfer of the Claimant to the Respondent. In this respect, the Chamber emphasised that no evidence was adduced to support the allegation that the Termination Agreement had indeed been notarised, and further that the exact role of the intermediary providing the witness statement was unclear; as he had facilitated the transfer itself, and was not the exclusive intermediary of the Claimant, the Chamber deemed that there was a potential conflict of interests of having been engaged by the Respondent, which the latter failed to properly overturn.
18. Therefore, bearing in mind the above, the Chamber held that the Respondent failed to meet the burden of proving that the Termination Agreement was valid and binding, and consequently that the Contract was mutually departed from.

19. Turning to the lawfulness of the contractual termination, the Chamber recalled that the amount of TND 33,000, which was remitted to the Claimant on 5 October 2022, corresponded to the signature bonus. Beyond this, the Chamber remarked that the non-payment of salaries since the signature of the Contract (September 2022, October 2022, November 2022) equally remained undisputed, and that the Claimant put the Respondent in default, granting a deadline of 15 days to remit the outstanding amount. Lastly, the Chamber took note of the uncontested fact that the Respondent failed to register the Claimant, as it was under the imposition of a transfer ban, rendering him unable to play.
20. Taking into account all of the above, the Chamber recalled its longstanding jurisprudence, according to which only a contractual breach of a certain severity or consistency warrants the premature termination of an employment contract. Where more lenient measures are available, these should be readily deployed, as opposed to terminating the employment relationship immediately. Such early termination indeed should only act as an *ultima ratio measure*.
21. In light of the aforementioned assessment, and the Chamber's longstanding jurisprudence, the Chamber concluded that the Claimant indeed terminated the Contract as an *ultima ratio measure*. Therefore, the termination occurred with just cause.
22. The consequences of such unlawful termination are as follows.

ii. Consequences

23. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
24. 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 in excess of three monthly salaries under the contract, amounting to USD 20,000 net, or the following specific instalments:
 - USD 2,000 net, corresponding to the pro-rata salary of September 2022;
 - USD 6,000 net, corresponding to the salary of October 2022;
 - USD 6,000 net, corresponding to the salary of November 2022;
 - USD 6,000 net, corresponding to the salary of December 2022.
25. 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 20,000 net.

26. 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 30 December 2023 until the date of effective payment.
27. 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.
28. 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.
29. 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.
30. 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 216,000 net (i.e. the residual value of the Contract between January 2023 and June 2025) serves as the basis for the determination of the amount of compensation for breach of contract.
31. The Chamber herewith wished to emphasise that only the base salary of USD 6,000 net, USD 7,000 net and USD 8,000 net for the respective seasons of 2022/2023, 2023/2024 and 2024/2025 could be taken into account for the sake of calculating the compensation owed to the Claimant, as the seasonal performance bonuses were conditional on the Claimant's number of matches played, thus not being guaranteed by nature.
32. 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.

33. Indeed, the player found employment with the New Club. In accordance with the pertinent employment contract, the player was entitled to approximately NGN 600,000 per month, or approx. USD 1,300. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of USD 5,200, that is, four times USD 1,300 between March 2023 and June 2023.
34. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason i.e. overdue payables by the club, and therefore decided that the player shall receive additional compensation.
35. In this respect, the DRC decided to award the amount of additional compensation of USD 18,000, i.e. three times the monthly remuneration of the player, limited, however, to the mitigated amount of USD 5,200, so as not to exceed the residual value of the Contract.
36. 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 216,000 net to the player (i.e. USD 216,000 minus USD 5,200 plus USD 18,000, limited to USD 5,200), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
37. 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 30 December 2022 until the date of effective payment.

iii. Compliance with monetary decisions

38. 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.
39. 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.

40. 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.
41. 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.
42. 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.

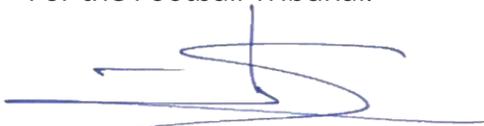
d. Costs

43. 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.
44. 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.
45. 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, Chijioke Nnamdi Akuneto, is partially accepted.
2. The Respondent, Club Sportif Sfaxien, must pay to the Claimant the following amount(s):
 - **USD 20,000 net as outstanding remuneration** plus 5% interest *p.a.* as from 30 December 2022 until the date of effective payment;
 - **USD 216,000 net as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 30 December 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 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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