

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning
the player Mohammed M.M. Balah

COMPOSITION:

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

CLAIMANT:

Mohammed M.M. Balah, Palestine
Represented by 14 Sports Law

RESPONDENT:

El Masry Sporting Club, Egypt
Represented by Sport Makers

I. Facts of the case

1. On 1 October 2021, the Palestinian player, Mohammed M.M. Balah (hereinafter: *the player* or *the Claimant*) and the Egyptian club, El Masry (hereinafter: *the club* or *the Respondent*) concluded an employment contract (hereinafter: *the contract*), valid as from the date of its signature until the end of the sporting season 2024/2025 in Egypt (according to the information available in the Transfer Matching System (TMS), the said season will presumably end on 30 June 2025).
2. In accordance with clause 2 of the contract, the club undertook to pay to the player a total fixed amount of USD 347,500, payable as follows:

For the season 2021/2022: EUR 70,000

- EUR 20,000 on 1 October 2021;
- EUR 50,000 divided in 10 instalments of EUR 5,000 each, payable on the 1st day of the month between 1 November 2021 and 1 August 2022.

For the season 2022/2023: EUR 75,000

- EUR 25,000 on 15 October 2022;
- EUR 50,000 divided in 10 instalments of EUR 5,000 each, payable on the 15th day of the month between 15 November 2022 and 15 August 2023.

For the season 2023/2024: EUR 90,000

- EUR 30,000 on 15 October 2023;
- EUR 60,000 divided in 10 instalments of EUR 6,000 each, payable on the 15th day of the month between 15 November 2023 and 15 August 2024.

For the season 2024/2025: EUR 112,500

- EUR 37,500 on 15 October 2024;
- EUR 75,000,000 divided in 10 instalments of EUR 7,500 each, payable on the 15th day of the month between 15 November 2024 and 15 August 2025.

3. Claus 4.6 of the contract reads as follows: "*The Player should bear the taxes of this contract and other remuneration according to the law, the club shall deduct taxes from the player's dues and transfer them to the taxes under his responsibility*".
4. On 21, 23 and 24 November 2022, the player sent default notices to the club, requesting the latter to – *inter alia* – proceed with the payment of his outstanding salaries. In particular, by means of his letter dated 21 November 2022, the player puts the club in default of payment in the amount of USD 30,000, thereby granting the club a deadline of 15 days to cure its breach.
5. Thereto, the club replied on 24 November 2022, informing the player that all of the player's financial dues had always been paid to him in cash and, therefore, the club requested him to attend the club at any time to receive his outstanding payments in cash as per same procedures for receiving all his previous salaries, as the club could allegedly not process payments in foreign currency. In addition, the club thereby informed the player that he could not integrate the first team, as he was recovering from an injury that prevented him from playing.
6. By means of his letter of 16 January 2023, the player puts the club in default of payment, again; this time in the amount of USD 15,000, corresponding to the salaries payable by 15 November 2022, 15 December 2022 and 15 January 2023, thereby granting the club a deadline of 15 days to cure its breach. In addition, the player urged the club to re-register him for the second half of the 2022/2023 season within the aforementioned deadline, as he was allegedly de-registered due to an injury he suffered.
7. Also on 18 January 2023, the player sent a letter to the club, urging the club to: reintegrate him to the first team, arrange new accommodation for him and cease its abusive behavior which constitutes "*severe infringement of the Employment Contract and blatantly harms his personality rights*". The player, thereby, also informed the club that he would not render his contractual services until the club cured its breaches.
8. On 19 January 2023, the club replied to the player, alleging that the player had duly received all his financial dues and making reference to clause 4.6 of the contract, in accordance with which the player's remuneration as per the contract was gross and that, therefore, the club had to practice the relevant deductions, reason why the club has duly complied with its contractual obligations in connection with the payment of his financial dues.
9. By means of his letter of 2 February 2023 (hereinafter: *the termination letter*), the player unilaterally terminated the contract. In accordance with the termination letter the reasons invoked by the player to terminate the contract were the following: 1.) the non-payment of his last 3 monthly salaries; 2.) the club failing to register him for the second half of the season 2022/2023 upon the player's injury; 3.) the club evicting the player from the hotel

where he was residing; 4.) the club not allowing the player to join the first team; 5.) the club's general lack of interest in the player.

10. On 1 June 2023, the player signed a new contract with the Palestinian Club Al Sadaka (hereinafter: *the new club*), valid from the date of signature until 31 March 2024, whereunder the player was entitled to a total fixed remuneration of USD 10,000.

II. Proceedings before FIFA

a. Position of the Claimant

11. On 2 March 2023, the player lodged a claim against the club before FIFA, requesting to be awarded outstanding remuneration and compensation for breach of contract in the total amount of USD 252,500, plus 5% interest *p.a.* as from the respective due dates, broken down by the Claimant as follows:

Outstanding remuneration: USD 15,000

- USD 15,000 corresponding to the salaries of November 2022, December 2022 and January 2023 in the amount of USD 5,000 each.

Compensation for breach of contract: USD 237,500

- USD 35,000 as residual value of the contract for the season 2022/2023, *i.e.* 7 salaries of USD 5,000 each (salaries payable between February and August 2023);
 - USD 90,000 as residual value of the contract for the season 2023/2024;
 - USD 112,500 as residual value of the contract for the season 2024/2025.
12. In his claim, the player explained that the club was constantly in default of payment concerning his contractual remuneration, despite the numerous default notices sent by the player to the club.
 13. Furthermore, the player explained he was informed by the club's administrator that he shall immediately abandon his hotel room, without being provided an alternative option for accommodation.
 14. Moreover, the player argues that he was firstly informed that he shall train with a small group of players and not with the first team squad, to which he already disagreed and that, when he arrived at the training ground, he was informed that – as per the club's instructions – he must not be provided with any training equipment and he shall not participate in any (sporting/training) activity at all.

15. In this context the player highlighted that the club neither proceeded to the payment of the amounts due, nor reintegrated the player to the roster of the first team, nor re-registered him for the second half of the sporting season 2022/23, nor took any initiative in order to maintain their employment relationship; reasons why he had no alternative but to unilaterally terminate the contract with just cause on 2 February 2023.

b. Position of the Respondent

16. In its reply, the club alleged – *inter alia* – the following:

- That the club did register the player for the 2022/2023 season, as can be corroborated with the communication issued on 19 April 2023 by the Egyptian Football Association (EFA), reason why the allegations of the player in this respect shall be rejected (see exhibit 20 to the reply to the claim – pages 148 and 149 to the reply to the claim).
- That, in accordance with clause 4.6 of the contract, *“it is evident and undisputable that the Parties agreed on all the Player’s financial entitlements to be GROSS, not NET, such that the Player’s dues shall be subject to all applicable taxes due according to the Egyptian laws which the Club shall be liable to deduct from the Player and remit them to the concerned Egyptian governmental bodies”*.
- That, in April 2022, the player got injured and was diagnosed with *“Full Cruciate Ligament Tear injury”*. Therefore, continued the club, *“as any injured player with this harsh injury which require up to 1 year recovery period after the operation to return back for official matches, it was anticipated for him to return fit and cured during the last couple of months of the subsequent season (Season 2022/2023)”*.
- That the club *“committed itself to paying all costs of the Player’s rehabilitation and physiotherapy costs amounting to EGP 30,000, in order to allow the Player to participate in the official matches again with the Club”*.
- That, in December 2022, when the player showed up at the club’s offices, the club paid to the player the amount of USD 25,000 net in cash, which would correspond to the first, second, third and fourth (this one partially) instalments payable during the season 2022/2023, *i.e.* approximately USD 40,000 gross. In this respect, the club argued that the player *“deemed the first instalment to be USD 25,000 NET which is entirely incorrect, he was entirely aware of the fact that all his financial entitlements stated in the Contract are GROSS as stated above in the factual background [...]”*.

- In this regard, the club referred to Tax law no 91 of 2005 and Law 26/2020 of 5 July 2020 amending the Income Tax and explained that, in accordance with the said legal text, the club needed to deduct 25% of the player's gross remuneration.
- In addition, the club referred to Law no 83 of 2020 amending the provisions of Law no 147 of 1984, in accordance with which the club would need to deduct a further percentage of 4.5% of the player's financial entitlements as "*development tax*". In this respect, the Respondent assured that the EFA does not register any player before the payment of the said development tax. In this respect, the club explained that "*as the Club deducted 4.5% from each season at the beginning of the season and the second season it deducted the due development tax from the first payment which is equal to 3,375 USD deducted from first payment of the season*".
- The above being said, the Respondent held that, considering the mandatory observance of both taxes (29.5% in total), by the date of termination, the player should have received the total amount of USD 26,625 net, out of which the club paid to the player USD 25,000 in December 2022; reason why, by the date of termination of the contract, only the amount of USD 1,625 was outstanding.
- Lastly, the club argued that "*the Club already told and assured that the Player many times that he is registered with the Club and will be fielded in due course, and since the Player falsely alleged to be evicted from the hotel despite the Club duly paid him a significant housing allowance of EGP 10,000 on a monthly basis as he acknowledged in his Claim, and since he was never prevented to train with his teammates, and since that anyways the Player travelled directly after requesting some alleged monies despite his full awareness to the fact that (as assured to him on numerous occasions) that no USD payments can be done by bank transfers, the entire situation was entirely ridiculous to the Club that refrained from responding to the Player any further*".

17. In its request for relief, the club requested the following:

- To fully reject the player's claim;
- To rule that if the player has any outstanding payment, it should not exceed USD 1,625
- To rule that the player prematurely terminated the contract without just cause; or
- If the player is deemed to have terminated the contract with just cause, he should not be entitled to any compensation of any kind; or
- Alternatively, should the player be entitled to any compensation, it shall be significantly mitigated with 75% based on all reasons explained above.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

18. 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 2 March 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.
19. 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 Palestine and a club from Egypt.
20. 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 2 March 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

21. 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

22. 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

23. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the following events had remained undisputed between the parties, had been acknowledged by them or had been sufficiently proven with the documentary evidence provided by them within the scope of the present proceedings:

- In April 2022, the player suffered a Full Cruciate Ligament Tear injury;
- The club covered the player's medical expenses upon his injury (at least in an amount equal to EGP 30,000);
- The club paid the player's remuneration for the season 2021/2022;
- The club registered the player for the season 2022/2023 (exhibit 20 to the reply to the claim – pages 148 and 149 to the reply to the claim);
- The player puts the club in default of payment for the first time on 21 November 2023;
- The club paid to the player the amount of USD 25,000 in December 2023;
- The player sent default notices to the club, requesting the latter to pay to him his salaries of November 2022, December 2022 and January 2023;
- The club replied, explaining that the amount of USD 25,000 covers the financial entitlements due to the player, as the contract (clause 4.6 thereof) states that the amounts due to the player are gross and not net) and that the club needs to deduct 29.5% as taxes;
- The player unilaterally terminates the contract on 2 February 2023.

24. In this context, the Chamber proceeded with the analysis of the specific issues surrounding the termination of the contract in the case at hand:

Player's registration / non-registration during the 2022/2023 season:

25. In this respect, the Chamber observed that the club has been able to prove that the player was indeed registered with the club during the 2022/2023 season, as demonstrated with the declaration issued by the Egyptian Football Association (EFA) on 19 April 2023. Thus, concluded the Chamber, the player's non-registration cannot serve as a valid argument to support the player's unilateral termination of the contract.

Player's outstanding salaries:

26. In this regard, the Chamber wished to highlight that clause 4.6 of the contract is clear when establishing that the amounts thereunder due are gross. In this respect, the DRC duly noted that the club has provided extracts of the applicable provisions of the relevant legal texts. In this regard, continued the Chamber, although no complete versions of the said laws have been made available, the Chamber – *in casu* – decided that the club has sufficiently met its burden of proof to demonstrate that taxes at the total rate of 29.5% of the player's financial entitlements needed to be deducted. Thus, in this understanding, from the amounts due to the player for the 2022/2023 season until the date of termination of the contract (*i.e.* between October 2022 and January 2023, which amounts to USD 40,000), the club only paid to the player the amount of USD 25,000 in December 2022, as acknowledged by both parties. Thus, although the club would have been entitled to deduct USD 11,800; the club actually deducted USD 15,000, meaning that the amount of USD 3,200 net would still be due to the player as outstanding remuneration (15,000 – 11,800 = 3,200).

The player being evicted from the hotel:

27. In this respect, the Chamber acknowledged that the player provided a video (exhibit 9 to the claim) to support his allegations that he was evicted from a hotel. After an analysis of the said video, the Chamber concluded that it cannot be established that the player was actually evicted from the hotel. In addition, although – from the parties' submissions – it can be inferred that the club undertook to pay to the player housing allowances of EGP 10,000, no contractual provision refers to any obligation of the club to do so nor to provide the player with accommodation. Thus, the Chamber concluded that said allegations cannot serve as a valid argument in support of the player's allegations.

The player being forced to train alone / being deprived from participating in training sessions:

28. In this regard, and similarly to the above, the Chamber observed that the player provided a video (exhibit 10 to the claim), from which it cannot be established whether the player was or not granted access to training sessions or was forced to train alone.
29. In view of all of the above, the Chamber concluded – in a majority decision, as Ms Khadija Timera considered that the player did have just cause to terminate the contract *cf.* art. 14 of the Regulations – that the player, who remained registered with the club during the 2022/2023 season upon his injury, was paid his remuneration (with the exception of an amount of USD 3,200 net), the club covering the relevant medical expenses, terminated the contract without just cause on 2 February 2023, as the termination is an *ultima ratio* measure and the Chamber concluded that, in view of the circumstances in which the Claimant unilaterally terminated the contract, the termination of the contract was not an acceptable last resort.

30. Therefore, the Chamber, in a majority decision, decided that the Claimant terminated the contract without just cause and that, therefore, the Claimant is not entitled to any compensation for breach of contract. However, underscored the Chamber unanimously, as it has been determined that the club still owes the player the amount of USD 3,200 net as outstanding salaries, the said amount needs to be awarded to the player.

ii. Consequences

31. 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. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player amounts to USD 3,200 net.

32. 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 3,200 net.

33. 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 amount of USD 3,200 as from 1 February 2023 (as the said unpaid part integrated the outstanding moneys due to the player by January 2023, i.e. the latest financial due of the player) until the date of effective payment.

iii. Compliance with monetary decisions

34. 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.

35. 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.

36. 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. 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.

37. 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

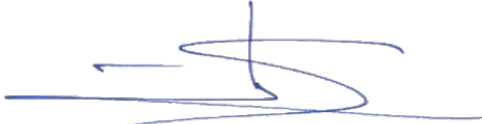
38. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
39. 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.
40. 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, Mohammed M.M. Balah, is partially accepted.
2. The Respondent, El Masry Sporting Club, must pay to the Claimant the following amount:
 - **USD 3,200 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 February 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).

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