

Decision of the Dispute Resolution Chamber

passed on 20 July 2023

regarding an employment-related dispute concerning
the player Miguel Antonio Bianconi Kohl

BY:

Johan VAN GAALEN (South Africa), Single Judge

CLAIMANT:

Miguel Antonio Bianconi Kohl, Brazil

Represented by Filipe Orsolini Pinto de Souza

RESPONDENT:

Club Jorge Wilstermann, Bolivia

I. Facts of the case

1. On 1 July 2022, the Brazilian player Miguel Antonio Bianconi Kohl (hereinafter: the *Claimant*) and the Bolivian club Jorge Wilstermann (hereinafter: the *Respondent*) concluded an employment contract (hereinafter: the *Contract*) to be valid as from said date until 31 May 2023.
2. Pursuant to the Contract and its Annex 1, the Respondent undertook to provide the Claimant, *inter alia*, with the following benefits:
 - a total remuneration of USD 132,000, split into 11 monthly quotes of USD 12,000;
 - a monthly housing allowance of USD 500;
 - a car for the entire duration of the Contract;
 - one yearly round-trip ticket from São Paulo (Brazil) to Cochabamba (Bolivia) to the Claimant and his family
3. Furthermore, clause 9 of the Contract established what follows (Free translation from Spanish):

"NINTH - RESOLUTION OF DISPUTES - In the event of contractual disputes regarding the interpretation, application and validity of this Contract, both parties agree to submit the dispute to the Dispute Resolution Tribunal of the Bolivian Football Federation - FBF (TRD) or to the Dispute Resolution Chamber (CRD) of FIFA when appropriate (...)"
4. On 5 June 2023 the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.
5. According to the Claimant, the Respondent did not comply with its financial obligations under the Contract.
6. In particular, the Claimant stated that the Respondent failed to pay (i) USD 87,500 as salary plus housing allowances during the entire contractual period, (ii) USD 5,200 as reimbursement of the transportation expenses incurred for the relevant car rental and (iii) USD 818 as reimbursement of the return-flight tickets for him and his family.
7. Accordingly, the Claimant requested that the Respondent shall pay the total of USD 93,518 plus 5% interest as from the relevant due dates of each outstanding amount.
8. In its reply, the Respondent first objected to FIFA's competence on the matter. In particular, according to the Respondent, clause 9 of the Contract would expressly reserve the competence of the Dispute Resolution Tribunal of the Bolivian Football Federation (hereinafter: the *DRT of FBF*).

9. In this respect, the Respondent argued that already at the time of the conclusion of the employment contract, the referred tribunal resulted being properly constituted with respect of the principles of fair procedure and independence laid down by the FIFA Circular n. 1010 and FIFA Regulations, hence it should be recognized as the only competent body in the case at stake.
10. As to the merit of the dispute, the Respondent argued that the Claimant did not send any default notice but simply proceeded to lodge the present claim five days after the natural expiration of the Contract, without trying to solve the matter amicably nor leaving the Respondent any room for remedying the alleged default.
11. In this context, the Respondent acknowledged only part of the sums claimed as outstanding by the Claimant, namely the salaries and the housing allowances, while it contested the authenticity of the documents presented by the Claimant as receipts for the car rental and argued that in any case the Contract did not foresee the reimbursement of any expense related to transportation expenses but simply a generic duty to provide the Claimant with a car.
12. Furthermore, the Respondent argued that it shall pay the relevant statutory taxes over all the amounts owed to the Claimant while the latter had accepted to reduce his monthly remuneration to USD 7,000 starting as from April 2022.
13. The requests for relief of the Respondent, accordingly, were the following:
 - I) *“To declare the claim of the player inadmissible on a preliminary basis or;*
 - II) *In a subsidiary manner, to reject the claim because the player did never set the club in default nor it has ever tried to find an amicable solution;*
 - III) *Thirdly, to invite the parties to mediate in order to find an alternative solution; or*
 - IV) *To reduce the amounts to be paid to the claimant by virtue of the application of the relevant statutory taxes and discounts agreed by the parties during the season.”*

II. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *the Single Judge*) analysed whether he 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 June 2023 and submitted for decision on 20 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.
15. Subsequently, the Single Judge 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 Single judge of the Dispute Resolution Chamber is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Brazil and a club from Bolivia.
16. However, the Single Judge took note of the Respondent's objection, according to which, the DRT of FBF shall be recognized as the competent judicial body *in casu*.
17. With the aforementioned consideration in mind, and prior to entering into the analysis of its competence, the Single Judge wished to recall that in accordance with art. 22 lit. b) of the Regulations on the Status and Transfer of Players, without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement.
18. In relation to the above, the Single Judge also deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that another organ can settle an employment-related dispute between a club and a player of an international dimension, is that the competence of the relevant arbitration tribunal, respectively national court, derives from a clear reference in, *inter alia*, the contract at the basis of the dispute.
19. Therefore, while analysing whether he was competent to adjudicate the present matter, the Single Judge considered that he should, first and foremost, analyse whether the contract at the basis of the present dispute actually contained a clear and exclusive jurisdiction clause in favour of the DRT of the FBF.

20. In this context, the Single Judge observed that the Contract signed by the parties, in particular under clause 9, expressly recognizes the competence of FIFA over every potential dispute arising from said contract. Hence, the Single Judge confirmed that the reasoning advanced by the Respondent could not be followed on the basis that the Contract gave to the parties the faculty of opting for FIFA jurisdiction, without any priority, or exclusivity, ascribable to the DRT of the FBF.
21. For the sake of clarity, the Single Judge recalled that FIFA article 22 of the Regulations – in addition to defining the parties that have standing to appear in front of the Football Tribunal - also provides an exhaustive enumeration of the types of disputes FIFA is competent to hear. The Single Judge emphasized that the scope of FIFA jurisdiction is not open to the parties' discretion; it derives from the FIFA Statutes and the Regulations, and not from private agreements between parties such as the Contract at hand. What follows from the above is that a jurisdiction clause in an employment contract giving competence to a particular deciding body (or the Football Tribunal) is not per se binding on the Single Judge of the Dispute Resolution Chamber, for his competence derives not from the contractual arrangements between any given parties but in fact from the Regulations.
22. The foregoing reasoning applied *in casu* confirms that the Single Judge is competent to hear the present dispute insofar as there was no clear and exclusive jurisdiction clause under the Contract setting aside the competence of FIFA in favour of the DRT of the FBF on an exclusive basis. The claim was ruled therefore admissible.
23. Subsequently, the Single Judge 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 05 June 2023, the aforementioned edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

24. The Single Judge 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 Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

25. The competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments, and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

26. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute the quantification of the sums claimed by the Claimant as outstanding.

27. In particular, the Single Judge observed that according to the Respondent, the monies payable to the Claimant should be reduced in consideration of (i) the relevant taxes applicable pursuant to the Bolivian national law as well as (ii) the different contractual provisions which would not allow the Claimant to receive a reimbursement of his transportation allowances (*in casu* the car rental).

28. Moreover, the Single Judge recalled that the Respondent alleged having signed an agreement with the Claimant for the reduction of his monthly salary to the amount of USD 7,000 starting from April 2022.

29. In this context, the Single Judge acknowledged that it its task was to determine which amounts remained outstanding in favour of the Claimant at the end of his employment relationship with the Respondent.

30. In this respect, the Single Judge wished to premise that in case of outstanding remuneration, the lack of default notice by a party cannot jeopardize its right to claim the relevant amounts nor it affects *per se* the admissibility of the claim, hence the related objections presented by the Respondent result moot.

31. Moving to the dispute over the applicable fiscal regime, the Single Judge observed that the Contract does not refer expressly to the gross nature of the amounts payable to the Claimant, nor it indicates any specific percentage deductible from said amounts as taxes.

32. Accordingly, the Single Judge emphasized that the Respondent should have corroborated its opposing argument adequately, *quid non in casu*, hence the objection moved in this respect shall be rejected and the amounts indicated in the Contract shall be intended as net.

33. In continuation, with regard to the salary reduction allegedly accepted by the Claimant, the Single Judge observed that the evidence produced by the Respondent, supposedly indicating said reduction in the amount of USD 7,000 as from April 2022, was not signed by

the Claimant nor there was any mention of said document under the Contract or in its annexe.

34. Accordingly, the Single Judge assessed that the only source of obligations for the parties to the present dispute remains the Contract signed on 1 July 2022.
35. With the above in mind, the Single Judge recalled the objection moved by the Respondent in relation to the reimbursement of the car rental claimed by the Claimant, and considered it in line with the wording of the Contract, namely as the Contract does not foresee any burden on the Respondent for the reimbursement of transportation expenses (such as a car rental), nor it quantifies the relevant expenses to be covered, hence the Claimant's request for relief cannot be accepted *in casu*. Consequently, the Single Judge emphasized that it became moot the question raised by the Respondent concerning the authenticity of the Claimant's signature on the relevant payment receipts.
36. Conversely, the Single Judge noted that it remained uncontested the value of the relevant salaries, housing allowances and reimbursement of flight tickets demanded by the Claimant, which therefore appear due as per the Contract and shall be paid by the Respondent.
37. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts claimed as outstanding under the contract, in total USD 88,318.
38. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge 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 respective due dates until the date of effective payment.

ii. Compliance with monetary decisions

39. Finally, taking into account the applicable Regulations, the Single Judge 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.
40. In this regard, the Single Judge 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.

41. Therefore, bearing in mind the above, the Single Judge 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.
42. 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.
43. The Single Judge 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

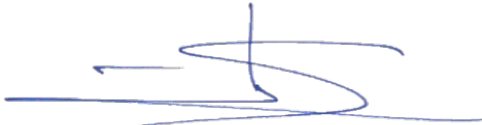
44. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
45. Likewise, and for the sake of completeness, the Single Judge 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 Single Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

III. Decision of the Dispute Resolution Chamber

1. The Football Tribunal has jurisdiction to hear the claim of the claimant, Miguel Antonio Bianconi Kohl.
2. The claim of the Claimant, Miguel Antonio Bianconi Kohl, is partially accepted.
3. The Respondent, Wilstermann, must pay to the Claimant the following amount(s):
 - **USD 500 as outstanding housing allowance** plus 5% interest per annum as from 1 August 2022 until the date of effective payment;
 - **USD 500 as outstanding housing allowance** plus 5% interest per annum as from 1 September 2022 until the date of effective payment;
 - **USD 12,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 October 2022 until the date of effective payment;
 - **USD 12,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 November 2022 until the date of effective payment;
 - **USD 12,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 December 2022 until the date of effective payment;
 - **USD 12,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 January 2023 until the date of effective payment;
 - **USD 5,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 February 2023 until the date of effective payment;
 - **USD 5,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 March 2023 until the date of effective payment;
 - **USD 12,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 April 2022 until the date of effective payment;
 - **USD 12,500 as outstanding remuneration and housing allowance** plus 5% interest per annum as from 1 May 2023 until the date of effective payment;
 - **USD 500 as outstanding housing allowance** plus 5% interest per annum as from 1 June 2023 until the date of effective payment;
 - **USD 818 as flight expenses** plus 5% interest per annum as from 15 November 2022 until the date of effective payment.

4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. 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.
7. 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.
8. 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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