

Decision of the Players' Status Chamber

passed on 18 July 2023

regarding an employment-related dispute concerning
the coach Ladislau Bölöni

BY:

Thulaganyo Gaoshubelwe (South Africa)
Single Judge of the Players' Status Chamber

CLAIMANT:

Ladislau Bölöni, Romania
Represented by SCPA Bertrand Associé

RESPONDENT:

Panathinaikos FC, Greece

I. Facts of the case

1. On 19 October 2020, the Romanian coach Ladislau Bölöni (hereinafter: *Claimant* or *Coach*) and the Greek club Panathinaikos FC (hereinafter: *Club* or *Respondent*) concluded an employment contract (hereinafter: *the Contract*) valid as from the date of signature until 30 June 2022.
2. According to the Contract, the Respondent undertook to pay the Claimant the following remuneration:
 - *Monthly salary of EUR 3,000 gross;*
 - *“Contract bonus” of EUR 360,000 net for the sporting season 2020/2021, payable in eight instalments as follows:*
 - o *EUR 32,000 payable on 30 October 2020;*
 - o *EUR 48,500 payable on 20 November 2020;*
 - o *EUR 41,000 payable on 30 December 2020;*
 - o *EUR 59,000 payable on 15 February 2021;*
 - o *EUR 44,500 payable on 5 March 2021;*
 - o *EUR 52,000 payable on 8 April 2021;*
 - o *EUR 38,000 payable on 12 May 2021;*
 - o *EUR 45,000 payable on 30 June 2021;*
 - *“Contract bonus” of EUR 460,000 net for the sporting season 2021/2022, payable in nine instalments (sic) as follows:*
 - o *EUR 59,500 payable on 28 August 2021;*
 - o *EUR 39,000 payable on 19 September 2021;*
 - o *EUR 49,500 payable on 12 November 2021;*
 - o *EUR 53,000 payable on 15 December 2021;*
 - o *EUR 44,000 payable on 22 January 2022;*
 - o *EUR 57,500 payable on 5 March 2022;*
 - o *EUR 51,000 payable on 8 April 2022;*
 - o *EUR 59,500 payable on 12 May 2022.*
3. Additionally, in accordance with art. 6 of the Contract, the parties agreed as follows:
4. *“In the event the termination of the contract without just cause by PAE PAO or if the HC (i.e. head coach) terminates the contract for just cause attributable to PAE PAO on or before 30 June 2021, the HC will be entitled as a compensation the net amount of 175.000€.”*
5. On 22 October 2020, the parties signed a private agreement (hereinafter: *the Private Agreement*) in accordance with which it was agreed that any dispute arising out of the

Contract would be submitted to the FIFA judicial bodies, and that said provision would *"prevail over the jurisdiction clause agreed in art. 8 of the Agreement"*.

6. On 11 May 2021, the Respondent terminated the Contract unilaterally, acknowledging that such termination occurred "without just cause", and outlining that a compensation of EUR 175,000 was due, per art. 6 of the Contract.
7. On the same day, the Claimant replied to said correspondence, outlining that in addition to said compensation, he is entitled to overdue payables corresponding to the seasonal bonus for the season 2020/2021, as well as the salaries until 30 June 2021.
8. On 12 May 2021, the Respondent addressed the Claimant, stating that beyond the compensation agreed to contractually, no further amounts are due to the Claimant.
9. On 19 May 2021, the Claimant addressed the Respondent once again, reiterating his request from 11 May 2021 and stating that he is entitled to also receive:
 - Gross monthly salary for May 2021;
 - 7th instalment of EUR 38,000 net of the seasonal bonus;
 - Gross monthly salary for June 2021;
 - 8th instalment of EUR 45,000 net of the seasonal bonus;
 - Proof of pension fund membership number;
 - Airplane ticket from Athens to Nice;
 - An official document to justify the payment of all income tax on the remuneration paid to the Claimant.
10. On 24 May 2021, the Respondent paid the Claimant the cost of a return flight ticket, in accordance with the Contract.
11. On 23 September 2021, the Respondent paid the Claimant an amount of EUR 175,000.

II. Proceedings before FIFA

12. On 9 May 2023, the Claimant lodged a claim against the Respondent in front of FIFA and requested outstanding remuneration and compensation on the basis of the allegedly unlawful breach of contract by the Respondent.

a. Position of the Claimant

13. In his claim, the Claimant argued that the compensation clause contained in the Contract should be declared null and void, on account of the fact that the Respondent used it in complete bad faith, acknowledging that there is no just cause and thus undermining the core principle of contractual stability.

14. The Claimant further outlined that the Respondent was in debt of outstanding amounts at the time of termination, namely two instalments of EUR 38,000 net and EUR 45,000 net, which correspond to a “seasonal bonus” for 2020/2021, thus not being strictly bound by their respective due date and being payable in any case. The Claimant equally emphasised that he is entitled to receive the salaries for May 2021 and June 2021 – i.e. until the end of the 2020/2021 season.

15. Furthermore, the Claimant described that the compensation clause is neither reciprocal nor proportionate, and thus should not be applied for the sake of calculating the compensation due to the Claimant.

16. Therefore, the Claimant made the following request for relief:

- EUR 89,000 as outstanding remuneration for the season 2020/2021;
- EUR 596,000 as compensation, corresponding to the residual value of the Contract, from which already EUR 175,000 has been paid, leaving a remainder of EUR 421,000;
- EUR 36,000 additional compensation;
- Interest on all the above amounts as from 11 May 2021 until the date of effective payment
- EUR 7,392 as legal costs;
- Tax certificates for the amounts claimed;
- Proof of the Claimant’s pension fund membership number.

b. Position of the Respondent

17. In its reply, the Respondent relied on the principle of *venire contra factum proprium*, in the sense that he was assisted by an experienced legal counsel in the contractual negotiation, and that he was fully aware of the compensation clause under art. 6 of the Contract and even helped draft its wording. By now claiming its invalidity, the Claimant is acting contrary to his previous course of actions.

18. The Respondent argued that this is even more so the case considering that the Claimant, in his default notice of 11 May 2021, acknowledged the validity of the clause, by stating that the Respondent undertook to pay the amount of compensation agreed therein as well as the remaining outstanding amounts due under the Contract.
19. The Respondent went on to argue that, whilst it did terminate the Contract without just cause, it limited its liability to pay compensation to EUR 175,000, to which the Claimant freely agreed.
20. As to the principles of “proportionality and reasonableness”, the Respondent argued that the clause amounts to “nearly half” of the compensation due for the following sporting season to the Claimant.
21. Concerning the overdue payables claimed by the coach, the Respondent argued that, as the Contract was terminated on 11 May 2021, no amounts falling due thereafter are payable to the Claimant. The Respondent thus rejected the line of argument that it owed the amounts of EUR 38,000, EUR 45,000 and EUR 6,000 in respect of bonuses and monthly salaries.
22. The Respondent also outlined that it had complied with all other payments due under the Contract, having remitted a total amount of EUR 284,564.63, providing proofs of payment of the relevant transfers. The Respondent thus argued that it had no further amounts outstanding to the Claimant.
23. Furthermore, the Respondent requested no additional compensation or legal fees to be ordered.
24. In conclusion, the Respondent requested for the claim to be rejected.

c. Replica of the Claimant

25. In his replica, the Claimant outlined that the fact that he was legally represented cannot be used against him to construe that he waived any rights to compensation on the basis of an unlawful contractual negotiation.
26. As to the compensation clause itself, the Claimant referred to Swiss law to argue that, since the compensation agreed to is lower than the residual value of the Contract, the clause should be declared invalid. The Claimant also pointed out that such conclusion would be in line with FIFA jurisprudence.
27. The Claimant added that acknowledging the existence of the clause under art. 6 of the Contract does not bear as a consequence its acceptance.
28. Lastly, the Claimant pointed out that the proofs of payment of the Respondent were untranslated and thus should not be taken into consideration, and that they, in any case, do

not prove that the payments sought in the current claim were remitted, thus bearing no probative value.

29. The Claimant thus reiterated his request for relief.

d. Duplica of the Respondent

30. In its duplica, the Respondent reiterated that it complied with all obligations towards the Claimant and submitted translations of the previously submitted proofs of payment, for completeness' sake.

31. The Respondent also reiterated that the Claimant, being an experienced individual in contractual negotiations, and being represented during the negotiation of the present Contract demonstrates that he willingly agreed to the clause.

32. The Respondent also pointed out that the lack of reciprocity of the clause does not detract from its validity, and once again emphasised that the parties were willing and autonomous to agree the present clause.

33. The Respondent also stressed that the Claimant had never challenged the validity of the clause until lodging the present claim, and even acknowledged it in previous correspondence. The Respondent thus reiterated the application of *venire contra factum proprium*.

34. Lastly, the Respondent outlined that the Claimant is not entitled to claim outstanding amounts, as these were only payable after the date of termination.

35. In short, the Respondent insisted on the claim to be rejected.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

40. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 9 May 2023 and submitted for decision on 18 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.
41. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (May 2023 edition), the Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Romania and a club from Greece.
42. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he 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 9 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

43. 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

44. His 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, he 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

45. 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 payment of certain financial obligations under the Contract, the validity of the termination clause under art. 6 of the Contract, and consequently the Claimant's entitlement to certain amounts stipulated under the Contract.
46. In this context, the Single Judge acknowledged that it its task was to determine whether or not the Respondent had a valid reason to default on the amounts established as outstanding, whether the clause in question was in line with his jurisprudence, and, consequently, whether the Respondent could be held liable to pay the Claimant any amounts.
47. In this respect, the Single Judge revisited the parties' arguments, starting with the Claimant, who vehemently contested the validity of art. 6 of the Contract, as it purportedly did not conform to the principles of reciprocity and proportionality, and furthermore claiming that there were outstanding amounts under the Contract, irrespective of said provision, to which he was entitled.
48. On the other hand, the Single Judge noted that the Respondent argued that the clause was agreed to by the Claimant with full knowledge of the consequences, and that no amounts other than the contractually stipulated compensation may be presently claimed. The fact that the Contract was terminated without just cause remained uncontested. Lastly, the Respondent echoed that there were no outstanding amounts, as all instalments falling due prior to the date of termination were fully remitted.
49. Having analysed the above, the Single Judge decided to address the parties' points of conflict in turn. To begin with, concerning the claim for outstanding salaries in the amount of EUR 6,000 for the month of May 2021 and June 2021, the Single Judge wished to point out that, as correctly illustrated by the Respondent, these amounts were due after the date of contractual termination. As such, and given that the Claimant had not rendered services in the respective months on account of the contractual relationship being terminated, these amounts never fell due, and consequently could not be presently claimed. The Single Judge, therefore, firstly decided to hold that the claim for these amounts should be turned down.
50. Subsequently, the Single Judge turned his attention to the "contract bonus" payments of EUR 38,000 net and EUR 45,000 net, which were due on 12 May 2021 and 30 June 2021 respectively. In this context, the Single Judge wished to emphasise that, contrary to "salary payments", which were directly dependent on the rendition of services in the corresponding timeframe, the abovementioned bonuses were "seasonal bonuses", per the Contract. In the Single Judge's estimation, this entailed that they were, by their nomenclature and contractual nature, guaranteed, on account of the fact that the Claimant

had begun the season as the coach of the Respondent, and been employed for the majority thereof. Consequently, the Single Judge deemed that the due date of the above amounts did not affect the fact that the Claimant was entitled to them upon the termination of the Contract.

51. Therefore, the Single Judge held that the Claimant, in any event, is entitled to the amount of EUR 83,000 net as outstanding remuneration.
52. Having established the above, the Single Judge proceeded to consider the validity of the compensation clause under art. 6 of the Contract. In this respect, the former deemed it important to point out that the Respondent submitted convincing arguments as well as corroborating evidence that the Claimant was fully aware of the clause which he was agreeing to, and that he even helped in drafting its wording in the final version. The exchange of correspondence during the negotiation phase of the Contract was crucial to this extent, whereby the provision limiting the payable compensation depending on the date of termination was removed from the final version of the Contract.
53. The Single Judge wished to also refer to his own longstanding jurisprudence, as well as the jurisprudence of CAS, according to which the validity of each compensation clause should be determined in accordance with the specific circumstances of each case.
54. In the present context, the Single Judge considered that the circumstances surrounding said clause, during both the drafting stage and after the contractual termination, with the Claimant failing to object to its integration, and only requesting payment of the remaining salaries of that season and not the residual value of the Contract, all point to the clause's conformity with the legitimate expectations of the Claimant, and the parties' contractual autonomy.
55. Furthermore, and in any event, the Single Judge wished to emphasise that the clause was reciprocal, as it applied equally, regardless of whether the Respondent or the Claimant were to terminate the Contract.
56. In light of the above, the Single Judge concluded that the clause under art. 6 of the Contract was valid and binding, as it met the principles of proportionality and reciprocity, and that the Respondent had complied therewith by remitting the amount of EUR 175,000 on 23 September 2021. The request for compensation in the amount of the Contract's residual value was, consequently, rejected.
57. Lastly, the Single Judge wished to address the request for the Claimant's pension fund membership number. In this respect, he wished to point out that there appeared to be no clear contractual provision to this extent. Consequently, said request was equally rejected.

58. In conclusion, the Single Judge decided that, in accordance with the general principle of *pacta sunt servanda*, shall receive an outstanding remuneration of EUR 83,000 net, as well as interest of 5% *p.a.* running from 11 May 2021 until the date of effective payment.

ii. Compliance with monetary decisions

59. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 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.
60. 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.
61. 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. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
62. 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.
63. 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. 8 par. 8 of Annexe 2 of the Regulations.

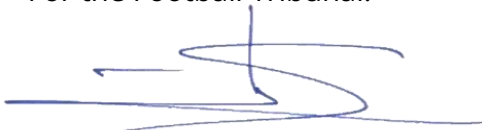
d. Costs

64. 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.
65. 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.
66. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Ladislau Bölöni, is partially accepted.
2. The Respondent, Panathinaikos FC, must pay to the Claimant EUR 83,000 net as outstanding remuneration plus 5% interest *p.a.* as from 11 May 2021 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. 8 of Annexe 2 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. 8 par. 7 and 8 of Annexe 2 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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