

# Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning the player Jose Correia

## COMPOSITION:

**Frans DE WEGER (The Netherlands)**, Chairperson  
**Andre DOS SANTOS MEGALE (Brazil)**, Member  
**Khadija TIMERA (Senegal)**, Member

## CLAIMANT:

**Gangwon Football Club, Republic of Korea**

## RESPONDENT:

**Jose Correia, Portugal**  
Represented by José Miguel Sampaio e Nora

## INTERVENING PARTY:

**Al-Markhiya SC, Qatar**

## I. Facts of the case

1. The relevant parties to this dispute are:
  - a. the club from Republic of Korea, Gangwon Football Club (hereinafter: **the Claimant** or **Gangwon**);
  - b. the Portuguese player, Jose Correia (hereinafter: **the Respondent** or **the player**), popularly known as “Ze Turbo”; and
  - c. the Qatari club, Al-Markhiya SC (hereinafter: **the intervening party** or **Al-Markhiya**).
2. On 2 February 2023, Gangwon and the player concluded a Provisional Contract (hereinafter: **the Contract**), containing *inter alia* the following conditions:
  - Term: from 1 February 2023 until 31 January 2024;
  - Salary: USD 300,000 net;
  - Performance bonuses, flight tickets, car and accommodation allowances;
  - Extension option for another year to be exercised by the parties by 15 December 2023.
3. Furthermore, clauses 6 and 7 of the Contract read as follows, quoted *verbatim*:

### *“6. Validity*

*1. This Contract, in part or whole, shall constitute the basis of the employment contract to be submitted to the K-League and/or the Korea Football Association and shall be conditional upon:*

*- This Contract shall become effective subject to the Player’s successful completion of medical examination performed by the Club. The Player shall be registered successfully with the Club after passing the medical examination to be carried out by the Club.*

*2. It is undertaken by the Parties that the monetary provisions stipulated in this Contract shall be final and irrevocable.*

### *7. Penalty for breach of contract*

*In the case that one party breaches this contract, the other party shall have the right to receive USD 300,000 as a penalty within 30 days after the breach hereof occurs”.*

4. On 3 February 2023, Gangwon received confirmation of the “*Approval for Electronic Travel Authorization*”, valid as from the date of issuance until 1 February 2025.
5. On 6 February 2023, Gangwon signed a leasing for an apartment for the period of 24 months. According to Gangwon, the agreement was concluded on behalf of the player.
6. According to Gangwon, on 9 February 2023, it received the following message from the player’s agent, which was however not corroborated by any evidence:

*“In the process of coordinating the itinerary with the Player, another agent contacted Qatar club, Al-Markhiya SC(hereinafter: Al-Markhiya). Al-Markhiya offered much better conditions to the Player than Gangwon, therefore, the Player is likely to sign with Al Markhiya”.*

7. On 9 February 2023, Gangwon addressed Al-Markhiya a notice by means of which it (i) recalled that existence of the Contract; and (ii) warned it against the consequences of signing a new agreement with the player in light of the FIFA regulations.
8. On 13 February 2023, Gangwon put the player in default. In doing so, it (i) urged the player to avail himself at the club’s premises for medical examinations on 16 February 2023; (ii) provided the player with flight tickets from Doha to Seoul dated 15 February 2023; and (iii) stated that the player’s absence would amount to breach of contract.
9. On 16 February 2023, Gangwon acknowledged that the player failed to board his flight on the previous day. As such, Gangwon requested him to “*confirm the new itinerary*” and the “*new boarding date within a week*” under penalty of proceeding “*with the related legal claim*”.
10. Also on 16 February 2023, Al-Markhiya announced the hiring of the player in its official Instagram account, as well as in its official website.
11. On 8 March 2023, Gangwon issued an invoice against the player for an amount of USD 300,000 in line with clause 7 of the Contract.
12. In parallel and on unspecified date, the player entered into an employment agreement with Al-Markhiya valid as from 7 February 2023 until 30 June 2023. Accordingly, the player would be entitled to the following monies:
  - a. QAR 121,666.66 as salary for February 2023; and
  - b. QAR 152,083.33 as monthly salary from March 2023 until June 2023.

## II. Proceedings before FIFA

13. On 21 March 2023, Gangwon filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Position of Gangwon

14. In his claim, Gangwon explained that it entered into a valid and binding contract with the player, including all the *essentialia negotii*, but which was subsequently breached by the player due to his decision to sign with Al-Markhiya.

15. Consequently, Gangwon requested to be entitled to the following amounts:

- a. USD 300,000 net as penalty for breaching the Contract as provided in its clause 7;
- b. USD 658 net (KRW 861,500) as reimbursement of the air fare paid by Gangwon on behalf of the player due to his failure to board on 15 February 2023.

### b. Position of the player

16. On 5 May 2023, the player filed his reply to the claim of Gangwon.

17. First and foremost, he argued that he was *"the weak part"* of the relationship and was not provided with any explanation regarding the *"legal value"* of the Contract.

18. Furthermore, the player pointed out that pre-contracts are not regulated in the FIFA regulations, therefore *"cannot have any other value than a simple 'Letter of intent'"*. In the player's view, such provisional nature of the Contract was clear for that it provided for the signature of an official employment contract in the future, as well as was conditioned to the result of successful medical examinations. Likewise, the Contract was also not registered.

19. Therefore, the player argued that the Contract lacked legal effect. Alternatively, he stressed that the penalty clause therein included is excessive and should be reduced.

20. The requests for relief of the player were as follows, quoted *verbatim*:

*"A) the claim filed by FC Gangwon is dismissed.*

*B) In case of the FIFA Football Tribunal should consider the document like a typical contract the respondent ask that the penalty be reduced equitably.*

*C) FC Gangwon is ordered to reimburse all the legal and costs incurred in connection with this procedure".*

### **c. Position of Al-Markhiya**

21. On 16 May 2023 and due to the possibility of being deemed jointly liable for the payment of the compensation in accordance with art. 17, par. 4 of the FIFA Regulations on the Status and Transfer of Players (**RSTP**), Al-Markhiya was called as a party to the proceedings and was invited by the FIFA general secretariat to submit its position to the file (*cf.* art. 9 par. 4 of the Procedural Rules Governing the Football Tribunal).
22. Notwithstanding the above, Al-Markhiya failed to submit its position within the deadline granted by the FIFA general secretariat.

## **III. Considerations of the Dispute Resolution Chamber**

### **a. Competence and applicable legal framework**

23. 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 21 March 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.
24. 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 par. 1 lit. b) of the RSTP (May 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Portugal and a club from the Republic of Korea, with the intervention of a Qatari club.
25. 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 RSTP (May 2023 edition), and considering that the present claim was lodged on 21 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**

26. 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**

27. 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**

28. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that it pertains to a claim for breach of contract lodged by Gangwon against the player, with the intervention of Al-Markhiya.

29. In particular, the DRC noted that it remained undisputed between the parties that, following the conclusion of the Contract, the player departed from its execution and decided to pursue a new employment relationship with Al-Markhiya. Nevertheless, the parties dispute: (i) whether such Contract was indeed valid and binding to the parties; (ii) if affirmative, if it was terminated with just cause; and (iii) the consequences that follow.

30. Consequently, the Chamber moved to the analysis of each topic in turn.

#### **A. Was the Contract valid and binding to the parties?**

31. As a departure point, the DRC recalled that the Football Tribunal's well-established jurisprudence dictates that, in order for a contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it shall contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration payable by the employer to the employee, and the signatures. Such analysis is, moreover, irrespective of the title of an agreement (*cf.* Commentary to the Regulations on the Status and Transfer of Players, p. 199).

32. While considering the above *vis-à-vis* the documentation on file, the Chamber was satisfied with the conclusion that all essential elements are indeed included in the Contract. In other words, the document provides for the duration of the employment relationship and the payable remuneration to the player, as well as it relates to the player as being employed as a footballer with Gangwon and contains their proper identification. The Contract is also

signed by both parties, which corroborates that they unequivocally consented to the terms and conditions therein established.

33. In parallel and moreover in line with its long-standing jurisprudence, the DRC highlighted that:
- parties' are responsible for documents they sign, hence the player could not claim that he was not aware of its contents and/or that he did not understand its consequences;
  - there was not any evidence on file suggesting that such document was signed under duress; and
  - the fact that the Contract refers to medical examinations and the subsequent signing of an employment contract does not prevent the Contract from coming into effect – especially because the player did not even avail himself at Gangwon's premises in order to undergo exams, despite being requested to do so. Furthermore, he was provided with the corresponding visa and flight tickets but failed to abide by the directions of the club.
34. In light of the above, the Chamber determined that the parties validly accepted to enter into an employment relationship valid as from 1 February 2023 until 31 January 2024. Put differently: the Contract was indeed valid and binding to the parties.

### **B. Was the Contract terminated with just cause?**

35. It followed from the above, in the Chamber's view, that the parties entered into a valid Contract that was subsequently breached by the player in the beginning of February 2023. Further, the DRC was convinced that such breach (*i.e.*, termination) occurred without just cause, insofar as the player failed to advance any evidence capable of suggesting otherwise.
36. *Contrario sensu*, the documentation on file led the DRC to believe that the player found another (more attractive) employment, and simply decided to depart from his contractual arrangement with Gangwon.
37. Therefore, the Chamber decided that the player terminated the Contract without just cause. Specifically, the DRC deemed that 7 February 2023 should be considered as the date of termination, being that the day when the new employment of the player with Al-Markhiya was set to start.

### **C. What are the consequences that follow?**

38. Having stated the above, the Chamber turned its attention to the question of the consequences of such unjustified breach of contract committed by the player.
39. At this stage, the Chamber firstly observed that Gangwon requested to be awarded a reimbursement of the air commission for the unused flight tickets issued to the player. However, it was the DRC's view that such request lacked contractual and regulatory basis, hence should be rejected.
40. In continuation, it turned to the calculation of the amount of compensation payable by the player to Gangwon 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.
41. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent 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.
42. In this regard, the Chamber took due consideration that the Contract in fact included a compensation clause *i.e.*, clause 7. For ease of reference, the DRC recalled that such provision read as follows, quoted *verbatim*:
- "In the case that one party breaches this contract, the other party shall have the right to receive USD 300,000 as a penalty within 30 days after the breach hereof occurs".*
43. While analysing the abovementioned clause, the Chamber firstly outlined that it fulfills the criteria of reciprocity. Nevertheless, it noted that the player challenged its proportionality, who claimed that the amount of compensation should be reduced.
44. Accordingly, the DRC acknowledged that USD 300,000 corresponded to one monthly salary per the Contract (*i.e.*, 1/12 of the residual value). Consequently, and as opposed to the argumentation of the player, the DRC was firm to determine that such amount was neither unreasonable nor excessive in accordance with the jurisprudence of the Football Tribunal. On the contrary, in the DRC's view, it could even be argued that such amount was far lower than the one due to Gangwon when considering the average between the Contract and the new employment with Al-Markiya (*cf.* art. 17 of the Regulations).



45. Consequently, and bearing in mind (i) the particularities of the case; and (ii) Gangwon's clear position and *petitum*; the Chamber decided that it should be entitled to USD 300,000 as compensation for breach of contract.
46. The DRC also established that Gangwon would in principle be entitled to interest over the awarded compensation. Nevertheless, as such concept was not request, the Chamber was prevented to make any ruling to this extent (*ne ultra petita*).
47. Lastly, in accordance with the unambiguous contents of article 17 paragraph 2 of the Regulations, the Chamber established that Al-Markiya should be jointly and severally liable for the payment of compensation.

## ii. Compliance with monetary decisions

48. 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.
49. In this regard, the DRC highlighted that, against players, the consequence of the failure to pay the relevant amounts in due time shall consist of a restriction on playing in official matches up until the due amounts are paid and for the maximum duration of six months.
50. Therefore, bearing in mind the above, the DRC decided that, in the event that the player does not pay the amounts due to Gangwon within 45 days as from the moment in which Gangwon communicates its relevant bank details, provided that the decision is final and binding, a restriction on playing in official matches, for the maximum duration of six months shall become effective on the player in accordance with article 24 paragraphs 2 and 4 of the Regulations.
51. In parallel, 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.
52. Therefore, bearing in mind the above, the DRC decided that the player and Al-Markiya must pay the full amount due (including all applicable interest) to the respective creditor within 45 days of notification of the decision, failing which, at the request of the respective creditor, 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 both the respondents in accordance with art. 24 par. 2, 4, and 7 of the Regulations.

53. The parties shall make full payment (including all applicable interest) to the bank account provided in the Bank Account Registration Form, which are attached to the present decision.
54. The DRC recalled that the above-mentioned restrictions 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**

55. 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.
56. 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.
57. 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, Gangwon Football Club, is partially accepted.
2. The Respondent, Jose Correia, must pay to the Claimant **USD 300,000 as compensation for breach of contract without just cause.**
3. The Intervening Party, Al-Markhiya SC, is jointly and severally liable for the payment of the aforementioned compensation.
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:

### Against the Respondent:

1. The Respondent shall be restricted on any football-related activity up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months.
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 six months.

### Against the Intervening Party:

1. The Intervening Party 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

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**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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