

Decision of the Players Status Chamber

passed on 3 August 2023

regarding an employment-related dispute concerning
the coach Chiheb Ellili

BY:

Louis Everard (Netherlands), Single Judge of the PSC

CLAIMANT:

Chiheb Ellili, Tunisia
Represented by R&A SPORTS LAW

RESPONDENT:

Alahly Benghazi SC, Libya

I. Facts of the case

1. On 28 July 2022, the Tunisian coach, Chiheb Ellili (hereinafter: *Claimant* or *player*) and the Libyan club, Alahly Benghazi SC (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid as from 23 August 2022 until 23 August 2023.
2. The Claimant was employed as "*head coach of the first team*".
3. According to the contract, the Respondent undertook to pay the Claimant the a total contractual amount of USD 180,000, as follows:
 - USD 54,000 as "*sign-on fee*";
 - USD 12,600 as monthly salary (10x).
4. On 26 December 2022, the club terminated the contract with the coach and hired a new head coach with staff.
5. On 25 January 2023, the Claimant put the Respondent in default and requested payment of USD 48,750, since the termination was "*abusive*".
6. On 17 June 2023, the Claimant put the Respondent in default and requested payment of USD 23,550 as outstanding remuneration and "*compensation in the amount of the residual value*".
7. On 7 January 2023, the coach signed an employment contract with the Algerian club, SSPA Black Eagles, valid as from 7 January 2023 until 7 July 2023, including a monthly salary of EUR 13,000 (approx. USD 14,000).

II. Proceedings before FIFA

8. On 6 July 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

9. In his claim, the coach requested payment of the following monies (USD 103,450):
- USD 10,950 as partial salary for November 2022, plus 5% interest *p.a.* as of 1 December 2022;
 - USD 12,600 as salary for December 2022, plus 5% interest *p.a.* as of 1 January 2023;
 - USD 79,900 as compensation for breach of contract, plus 5% interest *p.a.* as of 26 December 2022;
10. In this context, the Claimant argued that the club terminated the contract on 26 December 2022 without a reason and/or previous warning.
11. On account of the above, the coach held that the club had no just cause to terminate the contract.
12. Further, he maintained that the club remitted the sign-on fee (USD 54,000) and salaries in the total amount of USD 23,550.
13. On account of the above, he requested outstanding remuneration and compensation for breach of contract.

b. Position of the Respondent

14. The Respondent failed to submit its position to the claim.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

15. 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 6 July 2023 and submitted for decision on 3 August 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.
16. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (May 2023), he is competent to deal with the matter at stake, which concerns an employment-related dispute between a club and a coach of an international dimension.
17. 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), and considering that the present claim was lodged on 6 July 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

18. 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 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

19. Its 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 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

20. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the matter concerns a claim of a coach against a club for breach of contract.
21. In this context, the Single Judge acknowledged that his task was to decide if the club had just cause to terminate the contract or not, and on the consequences thereof.
22. The Single Judge noted that the coach held that the club had no just cause since the termination was issued without any reason.
23. The Respondent, for its part, failed to present its response to the claim of the coach, in spite of having been invited to do so. In this way, the Single Judge considered that the Respondent renounced its right of defence and, thus, accepted the allegations of the Claimant.
24. Furthermore, as a consequence of the aforementioned consideration, the Single Judge concurred that in accordance with art. 21 par. 1 of the Procedural Rules it shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
25. Taking into account the above, the Single Judge recalled the Football Tribunal's long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.
26. Taking into account the above and since the termination was issued without a reason and/or previous warning, the Single Judge concluded that the club had no just cause to terminate the contract on 26 December 2023, as a contract termination shall be the *ultima ratio*.

ii. Consequences

27. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.

28. 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 which were outstanding under the contract at the moment of the termination.
29. Taking into account the total contractual value (USD 180,000) and the acknowledged payments (USD 54,000 as sign-on fee and USD 23,550 as salaries), a residual part of USD 102,450 remains.
30. As to the outstanding remuneration, the Single Judge decided to follow the claim and award the coach the partial salary of November 2022 (USD 10,950) as well as the salary for December 2022 (USD 12,600).
31. In addition, taking into consideration the Claimant's request as well as the constant practice of the Football Tribunal 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.
32. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the coach by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 par. 2 of Annexe 2 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 remuneration and other benefits due to the coach under the existing contract and/or the new contract and the time remaining on the existing contract.
33. In application of the relevant provision, the Single Judge held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract.
34. In this regard, the Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
35. As a consequence, the Single Judge determined that the amount of compensation payable by the club to the coach had to be assessed in application of the parameters set out in art. 6 par. 2 of Annexe 2 of the Regulations.
36. Bearing in mind the foregoing as well as the claim of the coach, the Single Judge proceeded with the calculation of the monies payable to the coach under the terms of the contract until its term. Consequently, the Single Judge concluded that the amount of USD 78,900 (i.e. USD 102,450 – USD 10,950 – USD 12,600) serves as the basis for the determination of the amount of compensation for breach of contract.

37. In continuation, the Single Judge verified whether the coach had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Single Judge as well as art. 6 par. 2 lit. b) of Annex 2 of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the coach's general obligation to mitigate his damages.
38. Indeed, the coach found new employment with SSPA Black Eagles. In accordance with the pertinent employment contract, the coach was entitled to approximately USD 14,000 per month. Therefore, the Single Judge concluded that the coach mitigated his damages in the total amount of USD 84,000, that is, 6 times USD 14,000.
39. The Single Judge therefore concluded that the coach fully mitigated his damages and therefore no compensation is payable.

iii. Compliance with monetary decisions

40. 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.
41. 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.
42. 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. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
43. 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.

44. 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. 8 par. 8 of Annexe 2 of the Regulations.

d. Costs

45. 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.
46. 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.
47. Lastly, the Single Judge 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, Chiheb Ellili, is partially accepted.
2. The Respondent, Alahly Benghazi SC, must pay to the Claimant the following amount(s):
 - **USD 10,950 as outstanding remuneration** plus 5% interest *p.a.* as from 1 December 2022 until the date of effective payment;
 - **USD 12,600 as outstanding remuneration** plus 5% interest *p.a.* as from 26 December 2022 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. Pursuant to art. 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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