

# Decision of the Dispute Resolution Chamber

passed on 2 August 2023

regarding an employment-related dispute concerning the player Bruno  
Thiago Gomes de Lima

## COMPOSITION:

**Clifford J. HENDEL (USA & France)**, Deputy Chairperson

**Andre DOS SANTOS MEGALE (Brazil)**, Member

**Stefano SARTORI (Italy)**, Member

## CLAIMANT / COUNTER-RESPONDENT:

**Alzawra Sport Club, Iraq**

## RESPONDENT / COUNTERCLAIMANT:

**Bruno Thiago Gomes de Lima, Brazil**

Represented by Carlos Eduardo Licks Flores

## INTERVENING PARTY:

**Tadamon SC, Kuwait**

## I. Facts of the case

1. On 1 August 2022, the Iraqi club, Club Alzawra Sport Club (hereinafter: *the club* or *the Claimant / Counter-Respondent*) and the Brazilian player, Bruno Thiago Gomes de Lima (hereinafter: *the player* or *the Respondent / Counterclaimant*) concluded an employment contract valid as from the date of signature until 1 August 2023 (hereinafter: *the Contract*).
2. According to clause 1 of the Contract, the club undertook to pay the player USD 85,000, payable as follows:
  - a. 33% upon signature (*i.e.*, USD 28,050);
  - b. 33% in monthly salaries (*i.e.*, USD 28,050 in 12 instalments, amounting to USD 2,337.50 each); and
  - c. 34% at the end of the season (*i.e.*, USD 28,900).
3. On 6 December 2022, the player put the club in default and requested payment of USD 13,600, corresponding to 4 monthly salaries (*i.e.*, USD 3,400 each). The player granted the club a 15 days' deadline to cure the breach.
4. On 14 January 2023, the player suffered a jet-ski accident during his holidays.
5. Also on 14 January 2023, the club sent a letter to the player acknowledging that he was authorized to leave on holidays as from 26 December 2023 until 7 January 2023 but failed to resume his services in continuation. A copy of such letter was also sent to the Iraqi Football Association (IFA).
6. On 21 January 2023, the club sent a second letter to the player, with copy to the IFA and FIFA. Contextually, it pointed out that the player was still absent since 7 January 2023, hence in breach of contract.
7. On 12 February 2023, the club sent a third letter to the player stating *inter alia* as follows:

*"We would like to inform you that we are filing a complaint against the player (BRUNO THIAGO GOMES DE LIMA), passport number is (FW546293), born (1995), we hope to implement all the legal articles related to the natural termination of the contract by one of the parties to the agreement, namely (the player), Adhering to all the rights of our club under the law of transfer and registration of players of the international federation of football association (FIFA)".*
8. According to the club, it made the following payments to the player for the duration of their employment relationship (via cheques):
  - a. USD 28,000 on 20 October 2022;
  - b. USD 6,000 on 22 November 2022; and
  - c. USD 6,000 on 22 December 2022.

9. According to the player, on 12 June 2023, he accepted an offer to join the Kuwaiti club, Tadamon SC (hereinafter: *the intervening party*). The employment relationship would be valid as from 1 August 2023, therefore following the natural expiry of the Contract.

## II. Proceedings before FIFA

10. On 29 March 2023, the club filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Claim of the club

11. In its claim, the club stated the following, quoted *verbatim*:

*“We extend our greetings*

*Based on the contract concluded between our club and the player referred to above (a copy of the contract is attached with the player’s passport and related files).*

*And based on our letters of numbers (11.31) on 14/1/2023 and 21/1/2023 respectively, in which the player was absent from attending to implement the terms of the contract concluded with him, and then he was absent from the team, despite being notified through the approved e-mail (attached with this copy of the complaint), and as a result of this, our club had been seriously harmed by the failure of the player to implement the obligations of the contract, despite our club providing all matters and logistical needs to the player, such as training facilities, sports equipment, accommodation, and tickets by plane, in addition to being included in the ranks of our club team in all lists for matches during this season, before the player stopped attending.*

*This cause great harm to our club on the team’s results, in addition to the financial damage that the club incurred large financial losses.*

*We request your esteemed committee to consider this complaint of ours, and to demand compensation for the losses mentioned in this complain, as the financial value is twice the value of the original contract amount, in addition to returning all the amounts received by the player, according to the contract signed between the two parties, in addition to stopping the player from playing based on the Players Transfer and System Law of the regulations approved by the International Federation of Football Association (FIFA) Article (16) and Article (17).*

*We also enclose the player’s email, in addition to the phone number with other data, noting that our authorized representative in this complaint, Mr. Rafid Hamdan Dagher”.*

12. On 29 March 2023, the FIFA general secretariat acknowledged receipt of the club's submission and requested it to complete its claim by *inter alia* indicating the amount in dispute, as well as a detailed breakdown of the concepts claimed.
13. On 30 March 2023, the club explained *inter alia* the following:
  - "2. *The amount in dispute together with a detailed breakdown (club claims from the player):*
    - a. *Pay the contract amount in full (85.000 USD) eighty-five thousand American dollar.*
    - b. *Refund the amount which we paid to the player 40.000 USD forty thousand American dollar that we paid for the first instalment + monthly instalments (September, October, November and December).*
    - c. *The food allowance that was paid to the player, is equivalent to 1.600 USD one thousand American dollar.*
    - d. *The amount of housing that was paid to the player 2.800 USD two thousand American dollar.*
      - *The total amounts that the club asking in this case from the player is 130.000 USD one hundred thirty thousand American dollar".*

**b. Reply and counterclaim of the player**

14. On 2 May 2023, the player filed his reply to the claim of the club and lodged a counterclaim against it.
15. Initially, the player argued that the club was the party in breach of contract since the beginning of their contractual relationship. In particular, the club had failed to pay him his salaries whereas he has always complied with his obligations.
16. In addition, the player explained that he suffered a serious accident during his holidays and was in coma for several days. In this respect, he highlighted that the accident was reported by sporting news both in Brazil and in Iraq, hence the club was duly aware of his condition. In support of his argumentation, the player submitted copies of medical examinations, posts in the official social media of the club, and news regarding his medical condition.
17. Given the above, the player claimed that the club acted in bad faith by putting him in default and abruptly terminating the Contract due to his medical condition. He furthermore stressed that such termination took place without just cause and shall be compensated by the club.

18. The player requested to be awarded USD 48,000 as compensation for breach of contract, corresponding to residual value of the Contract. He filed no request for interest.

### **c. Reply to counterclaim by the club**

19. The club failed to submit its reply to the counterclaim of the player despite being invited to do so by the FIFA general secretariat.

### **d. Position of the intervening party**

20. 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**), Tadamon SC 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).
21. On 14 July 2023, the intervening party filed its position and stated *inter alia* as follows, quoted *verbatim*:

*"Please be advised that the Brazilian player, Bruno Thiago Gomes De Lima, along with his agent, has notified our club of his desire to play for us and has confirmed that he has already ended his contract with his former club, Alzawra Sport Club.*

*Based on this information, we have sent a draft employment offer to both the player and his agent in order to review the potential terms and conditions for the upcoming season, 2023-2024.*

*Please note that as of yet, we have not signed any employment contract with the player, nor have we received any POLCED and/or release from his former club, Alzawra Sport Club. Please find attached a copy of the draft employment offer".*

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

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

22. 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 29 March 2023 and submitted for decision on 2 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.

23. 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 FIFA RSTP (May 2023 edition), the DRC is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Brazilian player and an Iraqi club, with the intervention of a Kuwaiti club.
24. 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 FIFA RSTP (May 2023 edition) and considering that the present claim was lodged on 29 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**

25. 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**

26. 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**

27. 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 of a club against a player for breach of contract, and a corresponding counterclaim opposing the same parties and with the intervention of Tadamon SC.
28. In particular, the DRC acknowledged that the parties dispute the justice of the termination of the Contract and the consequences that follow. Consequently, the Chamber considered that its task was to determine the following:
  - (i) When and by whom was the Contract terminated?
  - (ii) Was the Contract terminated with just cause?

(iii) What are the consequences that follow?

29. The DRC moved then to the analysis of each topic in turn.

**(i) When and by whom was the Contract terminated?**

30. First and foremost, the Chamber underlined that there is no clear termination notice on file. Nevertheless, the Chamber also noted that on 12 February 2023, the club addressed a letter to the player, IFA and FIFA stating *inter alia* that “we hope to implement all the legal articles related to the natural termination of the contract by one of the parties to the agreement”.
31. Following such letter: (i) the club lodged a claim for breach of contract against the player in front of FIFA; and (ii) both parties departed from the execution of the Contract *i.e.*, no more services were rendered by the player to the club, and no more payments were made by the former to the later.
32. Consequently, the DRC decided that by sending the cited letter to the player on 12 February 2023, the club *de facto* terminated the Contract.

**(ii) Was the Contract terminated with just cause?**

33. In continuation, the Chamber moved to the analysis of the just cause, and recalled its 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 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* measure.
34. With the above in mind, the DRC observed that the club grounded the termination of the Contract on the absence of the player following his holidays.
35. Nevertheless, after having carefully analysed the parties’ submissions, the DRC concurred that the absence of the player for around a month under the exceptional circumstances of the case at hand, *i.e.*, after suffering a severe accident, could not be deemed as a breach of contract, let alone justify its abrupt termination. In this respect, the Chamber found it decisive that the player submitted evidence to demonstrate that the club was fully aware of his medical condition, which remained undisputed as the club failed to submit a reply to the counterclaim.
36. In addition, and in any scenario, the Chamber deemed that the club also failed to meet its burden of proof to demonstrate that the termination took place as an *ultima ratio* measure.

In particular, the Chamber underscored that the club could have (i) opened investigatory / disciplinary proceedings against the player; and (ii) adopted more lenient measures before terminating the Contract (e.g., warning, reprimand, suspension, fine).

37. In absence of any of the above, the Chamber decided that the club terminated the Contract without just cause.

## ii. Consequences

38. 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 club.

39. Initially, by recalling that the termination took place on 12 February 2023, the Chamber considered that the player should already have received (i) the advanced payment amounting to 33% of the Contract; and (ii) his salaries from August 2022 until January 2023, as follows, for a total of USD 42,075:

- 33% of the Contract = USD 28,050; plus
- Salaries from August 2022 until January 2023 à USD 2,337.50 = USD 14,025.

40. In contrast, it remained undisputed that the club paid the player a total of USD 40,000 for the same period.

41. Therefore, the DRC determined that the player should be entitled to the balance of USD 2,075 (i.e., USD 42,075 minus USD 42,000) as outstanding remuneration.

42. The Chamber also added that per its constant practice, the player would also be entitled to default interest over the abovementioned amount as from the due date until the date of payment. However, as the player filed no request for interest, the Chamber was prevented from awarding such concept in line with the general legal principle of *ne ultra petita*.

43. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club 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.

44. In application of the relevant provision, the Chamber 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. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

45. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
46. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the Contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of USD 42,925 serves as the basis for the determination of the amount of compensation for breach of contract.
47. In continuation, the Chamber verified as to whether the player 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 DRC as well as art. 17 par. 1 lit. ii) 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 player's general obligation to mitigate his damages.
48. Indeed, the player did not find any employment for the overlapping period entailing that no mitigation applies. Likewise, the Chamber also referred to art. 17 par. 1 lit. ii) of the Regulations and pointed out that no additional compensation should be granted as a consequence, and also confirmed that the termination was not linked to overdue payables.
49. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of USD 42,925 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
50. Alike for the outstanding remuneration, the DRC remarked that no interest could be granted as it was not requested by the player.
51. In conclusion, the Chamber rejected the claim of the club, and accepted the counterclaim of the player.

### iii. Compliance with monetary decisions

52. 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.
53. 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.
54. Therefore, bearing in mind the above, the DRC decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the player, 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 club in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
55. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form, which is attached to the present decision.
56. 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

57. 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.
58. 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.
59. 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 / Counter-Respondent, Alzawra Sport Club, is rejected.
2. The counterclaim of the Respondent / Counterclaimant, Bruno Thiago Gomes de Lima, is accepted.
3. The Claimant / Counter-Respondent, must pay to the Respondent / Counterclaimant the following amount(s):
  - **USD 2,075 as outstanding remuneration**; and
  - **USD 42,925 as compensation for breach of contract without just cause.**
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 Claimant / Counter-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 Respondent / Counterclaimant** 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

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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**

Fédération Internationale de Football Association  
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland  
[www.fifa.com](http://www.fifa.com) | [legal.fifa.com](http://legal.fifa.com) | [psdfifa@fifa.org](mailto:psdfifa@fifa.org) | T: +41 (0)43 222 7777