

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning the player Renato Kayzer De Souza

COMPOSITION:

Frans de Weger (the Netherlands) , Chairperson
Khadija Timera (Senegal), member
André dos Santos Megale (Brazil), member

CLAIMANT:

Renato Kayzer De Souza, Brazil
Represented by Breno Costa Ramos Tannuri

RESPONDENT:

DAEJEON HANA CITIZEN , Korea Republic
Represented by CCLA Advogados

I. Facts of the case

1. On 30 June 2022, Fortaleza E.C., the Brazilian player Renato Kayzer De Souza (hereinafter *the Claimant or the player*) and the Korean club, Daejeon Hana Citizen (hereinafter *the Respondent or the club*) entered into a loan Agreement for the temporary transfer of the player to the club.

2. Clause 4 of the loan agreement stipulated the following:

4.1. DAEJEON shall take out an occupational accident insurance for the PLAYER, with the PLAYER himself as beneficiary, with an indemnity in the amount of USD 400,000.00 (four hundred thousand American Dollars), as well as an insurance to cover death, disability permanent and personal accidents of the PLAYER, with FORTALEZA as the beneficiary, with an indemnity in the amount of USD 2,000,000.00

4.1.1. If there is no insurance contract that would have the PLAYER as the beneficiary, the responsibility for any accident will fall exclusively on DAEJEON, with which the PLAYER expressly agrees at this time.

3. On 1 July 2022, the player and the club concluded an employment agreement (hereinafter *the contract*) valid as from 1 July until 31 December 2022.
4. According to the contract the club undertook to pay to the player, inter alia, the following remuneration:

"ARTICLE 5 COMPENSATION, ETC

"1. The annual salary shall mean all remuneration paid in connection with the performance of this Contract ("Annual Compensation"). The Annual Compensation to be paid by the Club to the Player during [July,1 2022] to [DEC,31 2022] shall be as follows:

*1 Basic Annual Compensation USD 300,000 (USD 50,000 /Month)
The club will pay to player salary from July to Dec 2022."*

5. Art.10 par.2 of the contract, mentioned the following:

"Upon execution of this Contract, the Club shall purchase an insurance policy against the risk of the Player's injury or death in connection with the performance of this Contract."

6. Additionally, art. 11, par. 1 of the contract provides as follows:

"1. The Player shall immediately notify the Club of any injury or illness related to the Player Activities. The Player and Club shall discuss in good faith whether treatment is necessary, at which medical institution to receive treatment, and what kind of treatment (surgical, non-

surgical, drug, etc.) will be provided. Expenses related to treatment shall be paid in accordance with each of the following Subsections:

- (1) If the Player receives treatment at a hospital designated by the Club, the Club shall pay the full cost of treatment.*
 - (2) If the Player receives treatment at a hospital other than the one designated by the Club, the difference from the treatment expenses in Subsection 1 shall be borne by the Player. In such case, the amount of treatment expenses under Subsection 1 shall be proved by the Club, and the Player may request disclosure of the details of the calculation of treatment expenses."*
7. On 25 October 2022, the player ruptured his achilles' tendon, which required a medical surgery and, subsequently, a lengthy period of recovery.
 8. On 27 October 2022, the player requested from the club *"to undergo the necessary surgery and the subsequent rehabilitation in Brazil."*
 9. On 8 November 2022, the player underwent surgery in Brazil and was scheduled to begin the necessary physiotherapy treatment at the facilities of Club Athletico Paranaense as from 22 November 2022 for about 8 to 10 months.
 10. On 17 November 2022, the player sent a letter to the club, requesting the club to transfer the amount of (Brazilian Real) BRL 69,166.59 corresponding to the medical and travel expenses incurred and a reminder to pay the insurance amount of USD 400,000.
 11. On 5 December 2022, the club acknowledged receipt of the aforesaid notification, indicating that it required time to check the relevant information.
 12. On 6 December 2022, the player, replied to the club's email and requested its best efforts to reimburse the medical expenses already spent as soon as possible.
 13. Subsequently, the club allegedly *"informally contacted the player and addressed to the latter a verbal offer under which it undertook to pay a total amount of USD 200,000, which considered not only the reimburse of the medical expenses already incurred by the player but also sum due as occupational insurance set out int the Loan Agreement."* The aforesaid was rejected by the player.
 14. On 22 December 2022, the club sent an email to player, stipulating the following:

*"Dear Sir
I'm sorry for late reply.
It took a long time to review the mail and attached documents you sent.
I'm concerned about injury of player Renato kayzer. We hope for Kayzer's treatment and recovery and he will return to pitch as soon as possible.*

We have reached the following conclusion regarding the documents you have sent us.

Contents Amount(R\$) Accept amount

Surgery 32,800 accept 32,800

Hospital 26,430 accept 26,430

Flight 6,682 partial accept 4,366

Hotel 3,255 accept 3,255

SUM 69,167 66,851

We are willing to pay for Kayzer's treatment and recovery. However, in the case of flight tickets, We think it's hard to pay for a person named Puppi Gabriel who we don't know.

Therefore, we would like to pay R\$ 66,851 for Kayzer's surgery and treatment by January 2023.

If you accept it, please send us a letter saying that you accept the final amount.

The final amount will be remitted into the player's account.

Should you have any further inquiry, please do not hesitate to contact us.

Thank you"

15. On 28 December 2022, the player sent an email in reply and agreed to the following:

"WITHOUT ANY PREJUDICE WHATSOEVER:

Dear Sir,

Greetings from Brazil!

I revert to your email forwarded to my attention on 22 December 2022 regarding the abovementioned subject.

On behalf of the Player, I herein confirm that the Player accepted the amount you intended to pay as reimburse of the medical expenses already supported, notably, R\$ 66,851. As such, I kindly request you to transfer the referenced amount to the bank account of the Player as soon as possible. Once the referenced transfer is concluded, I kindly request you to forward me copy of the

In addition, the Player informed me that the representatives of the Daejeon F.C. offered to pay him USD 200,000 in lieu of USD 400,000 as insurance policy premium as set out in the loan agreement signed with EC Fortaleza. I am afraid to inform you though that the Player decided to decline the referenced offer. In contrast, the Player is intended to accept a reduction of the referenced total amount. Accordingly, the letter is ready to grant USD 50,000 discount, whether Daejeon F.C. undertakes to pay to the Player USD 350,000 on or before 15 January 2023.

Please, note that the counteroffer herein submitted on behalf of the Player to you attention will expire on 30 January 2022 at 23h59 (BRT).

I look forward to hearing from you regarding the above.

ALL RIGHTS OF THE PLAYER ARE HEREIN RESERVED."

16. On 31 January 2023, the club made payment of the amount of USD 13,148.24 corresponding to BRL 66,851.
17. On 2 February 2023, the player "one more time, drew the best attention of the Club to the contents of Art. 4 par. 1 of the Loan Agreement, whereunder the amount of USD 400,000 was

still outstanding by the Club. The Club, though, neither paid the referenced outstanding amounts nor provided any justification regarding its failure to make such payment, however to no avail"

II. Proceedings before FIFA

18. On 24 February 2023, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the player

19. In his claim, the player argued that art.4 par.1 of the loan agreement determined that the club had an obligation to take out an insurance policy for the player with the latter himself as the beneficiary to cover the risk of occupational injuries.

20. The requests for relief of the player, were the following:

- *To order the club to pay the player the amount of USD 400,000 net, plus default interest at a rate of 5% annually as from 26 October 2022 until the date of effective payment;*
- *To impose (if it is necessary) applicable sanctions on the club (cf. Art. 12bis of the FIFA RSTP)*

b. Position of the club

21. In its reply, the club indicated that *"on 26 October 2022, the club's appointed doctor informed that the prescribed treatment was for the player to undergo surgery immediately. Despite the Club's efforts, the Player requested to return to Brazil for treatment."*

22. On 28 October 2022, the club agreed with the player's Korean agent, *"to pay his salaries for six months in the net amount of USD 250,000 (two hundred and fifty thousand dollars), to authorize the Player to return to Brazil for his treatment and to cover the treatment cost."*

23. Allegedly, on 25 November 2022, the club indicated that it made payment of USD 50,000 to the player.

24. Allegedly, on 23 December 2022, the club indicated that it made payment of USD 100,000 to the player.

25. On 29 December 2022, the *"player's lawyer answered the club's e-mail refusing to comply with the agreement regarding the amount to be paid during the player's recovery, and presented a counteroffer of USD 350,000 (three hundred and fifty thousand dollars). Such an offer was refuted by the Club, since the Player was modifying what was previously agreed between them."*

26. On 31 January 2023, the club allegedly paid USD 13,148,24 to the player to cover the agreed medical and travel expenses.

27. The club further argued that the player had lack of standing to sue based on the loan agreement as he was merely *"a consenting party due to the need for him to demonstrate his acceptance to the transaction negotiated between the clubs."*
28. Accordingly, the club argued that *"it is clear that the player cannot claim compensation based on the loan agreement, since this document does not establish direct rights and obligations between the Club and him."*
29. However, the club further argued that *"even if the Chamber considers that the player was an integral part of the Transfer Agreement and that the contractual provisions established therein obliged the club towards him, this claim must be rejected given the fulfillment of obligations by the Club. This is because, when signing the Employment Agreement, the Player waived any previous understanding and agreements. This stems from the content of clauses 22.2 and 22.3 of this document."*
30. The club additionally mentioned that though art.10 par.2 of the contract, provides the club's obligation to contract a life and accident insurance, *"it did not establish any amount to be covered. Based on that, the Club did contract an insurance as can be seen by the insurance policy presented."*
31. According to the club the player was aware of the said insurance policy, as per a meeting held with his agent on 28 October 2022, which in accordance the following was confirmed:

"MEMORANDUM OF MEETING

Date: 28th October 2022

Subject: Player Renato Kayzer de Souza x Daejeon Verbal Agreement

Considering the current injury situation of the Player and his request to return to Brazil for treatment, the Club met with the Player, on this date, at 20:00PM, with his agent in Korea, to friendly discuss about the costs of treatment and the payment of his remaining salaries.

The Club informed the Player that in case the treatment takes place in Brazil, the Player would not be able to receive the insurance policy reward which the Player was entitled to, as of the terms of the Certificate of Insurance.

Based on the Medical Certificate issued by the Club's medical department doctor, which recommended a total of period of six months of rehabilitation after the operation, the following terms were proposed by the Player, through his agent, to the Club:

The payment of an amount of USD 100,000.00 equivalent to two months of the Player's remainder salary (November and December 2022);

The payment of an amount of USD 150,000.00 equivalent to the net amount of four months of the Player's salary;

The payment of all medical expenses and costs related to the Player's treatment (including flight tickets to Brazil for the Player) by the Club.

After all payments are made by the Club, the Player shall not be entitled to any other amount from the Club.

The Club accepted the terms 1 and 3 above, however, in regard to item number 2, the Club informed the Player that they would need to discuss it internally and afterwards would inform the Player about the acceptance of the proposal by December.

Having nothing more to discuss, the parties left the meeting at 21:30PM."

32. According to the club, at the aforesaid meeting, the player directly presented *"what he thought was the necessary amount to meet his necessities during his recovery period. In other words, by proposing to receive USD 250,000 (two hundred and fifty thousand dollars) plus the reimbursement of his treatment costs the Player created the legitimate expectation at the Club's representative that this amount would be sufficient to settle any damages or claims that the Player could be entitled to."*
33. Furthermore, the club confirmed that it is has been demonstrated that the parties chose to negotiate the amount to be paid by the club.
34. The club further referred to the medical report issued by the club's doctor.
35. In this regard the club referred to article 11.1.2 of the contract which indicate that the club would only be liable to pay the medical expenses in exceed of the costs of treatment in South Korea which were estimated at USD 8,138.68, accordingly the club paid USD 5,009.56 in excess.
36. In conclusion, the club requested that that the player's claim be dismissed.
37. However, in case the Chamber decide that a compensation shall be awarded to the Claimant:
 - (a) *That the compensation shall be equal to USD 100,000*
 - (b) *Alternatively, that the compensation shall be equal to USD 194,990.44*
 - (c) *In any case, that any compensation awarded shall reduce the amount already paid by the Club.*

c. Additional comments of the player

38. The player was requested by FIFA to provide additional comments on the payment documents submitted by the club and in reply thereto, indicated the following:
 - *"First and foremost, it is important to stress that the so-called "Memorandum Meeting" referred by the Respondent in its Answer allegedly signed on 28 October 2022, and which supposedly had the verbal consent of the Claimant was fabricated under outraged bad faith with the*

exclusive attempt to deceive the members of the Dispute Resolution Chamber of the FIFA Football Tribunal.

- *In the referenced occasion, the Claimant was still in Korea and there was absolutely nothing that prevented the latter of having signed it. The Claimant, though, never accepted to reduce the insurance amount set out in the Loan Agreement, notably, from USD 400,000 to USD 250,000*
- *the Respondent submitted evidence for the payment of the amounts which was reimbursed to the player*
- *Bearing in mind the above, there is no doubt whatsoever that the Respondent shall bear the full consequences of failing to purchase an insurance policy with the Claimant as the beneficiary in accordance with Art. 4.1.1 of the Loan Agreement. That is, the Respondent shall pay to the Claimant USD 400,000, plus the applicable default interest already indicated in the Statement of Claim."*

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

39. 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 24 February 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.
40. 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 lit. b) of the Regulations on the Status and Transfer of Players (May 2023 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 Brazil and a club from Korea Republic.
41. 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 Regulations on the Status and Transfer of Players (May 2023 edition), and considering that the present claim was lodged on 24 February 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

42. 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

43. 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

44. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the player has proven that he was indeed injured incurring subsequent medical expenses, and that the club on its account agreed to same but that parties strongly dispute the player's entitlement to receive compensation in the amount of USD 400,000 as per clause 4.1 of the loan agreement.
45. In view of the foregoing, the members of the Chamber, firstly, recalled the wording of clause 4.1 of the loan agreement, which stipulates, that:
- "DAEJEON shall take out an occupational accident insurance for the PLAYER, with the PLAYER himself as beneficiary, with an indemnity in the amount of USD 400,000.00 (four hundred thousand American Dollars), as well as an insurance to cover death, disability permanent and personal accidents of the PLAYER, with FORTALEZA as the beneficiary, with an indemnity in the amount of USD 2,000,000.00"*
46. The DRC therefore deemed it appropriate to analyse whether under the circumstances in the matter at hand and in consideration of the provisions of clause 4.1 of the loan agreement, if the player was indeed entitled to compensation in the amount of USD 400,000.
47. In this context, the DRC understood that the said provision seems to refer to a maximum amount of USD 400,000 as "*occupational accident insurance*" but concluded that it did not clearly establish the entitlement of the player to the total amount of USD 400,000 should the provisions of the said clause be triggered.
48. Moreover, the Chamber referred to clause 4.1.1 of the loan agreement, which stipulates that "*If there is no insurance contract that would have the PLAYER as the beneficiary, the responsibility for any accident will fall exclusively on DAEJEON, with which the PLAYER expressly agrees at this time.*"
49. In this regard, the DRC observed that it is clear that the said provision states that the club shall cover said expenses in the absence of an insurance contract, hence the Chamber decided that the club should be liable to reimburse the expenses and/or compensate the player on the basis of clause 4.1.1 of the agreement.
50. The members of the Chamber therefore held that considering that the player provided evidence as to the costs incurred by him, and considering that a reimbursement of the said expenses was remitted by the club in the amount of USD 13,148.24 following the medical report submitted by the club, which was not challenged by the player estimating the treatment cost at (Korean won) KRW 15,000,000 (approximately USD 11,692.70), it deemed that the player was duly reimbursed for his medical expenses.

51. In view of the above, the DRC decided to reject the claim of the player.

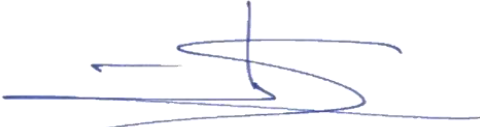
d. Costs

52. 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.
53. 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.
54. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Renato Kayzer De Souza, is rejected.
2. 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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