

Decision of the Dispute Resolution Chamber

passed on 6 July 2023

regarding an employment-related dispute concerning
the player **Najib Koumia**

BY:

Dana Al Noaimi (Qatar)

Single Judge of the Dispute Resolution Chamber

CLAIMANT:

Najib Koumia, Morocco

Represented by Mr Moujtahid Mohammed

RESPONDENT:

El Soqour, Libya

Represented by Sport Makers

I. Facts of the case

1. On 16 August 2022, the Moroccan player Najib Koumia (hereinafter: *Claimant* or *player*) and the Libyan club El Soqour (hereinafter: *club* or *Respondent*) allegedly concluded an employment contract (hereinafter: *the Contract*) valid as from the 1 October 2022 until the end of the sporting season 2022/2023 (cf. TMS: 1 July 2023).
2. According to art. 3 of the Contract, the Respondent undertook to pay the Claimant a net remuneration over the course of the Contract of USD 45,000, payable as follows:
 - USD 22,500 (i.e. half of the contractual value) as an “advance payment”;
 - USD 22,500 as monthly salary instalments over the course of the season.
3. Furthermore, the Respondent undertook under the same provision to pay the Claimant a conditional bonus of USD 5,000 for playing 10 matches by the end of the season.
4. The Contract also stipulated under art. 4 that the Respondent undertook to provide the Claimant with a flight ticket to Libya in order to commence the execution of the Contract.
5. Lastly, the Contract stipulated under art. 6 as follows:

“The present contract is preliminary, until no later than the arrival of the player in Libya and his registration via the official forms of the Libyan Football Federation.”
6. On 29 August 2022, the Claimant returned to the Respondent the signed copy of the Contract via his agent. The agent informed the Respondent that the Claimant was allegedly dissatisfied with the salary offered, but could be convinced to sign the document in question.
7. On 30 August 2022, the Respondent contacted the Claimant regarding the medical situation of the latter, after allegedly discovering that he had been suffering a medical condition from which he was still recovering.
8. On 31 August 2022, the Respondent sent an audio message to the Claimant’s agent, informing the latter that he should “consider the matter finished” and if the Claimant “found something else, he should go for it”.
9. On 1 September 2022, the Claimant allegedly requested for his picture to be removed from the Respondent’s website. Furthermore, the Claimant allegedly asked the Respondent to confirm whether the Contract had indeed been “annulled”, as he was in negotiations to sign an agreement with another club.

10. On 5 September 2022, the Claimant's agent allegedly proposed new players to the Respondent to sign in lieu of the Claimant.
11. On 14 February 2023, the Claimant sent the Respondent a formal warning, requesting to be paid the advance payment of USD 22,500 and to be provided with proof of registration to the squad, flight tickets and a visa in order to perform the Contract within 15 days. Failing the latter, the Claimant would deem the Contract terminated and lodge a claim before the Football Tribunal.

II. Proceedings before FIFA

1. On 23 March 2023, lodged a claim before FIFA. A brief summary of the parties' submissions is outlined below.

a. Position of the Claimant

2. In his claim, the Claimant argued that he had concluded a valid and binding employment agreement with the Respondent and that the latter had terminated such Contract without just cause and prior warning.
3. The Claimant alleged having attempted to contact the Respondent several times following the termination of the Contract, without success.
4. The Claimant equally argued having requested reintegration to the team of the Respondent, and to be provided with a flight ticket and visa, demonstrating his commitment to execute the Contract.
5. The Claimant, thus, asserted that he is entitled to compensation.
6. The Claimant requested payment of USD 50,000, with interest applicable as follows:
 - On the amount of USD 22,500, as from 1 October 2022 until the date of effective payment;
 - On the amount of USD 27,000, as from 23 March 2023 until the date of effective payment

b. Position of the Respondent

7. In its reply, the Respondent outlined that the Contract should be held invalid, and that the Claimant should be precluded from claiming any compensation.
8. The Respondent outlined that the Contract clearly and unequivocally foresaw under art. 6

that it was preliminary in nature and that it was subject to ratification / formalisation before the Libyan Football Federation.

9. Furthermore, the Respondent outlined that the Claimant had been suffering from a medical condition which had not been disclosed at the time the Contract had been proposed to him. This change in fundamental circumstances led to the Respondent not wanting to pursue the Contract any longer.
10. Furthermore, the Respondent outlined that the Claimant had been suffering from a medical condition which had not been disclosed at the time the Contract had been proposed to him. This change in fundamental circumstances led to the Respondent not wanting to pursue the Contract any longer.
11. The Respondent further outlined that the Claimant's lack of communication until the middle of February, by which point already two registration windows had allegedly passed, and he had the opportunity to conclude a different agreement, points to the lack of intent to pursue the alleged Contract. The contents of the respective letter are considered by the Respondent as "fake" and "in bad faith".
12. The Respondent, therefore, outlined that the claim should be rejected, as 1) the Contract is invalid, and 2) the Claimant had no intention in any event of pursuing an employment relationship with the Respondent.

c. Comments of the Claimant

13. Despite having been invited to do so, the Claimant provided no further submission.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge*) analysed whether it was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 10 March 2023 and submitted for decision on 23 March 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.
2. Subsequently, the Single Judge 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 Single Judge of 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 Morocco and a club from Libya.
3. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she 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 23 March 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

4. 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

5. Her 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 she 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

6. 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 validity of the Contract and its subsequent alleged termination without just cause.
7. In this context, the Single Judge acknowledged that its task was to determine, based on the evidence presented by the parties, whether the Contract had indeed been validly concluded, executed, and consequently whether any contractual termination occurred with or without just cause.
8. Having established the above, the Single Judge briefly recalled the parties' submissions, beginning with the Claimant, according to whom the Respondent terminated the Contract without just cause. The Claimant emphasised that the validity of the Contract is undeniable, given that it meets the prerequisites of a valid and binding employment contract. The Claimant further outlined that he attempted on several occasions to contact the Respondent, to no avail, in order to be reintegrated into the squad. The Claimant, thus, argued that he is entitled to compensation in the total value of the Contract.
9. The Single Judge noted, on the other hand, that the Respondent outlined that the Contract should be held invalid. In this respect, it was argued that the Contract specifically provided that it is preliminary in nature and subject to the registration with the Libyan Federation, as well as pointing to the fact that the Claimant abandoned the Contract on account of being in negotiations with another club, and only showing interest to be reintegrated after approximately five months.
10. Having revisited the above, the Single Judge referred to her longstanding jurisprudence, according to which a valid and binding employment contract must contain, in addition to the signature of the respective parties, the *essentialia negotii* of an employment contract, in particular the term of the contract, the remuneration due to the employee, and the specification that he would be employed by the club as a professional football player.
11. In the case at hand, the Single Judge noted that the Contract contains all *essentialia negotii* of an employment contract, and that the signatures of the parties are uncontested.
12. Furthermore, the Single Judge took note of the line of argument submitted by the Respondent, according to which the Contract was allegedly preliminary in nature, and that the non-homologation / standardisation of the Contract before the Libyan FA rendered it invalid.
13. In this respect, the Single Judge equally referred to her longstanding jurisprudence in establishing that the validity of an employment contract containing the *essentialia negotii*

cannot be made subject to the registration or homologation of the contract with the relevant member association.

14. Consequently, the Single Judge dismissed the line of argument that the Contract should be deemed invalid and proceeded to analyse the conduct of the parties thereafter.
15. The Single Judge referred to art. 13 par. 5 of the Procedural Rules, in accordance with which a party which intends to rely upon a fact bears the burden of proving its veracity.
16. In this respect, the Single Judge recalled that the Claimant argued that the Contract was terminated suddenly and without just cause by the Respondent, despite several alleged attempts made by him in vain to contact the latter and remedy the situation. The Single Judge wished to point out that no evidence of the Claimant attempting to contact the Respondent was adduced, and that the Claimant's only demonstrable contact with the Respondent was on one occasion in February 2023.
17. Contrastingly, the Single Judge observed that the Respondent submitted evidence of the Claimant's agreement to the fact that the Contract would no longer be pursued, in the shape of correspondence exchanged with his agent. The Single Judge equally wished to point out that the Claimant could be seen from the evidence on file to have preferred not to pursue the Contract on account of the unsatisfactory salary and the pending negotiations with another club.
18. In the opinion of the Single Judge, the lack of communication over an extended period of time was particularly significant in suggesting that neither party wished to pursue the Contract. Lastly, the Single Judge considered the fact that the Claimant, despite being offered the opportunity to submit further evidence and argumentation, failed to do so, cemented the aforementioned conclusion.
19. Based on the above, the Single Judge concluded that the Respondent met the burden of proving that the Contract had been mutually departed from, as neither party displayed interest in pursuing the obligations outlined thereunder, and that the Claimant failed to overturn such burden of proof with sufficient evidence of his own.
20. Therefore, and in the absence of outstanding monies owed by either party at the moment of departure, the Single Judge decided to reject the claim in its entirety.

d. Costs

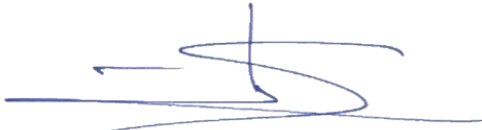
21. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.

22. 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.
23. Lastly, the Single Judge 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, Najib Koumia, 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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