

Decision of the Players' Status Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning
the coach Slavko Matic

BY:

Luis KANONNIKOFF (Paraguay)

CLAIMANT:

Slavko Matic, Serbia

Represented by Mico Petkovic

RESPONDENT:

Accra Hearts of Oak S/C, Ghana

I. Facts of the case

1. On 12 October 2022, the Serbian coach Slavko Matic (hereinafter: *the Claimant* or *the Coach*) and the Ghanaian club Accra Hearts of Oak (hereinafter: *the Respondent* or *the Club*) concluded an employment contract (hereinafter: *the Contract*).

2. Art. 2 of the Contract reads as follows:

2.0 Term. The Term ("Term") of this Employment Agreement shall commence on the date that it is fully executed by the parties and shall remain valid for a period of two (2) years unless terminated earlier via sections 2.1, 2.2. or for reasons of Default as more fully described in section 5 below.

2.1 Termination By Company. The Company may terminate this Agreement, without cause, by giving the Employee two month's advance notification of its decision to terminate. In lieu of notice, Company may terminate this Agreement by paying the Employee two months salary. Any and all such notices of termination must be in writing.

2.2 Termination By Employee. The Employee may terminate this Agreement, without cause, by giving the Company two month's advance notification of his decision to terminate or in lieu pay the Company an amount equal to 2 months of his salary.

3. Art. 3 of the Contract reads as follows:

3.0 In consideration for the services and satisfactory performance by Employee of the Duties of Employment outlined in this Agreement, Company, at its cost, shall provide employee with the following:

3.0.1 One - Time re-location payment of USD 5,000

3.0.2 Monthly Salary: Company shall pay the Employee a net salary per calendar month he is employed, as follows:

Over the Two Years: USD 5,000 per month

Salary will be paid in arrears at the end of each month, and all taxes shall be the responsibility of the Company.

4. Art. 5 of the Contract reads *inter alia* as follows:

5.2 By Company. The following shall constitute Events of Default ("Default") for the Company, including:

5.2.1 If it fails to make any payment due within a maximum period of one month after the payment has become due.

5.2.2 If Company is in material breach of this Agreement and does not cure such breach within the cure period specified in section 5.3 below.

5.3.3 If Company becomes insolvent.

5.3 Cure Period and Compensation: If an event of Default occurs as indicated in sections 5.1 and 5.2 above the affected party shall send a written notice of default to the offending party. The offending party will have seven calendar days within which to remedy the Default failing which the party shall have the right to unilaterally terminate the Agreement without any compensation or additional benefits due, other than for obligations already performed under this Agreement prior to Termination due to Default.

5. On 3 March 2023, the Club invited the Coach for a meeting discuss further steps taken by the club to guarantee [his] safety.
6. On 8 March 2023, the Coach sent a default notice under the terms of art. 5.3 of the Contract requesting the Club to be allowed to work.
7. On 17 March 2023, the Coach terminated the Contract under the terms of art. 5.3 of the Contract.

II. Proceedings before FIFA

8. On 22 May 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. The Claimant states that on 2 March 2023 he received some direct threats *"by means of which he was requested to cancel the training that had been organized on the following day and to keep himself away of the club's training grounds"*
10. The Claimant further states that *"on 3 March 2023 in the morning, a section of the Club's supporters stormed the club's training grounds and prevented [the Coach] from training the team. The police was not present at the club's training grounds from which reason [the Coach] reported the actions of the supporters to the Ghana Police including his statement about the circumstances resulting [the Coach] to be beaten by the supporters"*.
11. The Claimant sustains that he has the right to work in accordance with the Contract and in his view, the fact that he has been separated from the team since 3 March 2023 constitutes a material breach of the Contract.
12. According to the Claimant, after his default notice of 8 March 2023, the Respondent failed to remedy the breach within the granted deadline. Thus, the Claimant unilaterally terminated the Employment agreement with just cause on 17 March 2023.
13. The Claimant claims the prorata net salary for March 2023 in the amount of USD 2,742 and the amount of EUR 1,275 (USD 1,410) for the flight ticket from Accra to Belgrade.

14. The Claimant deems he is entitled to a compensation in the amount of USD 10,000 based on art. 2 of the Contract.

15. The Claimant filed the following requests for relief:

1. The claim of the Claimant is accepted.

2. The Respondent has to pay to the Claimant outstanding remuneration in the amount of USD 4,152 plus interest at the rate of 5% p.a.

on the amount of USD 2,742 as from 31 March 2023 until the date of effective payment and on the amount of USD 1,410 as from 17 March 2023 until the date of effective payment

3. The Respondent has to pay to the Claimant the compensation for prematurely termination of the Employment contract in the amount of USD 10,000 plus interest at the rate of 5% p.a. as from the date of passing the decision until the date of effective payment.

b. Position of the Respondent

16. On 13 June 2023, FIFA general secretariat closed the submission phase of the proceeding.

17. On 3 July 2023, the Respondent filed a submission with its position to the claim.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

18. 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 22 May 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.

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20. 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 (October 2022), 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.

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22. 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 22 May 2023, the same edition of said regulations (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.

b. Burden of proof

23. 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 he 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

24. His 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 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.
25. On a preliminary note, the Single Judge found that the submission filed by the Respondent on 3 July 2023 cannot be taken into account. In support of this view, the Single Judge relied on the clear wording of art. 23 par. 1 of the Procedural Rules, according to which the parties may not supplement or amend their submissions or request for relief after the closure of the investigation by FIFA general secretariat. The Single Judge recalled to this end that on 13 June 2023, FIFA general secretariat had closed the submission-phase of the matter in accordance with art. 23 of the Procedural Rules.

i. Main legal discussion and considerations

26. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that the claim remains undisputed by the Respondent.
27. In this context, the Single Judge acknowledged that his task was to determine, based on the evidence presented by the Claimant, whether the Claimant had just cause to terminate the Contract.
28. Having established the above, the Single Judge moved to the analysis of the just cause adduced by the Claimant in his termination notice of 17 March 2023. In doing so, the Single Judge recalled the well-established jurisprudence of the Football Tribunal according to which only a breach or misconduct that is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit the expectation that the continuation of the employment relationship between the parties can continue, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure 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 ever be an *ultima ratio* measure.

29. With the above in mind, the Single Judge observed that according to the Claimant and the evidence on file, he received direct threats and was separated from the team in order to guarantee his safety. The Claimant further sustains that the Respondent failed to allow him to return to work.
30. Accordingly, the Single Judge was satisfied with the conclusion that the Respondent ought to have provided minimum safety standards for the Claimant to perform his contractual duties and its failure to undertake specific actions in order for the Claimant to exercise his employment duties after the default notice of 8 March 2023, constitute a serious breach of its employment obligations.
31. Thus, the Single Judge concluded that the Claimant had a just cause to unilaterally terminate the contract, based on art. 4 of Annexe 2 of the Regulations.

ii. Consequences

32. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the Claimant, is USD 2,742 as prorata salary of March 2023 and EUR 1,275 as the reimbursement of a flight ticket for his return to Serbia.
33. 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, i.e. USD 2,742 and EUR 1,275.
34. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from 17 March 2023 until the date of effective payment.
35. Having stated the above, the Single Judge 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 Single Judge firstly recapitulated that, in accordance with art. 6 Annex 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 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.
36. In application of the relevant provision, the Single Judge held that he first of all had to clarify 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.

37. In this regard, the Single Judge took note of the wording of clause 2 of the Contract, which established that:

“2.1 Termination By Company. The Company may terminate this Agreement, without cause, by giving the Employee two month's advance notification of its decision to terminate. In lieu of notice, Company may terminate this Agreement by paying the Employee two months salary. Any and all such notices of termination must be in writing.

2.2 Termination By Employee. The Employee may terminate this Agreement, without cause, by giving the Company two month's advance notification of his decision to terminate or in lieu pay the Company an amount equal to 2 months of his salary.”

38. After analysing the content of the aforementioned clause, the Single Judge deemed that the said clause did not, in principle, apply to the case at hand, since in both instances, termination by the Club or termination by the Coach, the aforementioned clause refers to termination “*without cause*”.

39. However, the Single Judge underlined that the Claimant has specifically requested the application of the aforementioned clause and he has limited his request for compensation to the amount of USD 10,000, equal to two monthly salaries.

40. Consequently, the Single Judge decided that the amount of USD 10,000, as per the compensation clause agreed between the parties in the Contract and the specific request of the Claimant, is due to the coach by the club.

41. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest on said compensation at the rate of 5% p.a. as of 7 July 2023, as per the Claimant's specific request, until the date of effective payment.

iii. Compliance with monetary decisions

42. 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.

43. 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.

44. 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.

45. 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.
46. 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

47. 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.
48. Furthermore, 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.
49. Lastly, the Single Judge concluded his 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, Slavko Matic, is accepted.
2. The Respondent, Accra Hearts of Oak S/C, must pay to the Claimant the following amount(s):
 - **USD 2,742 as outstanding remuneration** plus 5% interest *p.a.* as from 17 March 2023 until the date of effective payment;
 - **EUR 1,275 as reimbursement of expenses** plus 5% interest *p.a.* as from 17 March 2023 until the date of effective payment;
 - **USD 10,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 7 July 2023 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. 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

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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