

Decision of the Dispute Resolution Chamber

passed on 3 July 2023

regarding an employment-related dispute concerning
the player Kasimov Mirjalol

BY:

Mario Flores Chemor (Mexico), Single Judge of the DRC

CLAIMANT:

Kasimov Mirjalol, Uzbekistan
Represented by Vadim Lyubinskiy

RESPONDENT:

Neroca FC, India

I. Facts of the case

1. On 19 September 2022, the Uzbek player, Kasimov Mirjalol (hereinafter: Claimant or player) and the Indian club, Neroca FC (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: contract) valid *“as from the day of arrival (Club House)”* until 31 May 2023.
2. According to the contract, the Respondent undertook to pay the Claimant a monthly salary of USD 2,000, payable on the 15th day every month and *“the last salary will be paid after the last match of the Hero I-League / Tournament.”*
3. Further, according to the contract, the Respondent undertook to pay the Claimant the following bonuses:
 - USD 50 for *“every goal scored in a competitive match”*;
 - USD 50 for *“every goal assisted in a competitive match”*.
4. The contract further established in art. 7.1 of Annexe 1: *“The Player shall be entitled to paid leave of up to 4 (four) weeks per 12 (twelve) month period, where the period of paid leave must be informed to the Club in advance and must be taken outside the period when Competitions are being played.”*
5. On 5 November 2022, the player arrived in India.
6. On 8 May 2023, the Claimant put the Respondent in default and requested payment of USD 2,250 (Salary for March 2023 plus USD 250 as bonuses) setting a 10 days' time limit in order to remedy the default.
7. On 23 March 2023, the player left India and returned to Uzbekistan.

II. Proceedings before FIFA

8. On 21 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. In his claim, the Claimant requested payment of the following monies:

- USD 2,000 as salary for March 2023, plus 5% interest *p.a.* as from 23 March 2023;
- USD 2,000 as salary for April 2023, plus 5% interest *p.a.* as from 23 March 2023;
- USD 200 as bonus for 3 goals and 1 assist, plus 5% interest *p.a.* as from 23 March 2023.
- USD 1,000 as *"leave remuneration"*, plus 5% interest *p.a.* as from 23 March 2023;
- USD 1,000 as *"legal representation fee"*, plus 5% interest *p.a.* as from 1 May 2023.

10. In his claim, the player argued that the club *"bought a flight ticket"* for 23 March 2023 and *"promised to the Claimant to pay remaining salary (March and April) and bonuses"*.

11. In this framework, the player submitted evidence that the last match of the season was played on 25 April 2023. Therefore, he argued that the salary for April 2023 was due.

12. Further, the player claimed his bonuses for goals scored and assisted as well as for the leave remuneration in accordance with the contract.

b. Position of the Respondent

13. The club failed to reply to the claim.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge (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 21 May 2023 and submitted for decision on 3 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.
15. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 1 lit. a) 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 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 with an international dimension between an player and a club.
16. 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 edition), and considering that the present claim was lodged on 21 May 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

17. 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

18. 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 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

19. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the player lodged a claim against a club for overdue payables.
20. In this context, the Single Judge acknowledged that his task was to detail if the player is indeed entitled to the claimed amounts.
21. The Single Judge acknowledged that according to the player, the club failed to remit the salaries for March and April 2023, bonuses, leave remuneration and his legal fee.
22. The Respondent, for its part, failed to present its response to the claim of the player, 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.
23. 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.
24. In this context, the Single Judge wished to emphasize that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Since the Respondent failed to submit any evidence in this regard, the Single Judge decided to award the monies based on the contract.
25. However, the Single Judge pointed out that since the player himself confirmed that he left India on 23 March 2023, and since he did not submit any evidence of the club's "promise" to remit the salaries for March and April 2023, the Single Judge decided to reject the player's request regarding the salary for the month of April 2023. In the Single Judge's opinion the player did not render his services for this month and shall therefore not be entitled to receive the salary.
26. Moreover, the Single Judge pointed out that "leave remuneration" claimed by the player appears to be a standard clause that allows the player to take holidays without having remuneration deducted. Put differently, such amounts are already included in the player's salaries and shall not be awarded separately.
27. Furthermore, in accordance with art. 25 par. 8 of the Procedural Rules, the Single Judge rejected the player's request for legal costs.

ii. Consequences

28. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided to award the player the following amounts:
- USD 2,000 as salary for March 2023, plus 5% interest *p.a.* as from 23 March 2023;
 - USD 200 plus 5% interest *p.a.* as from 23 March 2023;
29. In continuation, the Single Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
30. To this end, the Single Judge confirmed that the player put the club in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
31. Accordingly, the Single Judge confirmed that the club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
32. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the first offense by the club within the last two years, the Single Judge decided to impose a [choose: warning on the club in accordance with art. 12bis par. 4 lit. a) of the Regulations.
33. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

34. Finally, taking into account the applicable Regulations, the Single Judge 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.

35. 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.
36. 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. 24 par. 2, 4, and 7 of the Regulations.
37. 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.
38. 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. 24 par. 8 of the Regulations.

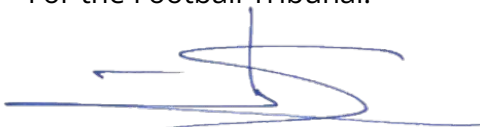
d. Costs

39. 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 Chamber decided that no procedural costs were to be imposed on the parties.
40. 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.
41. 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, Kasimov Mirjalol, is partially accepted.
2. The Respondent, Neroca FC, must pay to the Claimant the following amount:
 - **USD 2,200 as outstanding remuneration** plus 5% interest *p.a.* as from 23 March 2023 until the date of effective payment;
3. Any further claims of the Claimant are rejected.
4. A warning is imposed on the Respondent.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. 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 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.
7. 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.
8. 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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