

Decision of the Dispute Resolution Chamber

passed on 6 July 2023

regarding an employment-related dispute concerning
the player Hamdi Naguez

BY:

Dana Al Noaimi (Qatar)

Single Judge of the Dispute Resolution Chamber

CLAIMANT:

El Zamalek, Egypt

Represented by Studio Legale Civile

RESPONDENT:

Hamdi Naguez, Tunisia

Represented by Mr Anis Ben Mime

I. Facts of the case

1. On 26 July 2022, El Zamalek (hereinafter: *Claimant* or *club*) and Hamdi Naguez (hereinafter: *player* or *Respondent*) concluded a settlement agreement (hereinafter: *the Agreement*) in which it was agreed that the player would pay the club an amount of USD 350,000 as rescheduled amounts claimed previously in matters before the Football Tribunal, with references, FPSD-5481, FPSD-6171 and FPSD-6707.
2. In accordance with the Agreement, said compensation was payable in the following instalments:
 - USD 110,000 by no later than 1 January 2023;
 - USD 130,000 by no later than 1 June 2023;
 - USD 110,000 by no later than 1 August 2023.
3. Furthermore, in accordance with the Agreement, the Claimant and the Respondent agreed that, if the Respondent delayed payment of any of the stipulated amounts by 30 days, a penalty of USD 50,000 was payable by the latter.
4. On 30 March 2023, the Claimant put the Respondent in default and requested payment of an outstanding amount of USD 110,000 plus contractual penalty of USD 50,000, setting a 10 days' time limit in order to remedy the alleged default.

II. Proceedings before FIFA

5. On 13 April 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

6. According to the Claimant, the Respondent failed to comply with the terms of the Agreement, by failing to remit the contractually stipulated amount of USD 110,000 more than 30 days after its due date, despite having been put in default and granted a deadline of 10 days to remedy the alleged breach.
7. By way of consequence, not only the principal amount became due, but also a contractual penalty of USD 50,000.
8. The Claimant emphasised that such contractual penalty is entirely proportionate, in accordance with the jurisprudence of FIFA.

9. Therefore, the Claimant requested outstanding remuneration of USD 110,000, as well as a contractual penalty of USD 50,000.
10. Lastly, the Claimant requested interest of 5% *p.a.* as from 2 January 2023 until the date of effective payment.

b. Position of the Respondent

11. The Respondent acknowledged that the amount remained unpaid, however justified said non-payment with ongoing CAS proceedings involving another club, which impeded his financial capacities to make the due payments on time.
12. As to the contractual penalty of USD 50,000, the Respondent argued that said penalty is grossly disproportionate, amounting to almost half of the principal debt.
13. Consequently, whilst acknowledging the amount of USD 110,000, the Respondent insisted that the penalty clause should not be applied, and consequently no amounts beyond the principal debt should be paid.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 13 April 2023 and submitted for decision on 6 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 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), she is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a club from Egypt and a player from Tunisia.
16. 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 13 April 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

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. Her competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, she 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

19. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties, whilst agreeing on the outstanding principal amount, disagree on the lawfulness of the contractual penalty and the obligation arising therefrom to pay an additional amount of USD 50,000.
20. In this context, the Single Judge acknowledged that her task was to determine whether or not the contractual penalty set out in the Agreement was, in accordance with the jurisprudence of the Football Tribunal, proportionate and if, in addition to the principal amount of USD 110,000, the contractual penalty of USD 50,000 would be payable to the Claimant.
21. In this respect, the Single Judge firstly revisited the wording of the provision in question, which stated as follows:

"In case of any delay in the payment of an/any instalment exceeding 30 days, a delay penalty equal to USD 50,000 will be applied."
22. Having recapitulated the above, the Single Judge noted that the amount of USD 50,000 corresponded to approximately 45% of the outstanding amount of USD 110,000 being presently claimed, as well as 14.3% of the total sum of USD 350,000 stipulated under the Agreement.
23. Subsequently, the Single Judge recalled the jurisprudence of the Football Tribunal, *inter alia* FPSD-8971, in which a contractual penalty of USD 90,000 which corresponded to 10% of the total amount due under the respective agreement, and 50% of the unpaid amount claimed in said matter.
24. Thus, the Single Judge considered that the penalty clause is entirely proportionate, and should be upheld in the case at hand.
25. Based on all the above the Single Judge decided that the Respondent must pay the Claimant, in accordance with the general legal principle of *pacta sunt servanda*, a total outstanding amount of USD 110,000, as well as a contractual penalty of USD 50,000.
26. Lastly, and in accordance with the principle of *ne bis in idem*, the Single Judge decided to award interest on the amount of USD 110,000 only, applicable at the standard rate of 5% *p.a.* as from 2 January 2023 until the date of effective payment.

ii. Compliance with monetary decisions

27. 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.

28. 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.
29. 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.
30. 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.
31. 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.

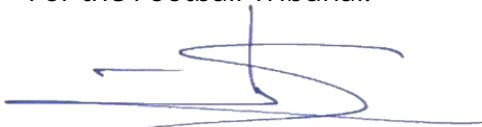
d. Costs

32. 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.
33. 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.
34. 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, El Zamalek, is accepted.
2. The Respondent, Hamdi Naguez, must pay to the Claimant the following amount(s):
 - **USD 110,000 as outstanding remuneration** plus 5% interest *p.a.* as from 2 January 2023 until the date of effective payment;
 - **USD 50,000 as contractual penalty.**
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. 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.
5. 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.
6. 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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