

Decision of the Dispute Resolution Chamber

passed on 2 August 2023

regarding an employment-related dispute concerning
the player Alvine Emma Njolle Ngonja

BY:

Khalid Awad Al-Thebity (Saudi Arabia), Single Judge of the DRC

CLAIMANT:

Alvine Emma Njolle Ngonja, Cameroon

Represented by Vadim Lyubinskiy

RESPONDENT:

FC Vorskla Poltava, Ukraine

I. Facts of the case

1. On 2 February 2023, the Cameroonian player, Alvine Emma Njolle Ngonja (hereinafter: *the player* or *the Claimant*) and the Ukrainian club, FC Vorskla Poltava (hereinafter: *the club* or *the Respondent*) concluded an employment contract (hereinafter: *the contract*), valid as from the date of its signature until 31 December 2024, as well as an annexe to the contract (hereinafter: *the annexe*).

2. According to clause 1 of the annexe, the club undertook to pay to the player – inter alia – the following remuneration:

For the period between 2 February and 31 December 2023:

- USD 1,275 as monthly salary.

For the period between 1 January and 31 December 2024:

- USD 1,475 as monthly salary

3. By means of her letter of 5 June 2023, the Claimant put the Respondent in default of payment of 4 monthly salaries (February to May 2023), thereby granting the club a deadline of 15 days to cure its breach. In addition, the Claimant requested the club to provide her with a visa to travel to Turkey and join the team for the training camp organized by the club.

4. Subsequently, by means of her letter of 21 June 2023, the player unilaterally terminated the contract.

5. The player remained unemployed following the termination of the contract.

II. Proceedings before FIFA

a. Position of the Claimant

6. On 27 June 2023, the player lodged a claim against the club before the FIFA Football Tribunal, requesting to be awarded outstanding remuneration and a compensation for breach of contract in the total amount of USD 10,433, plus 5% interest *p.a.* as from the respective due dates, broken down by the Claimant as follows:

Outstanding remuneration: USD 6,608

- USD 1,275 as salary of February 2023;

- USD 1,275 as salary of March 2023;
- USD 1,275 as salary of April 2023;
- USD 1,275 as salary of May 2023;
- USD 1,275 as salary of June 2023;
- USD 233 as “visa expenses”.

Compensation for breach of contract: USD 3,825

- USD 3,825 as compensation for breach of contract corresponding to the value of 3 monthly salaries.
7. In her claim, the player explained that the club decided to organize a training camp in Turkey between 11 February and 4 March 2023 and requested the player to obtaining the necessary visa to enter Türkiye, which was obtained by the player on 24 February 2023.
 8. In this respect, the player provided evidence of having incurred in visa expenses of USD 233 on 8 February 2023.
 9. In this context, the player argued that, despite her asking the club about when she could join the team in Türkiye, the club did not provide her with any instructions and failed to pay her monthly salaries.
 10. In this context of uncertainty, explained the player, and upon having put the club in default of payment in accordance with the parameters of art. 14bis of the Regulations, the Claimant argued that he had no alternative but to terminate the employment contract.

b. Position of the Respondent

11. Despite having been invited to reply to the claim, the club failed to do so.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

12. First of all, the Single Juge of the Dispute Resolution Chamber (hereinafter also referred to as *the 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 27 June 2023 and submitted for decision on 2 August 2023. Taking into account the wording of art. 34 of the May 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.

13. 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 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 Cameroon and a club from Ukraine.
14. 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 27 June 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

15. 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

16. 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 he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

17. The foregoing having been established, the Single Judge moved to the substance of the matter and noted that the allegations of the Claimant have remained uncontested insofar as the Respondent failed to reply to the claim, despite having been invited to do so *cf.* art. 21 of the Procedural Rules.
18. Therefore and in view of the fact that the Claimant put the Respondent in default of payment of 4 monthly salaries and granted the Respondent a deadline of 15 days for the latter to cure its breach without it doing so, the Single Judge determined that the Claimant did terminate the contract with just cause *cf.* art. 14bis of the Regulations.

ii. Consequences

19. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
20. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player amounts to USD 6,608, corresponding to the salaries due to the player between February and June 2023, as well as to the visa expenses, which shall be awarded – underscored the Single Judge – despite them not having a legal basis in the contract, insofar as the player has been able to sufficiently demonstrate that those expenses were incurred in order to join the team of the Respondent club in Türkiye, following the Respondent’s instructions.
21. 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 6,608.
22. In addition, taking into consideration the Claimant’s request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from the dates requested by the Claimant until the date of effective payment. In this respect, the Single Judge wished to underline that the salaries requested by the Claimant do not have a contractually agreed due date for its payment, meaning that those would be due on the first day of the following month to their accrual (in accordance with the jurisprudence of the DRC in this regard). However, as the Claimant requests the dies a quo of the salaries to start on the 2nd day of the following month to their accrual, the Single Judge decided to grant interest as from the date requested by the Claimant and not as from the 1st day of the following month to their accrual (*ne ultra petita*).
23. 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. 17 par. 1 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.
24. In application of the relevant provision, the Single Judge held that he, first of all, had to clarify as to 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. In this regard, the Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

25. As a consequence, the Single Judge determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
26. Bearing in mind the foregoing as well as the claim of the player, the Single Judge proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Single Judge concluded that the amount of USD 25,350 (i.e. 6 salaries of USD 1,275 and 12 salaries of USD 1,475) serves as the basis for the determination of the amount of compensation for breach of contract.
27. In continuation, the Single Judge verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
28. In this regard, the Single Judge noted that the player remained unemployed following the termination of the contract, meaning that he was not able to mitigate his damages in accordance with art. 17 para. 1 lit. ii) of the Regulations. As a consequence of the aforementioned, the Claimant – in principle – would be entitled to receive the full residual value of the contract as compensation for breach of contract. However, the Claimant is only requesting to be awarded compensation for breach of contract in the amount of USD 3,825, equal to 3 monthly salaries. Therefore and – once again – in order not to contravene the legal principle *ne ultra petita*, the Single Judge determined that the amount of compensation for breach of contract to be awarded to the Claimant can only amount to USD 3,825.
29. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% *p.a.* as of 2 July 2023 (as requested by the Claimant, despite the Claimant's termination of the contract with just cause having taken place on 21 June 2023 – *ne ultra petita*) until the date of effective payment.

iii. Compliance with monetary decisions

30. 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.
31. 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.
32. 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.
33. 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.
34. 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

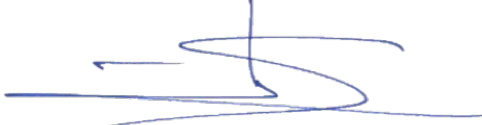
35. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
36. 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.
37. Lastly, the Single Judge concluded his 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, Alvine Emma Njolle Ngonja, is accepted.
2. The Respondent, FC Vorskla Poltava, must pay to the Claimant the following amount(s):
 - **USD 6,608** as **outstanding remuneration**, plus 5% interest *p.a.* as follows:
 - On the amount of USD 233 as from 2 March 2023 until the date of effective payment;
 - On the amount of USD 1,275 as from 2 March 2023 until the date of effective payment;
 - On the amount of USD 1,275 as from 2 April 2023 until the date of effective payment;
 - On the amount of USD 1,275 as from 2 May 2023 until the date of effective payment;
 - On the amount of USD 1,275 as from 2 June 2023 until the date of effective payment;
 - On the amount of USD 1,275 as from 2 July 2023 until the date of effective payment.
 - **USD 3,825** as **compensation for breach of contract** plus 5% interest *p.a.* as from 2 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. 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.
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

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777