

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning the player Francis
Odinaka Uzoho

COMPOSITION:

Frans de Weger (the Netherlands) , Chairperson
Khadija Timera (Senegal), member
André dos Santos Megale (Brazil), member

CLAIMANT:

APOEL NICOSIA , Cyprus

RESPONDENT:

Francis Odinaka Uzoho, Nigeria

I. Facts of the case

1. On 14 July 2020, the Cypriot club, APOEL NICOSIA (hereinafter: club or *Claimant*) and the Nigerian player, Francis Odinaka Uzoho (hereinafter: player or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid as from 14 July 2020 until 31 May 2023.
2. In accordance with the employment contract, the club undertook to pay the player:

1.3. *"The Player's gross remuneration shall be as follows:*

1.3.1. *From 30th July 2020 until 31st May 2021 (11 salaries), a monthly gross salary of €10.465 (€9.091 net).*

1.3.2. *From 30th July 2021 until 31st May 2022 (11 salaries) a monthly gross salary of €10.465 (€9.091 net).*

1.3.3. *From 30th July 2022 until 31st May 2023 (11 salaries) a monthly gross salary of €10.465 (€9.091 net)."*

3. On 31 August 2021, the club and the player concluded a termination agreement (hereinafter: *termination agreement*), which, *inter alia*, stipulated the following:

"2. As a compensation for his wish to prematurely terminate his contract, the Player will pay to APOEL the amount of EUR 50.000 as compensation by 30th June 2022. If the Player does not sign with any Cyprus Club until 30th June 2022, he shall not be obliged to pay this agreed compensation.

3. The Player's Employment Agreement and any other agreements and/or contracts signed with the Club are hereby terminated with immediate effect as from today and the Player is free to sign with any other club of his choice out of Cyprus.

4. As additional compensation for the early termination of the employment agreement, the Player shall also pay APOEL compensation equal to the 50% of all amounts which will be paid by FIFA to all of the Player's future clubs in relation to the Player's participation in the 2022 FIFA World Cup, under the FIFA World Cup Club Benefits Programme. This amount shall be paid to APOEL within 30 days as from the date when the relevant amounts shall be estimated and/or finalised by FIFA. In case of default and irrespectively of the reasons for the default, a penalty fee of 15% per annum until full payment shall be imposed. For the purposes of the present clause, the Player is hereby irrevocably authorising and giving a power of attorney to APOEL to contact FIFA and all of his new clubs in order to be informed of the actual amounts paid to these clubs, concerning the Player's participation in the 2022 FIFA World Cup."

4. According to the club, the player expressed his wish to be released from his contractual obligations in order to continue to a new club.

5. On 31 August 2021, the club agreed with the player to his release in exchange for payment of an agreed compensation as detailed in the termination agreement.
6. According to the club, the player signed a contract with a club from Cyprus, Omonoia, valid as from 1 September 2021.
7. On 12 July 2022, the club sent a reminder to the player, requesting payment of the amount of EUR 50,000.
8. On 27 July 2022, the club sent a further email to remind the player to pay the amount of EUR 50,000 granting it a deadline of 10 days.
9. On 1 August 2022, the player, allegedly replied to the email, stating the following
“Good morning, please I need more time as I don't have the money agreed. Thanks”

II. Proceedings before FIFA

10. On 17 October 2022, the club filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the club

11. According to the club, the player failed to comply with its contractual financial obligations as agreed to in the termination agreement.
12. The requests for relief of the club were that the player, pay the compensation amount of EUR 50,000 plus legal interest as from 1 July 2022 until date of effective payment.

b. Position of the player

13. In reply to the claim, the player, firstly rejected the claim of the club.
14. In this context, the player, indicated that *“about 4 days before the end of August 2021, I received a call from my then agent would informed me that the President of APOEL wished to let me go and we had to find a solution for mutual termination. He told me that if I did not accept it, the decision of the President of APOEL was that I would be transferred to the reserve team.”*
15. The player further indicated that the club at the time *“was owning me over 40,000 euro in unpaid salaries. I would like to stress that during my stay in APOEL there were payment delays and violations of the terms of payment.”*

16. Moreover, the player alleged that the club *“waited till the last day of the transfer window i.e. on 31/08/2021, and sent me the termination agreement to sign. The agreement was not open to any negotiation. I had to forgo my salaries and agree to their terms in order to get my freedom to find another club.”*
17. The player mentioned that after the termination agreement he signed an employment contract with the club Omonoia FC in Cyprus.
18. The player further stated that *“clause 2 of the termination agreement is under the circumstances illegal and invalid.”*
19. In this regard, the player indicated the following:
 - *“Firstly, the termination agreement was signed under conditions of threat and duress. I had no freedom to negotiate, I was threatened that my career would end.*
 - *Secondly it is an unfair and unreasonable restraint of trade clause. It forbids me from finding employment in another club in Cyprus for one year after my release from APOEL. The amount of €50,000 represents around 5 monthly salaries that I was receiving in APOEL.”*
20. For the above reasons I submit to you that the claim of APOEL is unfounded. The specific clause was signed under circumstances of threat and duress, it is an unreasonable and unjust restraint of trade clause, and it would be a grave injustice if I am ordered to pay this amount as compensation.
21. I reserve my right to submit further information and evidence should that be necessary.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

22. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 17 October 2022 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.
23. Subsequently, the members of the Chamber 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 club from Cyprus and a player from Nigeria.
24. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it 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 17 October 2022, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

25. The Chamber 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 Chamber 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

26. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber 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.

i. Main legal discussion and considerations

27. The foregoing having been established, the Chamber moved to the substance of the matter and took note that the case at hand pertains to a claim of a club against a player regarding non-compliance of his obligations in terms of the termination agreement concluded between the parties on 31 August 2021.
28. In this context, the Chamber acknowledged that its task was to determine whether the amounts claimed by the club had fallen due and were to be paid by the player.
29. The DRC noted that according to the club, the player failed to remit the amounts agreed to in the termination agreement, moreover that it was the player's expressed wish to be released from the contract hence the parties mutually agreed to prematurely terminate the contract.
30. In this context the Chamber observed that in accordance with clause 2 of the termination agreement *"as a compensation for his wish to prematurely terminate his contract, the Player will pay to APOEL the amount of EUR 50.000 as compensation by 30th June 2022. If the Player does not sign with any Cyprus Club until 30th June 2022, he shall not be obliged to pay this agreed compensation.*
31. The Chamber noted that the player on his account argued that the aforesaid provision is illegal and invalid, moreover that he signed the termination agreement under threat/duress and that at the said time the club owed him over EUR 40,000.
32. In reference to the player's argument that he signed the mutual termination agreement under duress and that the club owed him EUR 40,000 at the date of termination, the Chamber remarked that (i) the player did not advance any evidence in support of his allegations that such documents were signed under duress and (ii) he did not challenge or make prior complaints about the said duress/threat or about any outstanding dues owed to him by the club.
33. By recalling the content of art. 13, par. 5 of the Procedural Rules, the Chamber established that the player therefore failed to prove that the termination agreement was signed under duress or provide documentary evidence relating to any outstanding dues owed by the club, hence it decided to reject the argument of the player.
34. In this regard, the Chamber emphasised that both parties acknowledged that by signing the mutual termination agreement, potential compensation payable to the club could arise as per clause 2 of the termination agreement, accordingly as the player indeed signed with another club from Cyprus seemingly prior to 30 June 2022, the Chamber concluded that the provisions of clause 2 of the termination agreement was indeed triggered.

35. For the sake of completion, the Chamber highlighted that as per the player's email submitted by the club, which he did not contest, he seems to have acknowledged the debt as he seemingly requested an extension to pay the said amount.
36. Taking the above into account and the documentation on file, the Chamber concluded that clause 2 of the termination agreement was validly triggered and that the player had failed to fulfil the contractually agreed obligations as per the termination agreement and is thus to be held liable for the consequences thereof.

ii. Consequences

37. Having stated the above, the Chamber turned its attention to the question of the consequences of such unjustified breach of the termination agreement committed by the club.
38. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the player is liable to pay to the club the outstanding amount of EUR 50,000.
39. What is more, based on its well-established jurisprudence, the Chamber decided to award 5% interest *p.a.* on the above amounts from the 17 October 2022 i.e., date of claim until the date of effective payment.

iii. Compliance with monetary decisions

40. Finally, taking into account the applicable Regulations, the Chamber 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.
41. In this regard, the DRC 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.
42. Therefore, bearing in mind the above, the DRC 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.

43. 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.
44. The DRC 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.

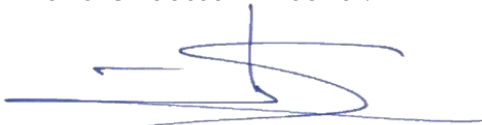
d. Costs

45. The Chamber 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.
46. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules and decided that no procedural compensation shall be awarded in these proceedings.
47. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, APOEL NICOSIA, is accepted.
2. The Respondent, Francis Odinaka Uzoho , must pay to the Claimant the following amount:
 - **EUR 50,000 as outstanding amount** plus 5% interest *p.a.* as from 17 October 2022 until the date of effective payment
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).

CONTACT INFORMATION

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