

Decision of the Dispute Resolution Chamber

passed on 2 August 2023

regarding an employment-related dispute concerning
the player Kingsley Ugochukwu Onuegbu

BY:

Khalid Awad Al Thebity (Saudi Arabia)
Single Judge of the Dispute Resolution Chamber

CLAIMANT:

Kingsley Ugochukwu Onuegbu, Germany

RESPONDENT:

Qingdao Hainiu FC, China PR

I. Facts of the case

1. On 15 March 2022, the German player Kingsley Onuegbu (hereinafter: *Claimant* or *player*) and the Chinese club Qingdao Hainiu FC (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *the Contract*) valid as from the date of signature until 31 December 2022.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant *inter alia* the following remuneration:
 - Total net salary of USD 300,000;
 - USD 2,000 per goal scored, cumulatively up to USD 50,000;
 - USD 2,000 per match won;
 - USD 1,000 per draw;
 - USD 11,000 for winning the “third phase”;
 - USD 15,000 for winning the “fourth phase”.
3. On 1 May 2023, the Claimant put the Respondent in default of payment of USD 96,000 and granted the latter a deadline of 15 days to remedy the alleged breach.
4. On 16 May 2023, the parties signed an agreement (hereinafter: *the Settlement*) by way of which it was agreed that the debt of USD 96,000 net which had allegedly accumulated over the course of the Contract should be reduced to USD 86,000 net, and that said amount was payable within 5 working days of said Settlement being signed.
5. Furthermore, the parties agreed within said Settlement that, if payment of the due amount were to be delayed by more than 7 working days, a liquidated penalty of USD 5,000 would become due towards the Claimant.
6. Lastly, the Settlement specified that, outside of the figure of USD 86,000 which was due thereunder, no further rights or obligations from either party would be outstanding.
7. On 12 June 2023, the Claimant informed the FIFA Administration that the Respondent had made a payment of USD 86,000 “a few days back”.

II. Proceedings before FIFA

8. On 2 June 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. According to the Claimant, the Respondent failed to pay him due amounts under both the Contract and the Settlement.
10. Initially, the Claimant asserted that the Respondent failed to pay the amount of USD 86,000 which was due under the Contract as a result of achieving certain conditional bonuses. The player's claim read as follows:

"After myself and the club reached an agreement to pay me which I agree to reduce the debt to 86,000 dollars, we both signed and its pass the deadline (delay of latest 7 days) and they still ignored the agreement."

11. During the proceedings, the Claimant acknowledged having received payment of the amount of USD 86,000 at an unspecified date, yet subsequently insisted that the Respondent was obligated to pay him an additional amount of USD 10,000, corresponding to the figure which was waived by virtue of the Settlement. More specifically, the Claimant asserted as follows:

"Few days back the club paid an amount of 86,000 dollars to my account which is supposed to be 96,000 dollars in total so I'm still demanding the sum of 10,000 dollars remaining."

12. The Claimant further made an allegation of "signature fraud" against the Respondent, highlighting that *"before every season the Chinese Football Federation CFA made it mandatory that every player registered to the club must sign a paper showing they have received all their salaries from last year before being able to get the licence for the new season, however I didn't sign that contract and my signature must have been forced, so I would like them to present the paper presented to the federation and who signed on my behalf and I'm demanding a compensation fee for signature fraud"*.

b. Position of the Respondent

13. Despite having been invited to do so, the Respondent failed to provide a position to the claim.

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 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 2 June 2023 and submitted for decision on 2 August 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), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Germany and a club from China PR.
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 2 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

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, he 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

19. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the basis of the present claim is the payment of certain financial obligations by the Respondent towards the Claimant.
20. In this context, the Single Judge acknowledged that his task was to assess whether, based on the evidence contained on file, the Respondent had indeed been in default towards the Claimant, and subsequently whether compensation was payable as a result thereof.
21. The Single Judge wished to firstly recall the submission of the Claimant, which he considered important for the present proceedings, particularly due to the fact that the Respondent provided no submission of its own.
22. The Single Judge noted that the Claimant first claimed not having received the amount of USD 86,000 which was stipulated by the Settlement. Subsequently, and after allegedly receiving payment of the amount of USD 86,000 – i.e. the amount mutually agreed upon – the Claimant changed his position to request an additional amount of USD 10,000, which corresponded to the sum by which the overall debt of the Respondent had been reduced as a result of the Settlement being signed.
23. Furthermore, the Single Judge recalled that the Claimant had made an allegation of signature fraud, for which he had requested an additional compensation fee.
24. The Single Judge equally observed that, in support of his arguments, the Claimant had submitted as evidence copies of the Contract and Settlement, sporting data to corroborate his achievement of certain conditional bonuses under the Contract, and a copy of a default notice sent to the Respondent on 1 May 2023.
25. Before evaluating these submissions, the Single Judge wished to once again recall the wording of art. 13 par. 5 of the Procedural Rules, according to which a party that wishes to rely on an alleged fact bears the burden of proving its veracity.
26. Having established this, the Single Judge proceeded to evaluate the matter on its merits. In this respect, it was deemed particularly noteworthy that the Claimant, after acknowledging that he agreed to reduce his debt from USD 96,000 to USD 86,000 in order to receive payment of the due amount more quickly, nonetheless amended his request for relief to include payment of USD 10,000 after receiving payment of USD 86,000 at an unspecified date.
27. The Single Judge, in this respect, pointed out firstly that the Settlement stipulated that no amounts of any kind outside of the sum of USD 86,000 were due to the Claimant. By paying said amount to the Claimant, the Respondent had complied with the terms of the Settlement.

28. Thus, the Claimant was held to have validly waived his entitlement to the remaining sum of USD 10,000, and, indeed, by altering his initial stance according to which the amount claimed was only USD 86,000, the claim for the remaining USD 10,000 could be held to constitute *venire contra factum proprium*.
29. In any event, therefore, the request for USD 10,000 was rejected by the Single Judge.
30. Subsequently, the Single Judge took note that the Settlement, though this amount was not requested by the Claimant, contained a penalty clause according to which payment of the due amount more than seven working days after the stipulated deadline would be met with an additional payment of USD 5,000 due by the Respondent.
31. In the context of said clause, the Single Judge wished to emphasise that, although the Claimant alleged that the amount of USD 86,000 had been paid late, no evidence (such as the relevant proof of payment or a bank extract) had been adduced. The Single Judge considered that, particularly for a contractual penalty for late payment, the burden of proving that said payment had been late to the extent of triggering the relevant clause had been on the Claimant, rather than the Respondent having to disprove that it had failed to make the payment on time.
32. Thus, the Single Judge also rejected said request by the Claimant, on account of the latter failing to meet the burden of proving that the contractual penalty provision had been triggered.
33. Lastly, the Single Judge turned to the allegation of forgery made against the Respondent. In this respect, the Single Judge once again emphasised that the submission of evidence was of vital importance in order to be able to build a credible case. It was noted that 1) no copy of the allegedly forged agreement, or the relevant regulation in accordance with which such an agreement may have been required was adduced to the file; 2) no details or argumentation concerning any allegedly waived amounts had been provided by the Claimant, in accordance with which a potential compensation could be determined; and lastly (and most importantly) no evidence whatsoever of forgery or undue influence of any other kind committed by the Respondent had been provided to support the Claimant's allegation.
34. In the absence of a concrete request for relief and any corroborating evidence to build the Claimant's argument, the Single Judge saw no other choice than to dismiss the request for compensation on the basis of purported forgery.
35. In conclusion, and keeping in mind that the Claimant acknowledged having received the amount of USD 86,000 by the Respondent – the only amount demonstrably due by the latter – the Single Judge decided to reject the Claimant's petition in its entirety.

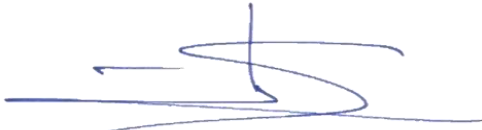
d. Costs

36. 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.
37. 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.
38. Lastly, the DRC 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, Kingsley Ugochukwu Onuegbu, is rejected.
2. 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