

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning
the player OTHMEN SAIDI

COMPOSITION:

Frans DE WEGER (The Netherlands), Chairperson
André dos Santos MEGALE (Brazil), Member
Khadija TIMERA (Senegal), Member

CLAIMANT:

Othmen Saidi, Tunisia
Represented by Anis Ben Mime

RESPONDENT:

Al Nahda, Saudi Arabia
Represented by Ali Abbes and Mr. Mohamed Rokbani

I. Facts of the case

1. On 13 January 2023, the Saudi Arabian club, Al Nahda (hereinafter: *the club* or *the Respondent*) sent to the Tunisian player, Othmen Saidi (hereinafter: *the player* or *the Claimant*) an offer (hereinafter: *the offer*).
2. The offer contained the following information:
 - Duration: 4 months.
 - The starting date would be on 15 January 2023 and the end dated would be on 15 April 2023.
 - Payment method: USD 20,000, USD 10,000 at the signature of the contract and USD 10,000 as monthly salary.
 - The club would provide accommodation and transport.
3. It is to be noted that the specimen of the offer provided by the player did not contain any designated space for the player's signature or expression of acceptance.
4. On 18 January 2023, the player underwent a medical examination by the club's staff.
5. On 19 January 2023 at 17:29 Saudi Arabian local time, via the electronic application WhatsApp, the club sent the player a copy of the medical report.
6. On 19 January 2023 at 17:57 Saudi Arabian local time, the player sent an email to club accepting the offer proposed by the club.
7. On 28 January 2023, the club sent the player following correspondence : *"Je vous informe que le joueur a été mis en examen médical et il s'est avéré qu'il souffre d'une blessure qu'il n'a pas déclaré au club les procédures d'enregistrement n'ont pas été accomplies avant la clôture de la période d'enregistrement au 28/01/2023. Le joueur a quitté le KSA"*.

Freely translated by FIFA

"[the Respondent] informed [the Claimant] that the player passed a medical examination, and it has been found that he has an injury which he has not declared to the club, the registration procedures were not completed before the closure of the registration period on 28/01/2023. The player has left Saudi Arabia".

8. On 31 January 2023, the player sent a termination notice to the club, indicating that following the correspondence from the club on 28 January 2023, the player considered that the club terminated the contract on that date.

9. On the same date, 31 January 2023, the player signed an employment contract with the Tunisian club Olympique de Beja valid as from 30 January 2023 until 30 June 2023, including a monthly gross salary of TND 2,500.

II. Proceedings before FIFA

10. On 7 March 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

11. The player claimed having concluded with the club a valid employment contract which was accepted by the player on 18 January 2023 and argued that the club breached the contract and accordingly, he is entitled to compensation.
12. With regards to the termination, the player considered that the letter sent by the club on 28 January 2023 should be considered as a unilateral termination of the contract and that on 31 January 2023, the player sent a letter to corroborate the club's abusive behaviour. Additionally, the Player stated that medical conditions cannot be considered as a valid reason to terminate the contract.
13. The Player requested the following relief:
 - USD 10,000 as outstanding salary plus 5 % interest p.a.
 - USD 60,000 as compensation for breach of contract plus 5% p.a.
 - To apply sporting sanctions on the club.

b. Position of the Respondent

14. In its reply, the Respondent requested FIFA to reject the claim.
15. According to the club following the sending of the offer on 13 January 2023, the player did not sign the offer, and only after he passed that he failed the medical exams, he accepted the offer and therefore, in accordance with the club the offer became null and void *"especially that according to FIFA DRC the essential negocii of an agreement to be considered as a binding contract is the signature of two parties"*.
16. The Club further concluded that *"the execution of the contract had never started due to the fact that the player did never sign any offer only after that he knew that he fails to succeed in the medical examination"*.
17. Alternatively, if the DRC concludes that *"the respondent has committed any fault or negligence, quod non, and that the contract is valid, it should be highlighted that the players*

acted with bad faith as established above and contributed more to the early termination of the contract and therefore no party shall be entitled to a compensation”.

18. Alternatively, if the DRC concludes that: *“the club bear any part of responsibility and that player is entitled to any compensation, it shall be mitigated and consider that the player assume the big part of responsibility due to the facts that we already described*
- *The contract cannot be executed due to the injury of the player.*
 - *The player signed the offer only after that he was informed of the result of the medical test and that he cannot provide any service for the club which proves his clearly bad faith”.*
19. The Club requested the following relief:
“Essentially: Reject the claim of the claimant
Alternatively: consider that the claimant is not entitled to receive any compensation.
Most Alternatively: consider the player bears at least 75 % of the cause of termination according to article 44 of the Swiss Code of Obligations”.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

20. 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 7 March 2023 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.
21. Subsequently, 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 par. 1 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 Tunisia and a club from Saudi Arabia.
22. 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 7 March 2023, 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

23. 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

24. The 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

25. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that this is a claim of a player against a club for alleged non-execution of a contract by the club.

26. In brief, while the player claimed that he had a valid and binding contract with the club, consisting of the offer sent by the club on 13 January 2023 and accepted by him on 19 January 2023, the club deems that there was not a contract as the player failed his medical exams and he only accepted the offer after the club informed him about his injury.

27. Subsequently, the Chamber confirmed that the main issue in the present claim is to determine whether the offer can be considered as a valid and binding employment contract. In doing so, the Chamber started by recalling its well-established jurisprudence which dictates that, in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee (or the corresponding proof of consent of both parties), it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration payable by the employer to the employee.

28. From the arguments of the parties and the documentation on file, the Chamber was able to establish that:

- The offer was sent on 13 January 2023.

- The offer contained the starting date of the contract: 15 January 2023.
 - The offer did not contain any designated space for the player's signature or expression of acceptance.
 - The contract, as described in the offer, did not establish any condition in order for it to be accepted. Therefore, the argumentation that the player did accept the offer only after being informed about his injury did not have any impact on the acceptance or not of the offer.
 - The player accepted the offer 4 days after the supposed starting date of the contract.
 - In accordance with the letter sent by the club on 28 January 2023, it can be retrieved that the club informed the player that he had an injury, and the registration procedure would not continue; however, it cannot be retrieved that a termination of the alleged contract took place, or that the parties had an employment relationship.
 - On 31 January 2023, the player sent a termination notice to the club and signed a new contract with the Tunisian club, valid as from 30 January 2023.
29. Based on the foregoing, the Chamber concluded that the acceptance of the offer was not subject to any condition, such as a medical examination. However, the Chamber stressed that in accordance with the player's conduct, the contract was not concluded considering that (i) there is not acceptance of the offer by the player prior the starting date of the contract, on 15 January 2023, (ii) since the acceptance of the offer was sent 4 days after the contract's proposed starting date, prior to said date the player was not in agreement with the contract and (iii) on the same date that the player sent a notification of the termination of the alleged contract he already signed a new contract which was valid as from 30 January 2023, which denotes the player's lack of interest in pursuing the contract.
30. On the basis of the foregoing, the Chamber concluded that there was not a valid and binding contract between the parties and therefore the player's claim lacked any contractual basis whatsoever. Accordingly, the Chamber found that the claim must be entirely rejected.

d. Costs

31. 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.
32. 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.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Othmen Saidi, 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

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