

Decision of the Dispute Resolution Chamber

passed on 27 July 2023

regarding an employment-related dispute concerning the player Carlos
Patrick Simeon

BY:

Frans de Weger (Netherlands), Chairperson

CLAIMANT:

Carlos Patrick Simeon, United Kingdom
Represented by Manuel Illanes Boguszewski

RESPONDENT:

Club Lynx FC, Gibraltar

I. Facts of the case

1. On 21 August 2022, the British/Seychellois player Carlos Patrick Simeon (hereinafter: *the Claimant*) and the Gibraltar club Lynx FC (hereinafter: *the Respondent*) concluded an employment contract (hereinafter: *the Contract*) valid “for one football season”, i.e., until 31 May 2023.
2. In this respect, the Contract reads as follows:

“Agreement entered into on this day the 21st day of August 2022

BETWEEN:

LYNX FOOTBALL CLUB LIMITED of Third Floor, 41 Europa Road, Gibraltar, GX11 1AA (the Club), AND

*Mr CARLOS PATRICKSIMEON of Third Floor, 41 Europa Road, Gibraltar, GX11 1AA with **British nationality** and Passport/ID Card Number 546289214 (the Player)”. (emphasis added).*

3. Accordingly, the Claimant was registered at the Respondent’s relevant association, i.e., the Gibraltar Football Association (**GFA**), as a British citizen/player.
4. Equally, the GFA confirmed the said information in the FIFA Transfer Matching System (**TMS**).
5. In accordance with art. 10 of the Contract, the Respondent undertook to pay to the Claimant *inter alia* a monthly remuneration of EUR 350. Furthermore, the Respondent would provide accommodation to the Player.
6. By correspondence dated 30 March 2023, the Claimant unilaterally terminated the Contract due to the alleged abusive conduct held by the Respondent, in addition to the non-payment of several salaries.

II. Proceedings before FIFA

7. On 14 June 2023, the Claimant filed the claim at hand before FIFA. In his claim, he referred of the misconduct held by the Respondent by not complying with its contractual obligations and forcing the Claimant to terminate the Contract prematurely.
8. Based on the foregoing, the Claimant makes the following request for relief:

- EUR 1,290.90 as outstanding remuneration;
 - EUR 14,370.75 as compensation for breach of contract by the Respondent without just cause;
 - 5% interest per annum on the above amounts as from the relevant due dates.
9. On 19 June 2023, the FIFA general secretariat informed the player that the Football Tribunal did not appear to be competent to deal with the case at stake, as the dispute did not appear to have an international dimension.
 10. On 11 July 2023, the Claimant reiterated its position as to the admissibility of the claim, arguing that he is a national player for the first team of Seychelles and is based in England meanwhile the Respondent is a club located in Gibraltar, territories that are governed by different football associations (i.e., the English Football Association and the GFA) despite belonging both to the United Kingdom.
 11. In this respect the Claimant stated that the FIFA Regulations on the Status and Transfer of Players (RSTP) provisions establish the existence of an international dimension when two different associations, and not nationalities, are involved (e.g., definition of an international transfer: the movement of the registration of a player from one association to another association).
 12. Furthermore, the Claimant highlighted that he was born, raised and has lived his entire life in England and that he has never been in Gibraltar before joining Lynx FC for employment reasons, hence his International Transfer Certificate had to be moved from The Football Association (England) to the GFA.
 13. In conclusion, the Claimant believes that the rejection of the competence in the present matter is unjustified, contrary to the criteria used in the FIFA Regulations and that it has left the Player in a delicate position without being able to claim his rights.
 14. In light of the above, the Claimant insisted that FIFA was competent to hear the dispute and requested the Football Tribunal to issue a formal decision on the matter.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

15. First of all, the Chairperson of the Dispute Resolution Chamber (hereinafter: *the Chairperson*) analysed whether he was competent to deal with the case at hand.
16. In this respect, he took note that the present matter was presented to FIFA on 14 June 2023 and submitted for a preliminary decision on 27 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.
17. The Chairperson confirmed that, in accordance with art. 19 par. 1 and 2 of the Procedural Rules, he is competent to decide, in an expedited manner, whether the case at stake is affected by any preliminary procedural matter (*i.e.*, if the Football Tribunal obviously does not have jurisdiction or if the claim is obviously time-barred). Likewise, the Chairperson highlighted that, in case the claim is not affected by any preliminary procedural matters, the FIFA general secretariat would be ordered to continue the procedure (cf. art. 19 par. 3 of the Procedural Rules).
18. Subsequently, the Chairperson 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 would be competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level.
19. In light of the above, the Chairperson outlined that the wording of the cited article clearly implies that the first condition that needs to be compulsorily fulfilled in order for FIFA to be competent to hear an employment-related dispute between a club and a player is that said dispute has an international dimension. This means that FIFA is only competent to hear an employment-related dispute of such kind when the parties have different nationalities.
20. Entering the analysis of the present dispute, the Chairperson took due consideration from the documentation on file that the player is both Seychellois and British.
21. In this context, the Chairperson recalled that the jurisprudence of the Football Tribunal shows that in cases where a player has dual citizenship, his registration is a determining factor when assessing if the international dimension of the dispute is given, considering that clubs may enjoy benefits in registering a player with a certain

nationality, *inter alia*, due to the specific limitations in the number of foreign players. The Chairperson felt furthermore comforted with this reasoning by considering both that (a) the reflection of the player's status in the field of play is given by the status of his registration and (b) the aforementioned reasoning has been confirmed consistently both by the jurisprudence of the Football Tribunal and the Court of Arbitration for Sport (CAS),

22. At this point, the Chairperson observed that in accordance with the employment contract, the player was employed as British. The Chairperson also took due note of the information contained in TMS, according to which the player was registered with the club under the British nationality, having his International Transfer Certificate (ITC) confirmed by the GFA.
23. Bearing in mind the foregoing, the Chairperson confirmed that the fact that the player was also Seychellois was not conclusive to the assessment of this specific case, in that his registration was not made at the GFA with such nationality.
24. In continuation, the Chairperson acknowledged that the dispute at hand involves two parties that share the same nationality, *i.e.*, the British nationality, for that the player was registered within the GFA as British citizen, whereas the club is based in Gibraltar, which is in turn a British Overseas Territory, and the GFA is simply the governing body for the sport of football in that territory.
25. In particular, the Chairperson highlighted that an independent country, in the matter at hand the United Kingdom, may have more than one member association of FIFA incorporated within its territory – as it happens with many countries and member associations of FIFA. To this effect, the Chairperson recalled that the United Kingdom has constitutional and historical links with 14 British Overseas Territories, amongst which Gibraltar – as recognized, for instance, in *CAS 2002/O/410 The Gibraltar Football Association (GFA) v. UEFA*. One of the consequences of this link is that people of these territories are British nationals. British nationality law applies to the British islands (the UK and the Crown dependencies) as well as the other British Overseas Territories. This situation therefore is exactly the one of the Claimant and the Respondent in the matter at hand.
26. On this note, the Chairperson highlighted that in accordance with article 6 of the FIFA Regulations Governing the Application of the Statutes, special provisions governing peculiar situations of “shared nationality” do exist. These provisions however are tailored on the specific issue of representation of national teams to envisage situations in which players can theoretically represent different countries because different members associations which have in common the same nationality exist and have been already recognised by FIFA over the years. In other words, these provisions do not come into play for the contractual dispute at hand, because the player's

eligibility to play for any national team is irrelevant to determine the international dimension of a dispute in line with art. 22 of the Regulations.

27. With the above in mind, the Chairperson referred to the jurisprudence of the Football Tribunal, which considers the nationality as the decisive element to be analysed, when determining whether a contractual dispute enjoys international dimension. He recalled, in this respect, that in case the player has the same nationality from the country where the club that holds his registration is based, the relevant dispute has to be considered a purely internal (national) matter to be decided by the competent authorities in the respective country.
28. As opposed to the player's argumentation to this extend, the Chairperson also deemed essential to clarify that the abovementioned conclusion is without prejudice of the parties' having agreed upon the jurisdiction of FIFA in the contract at the basis of the dispute, because the Football Tribunal's jurisdiction does not stem from the parties' agreement but in fact from the FIFA Statutes and the Regulations (*cf.* Commentary on the RSTP, edition 2021, page 359 *et seq.*).
29. Lastly, the Chairperson highlighted that the above is in line with the jurisprudence of the Football tribunal on the matter.
30. Taking all the above into consideration, the Chairperson decided that the claim of the player towards the club lacks international dimension as required by article 22 par. 1 lit b) of the Regulations. Hence, the Chairperson determined that the Football Tribunal does not have jurisdiction to hear the dispute at stake.

b. Costs

31. Lastly, the Chairperson 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 Chairperson decided that no procedural costs were to be imposed on the Claimant.

IV. Decision of the Dispute Resolution Chamber

1. The Football Tribunal does not have jurisdiction to hear the claim of the Claimant, Carlos Patrick Simeon.
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).

CONTACT INFORMATION

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