

# Decision of the Dispute Resolution Chamber

passed on 8 November 2023

regarding an employment-related dispute concerning  
the player Kareem Ben-Kmayal

**BY:**

**Iñigo Riestra (Mexico)**

**CLAIMANT:**

**Kareem Ben-Kmayal, United Kingdom**  
Represented by Loizos Hadjidemetriou

**RESPONDENT:**

**Pegeia 2014, Cyprus**  
Represented by Panayiotis Georgiou

## I. Facts of the case

1. On 7 August 2022, the British player Kareem Ben-Kmayal (hereinafter: *the Claimant* or *the Player*) and the Cypriot club Pegeia 2014 (hereinafter: *the Respondent* or *the Club*) concluded an employment agreement (hereinafter: *the Contract*).

2. Art. 1 of the Contract reads inter alia as follows:

*1.1 The duration of this Contract shall be from 01/08/2022 (date) until 30/06/2023 (date).*

*(...)*

*1.3 The players gross remuneration shall be as follows:*

*1.3.1 From 31/08/2022 until 30/04/2023 a monthly gross salary of €1887 (€1700 net)*

*1.4 any other gross payments and bonuses shall be payable as follows:*

*accommodation*

*promotion bonus 2000 euros*

*50 euros per goal*

*50 euros per assist*

*1.5 any other benefits and or allowances:*

*There is not*

3. On 15 July 2023, the Respondent send a correspondence stating that the Claimant owed several amounts for different concepts and requested him to pay EUR 1,678.38 within 7 days.

## II. Proceedings before FIFA

4. On 16 September 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

5. The Claimant states that the fact that the Contract does not specify a salary for May and June 2023 is contrary to the Cyprus legislation as well as the FIFA regulations and Swiss law *"and therefore illegal"*.

6. The Claimant sustains that *"the Cyprus Government has recently implemented a national minimum salary for all full time workers in Cyprus"*.

7. Thus, the Claimant sustains that he is entitled to the salaries of April, May and June 2023.
8. The Claimant refers to the letter of the Respondent sent on 15 July 2023 and states that it is “nothing more than a malicious attempt to avoid its contractual obligations”. In particular the Claimant states that:

*The Respondent's allegations that the Claimant left Cyprus without settling the utility bills and that he caused damage to the apartment provided to him by the Respondent, are totally absurd. As expressly stated in the CoE, clause 1.4, the Respondent was to provide the Claimant with accommodation. It was never agreed that the Claimant would have any contractual obligations towards the Respondent in respect of any utility bills. This has been the case throughout the Claimant's employment by the Respondent since the Claimant had never paid or was requested to pay any utility bills.*

*The Respondent is not entitled to any amounts from the Claimant since the CoE does not give the right to the Respondent to withhold any amounts from the Claimant's salary or pay any expenses on his behalf and then request reimbursement of these expenses by the Claimant. As expressly stated in art. 232a of the S.C.O., an employer may withhold part of the salary only if this is allowed by an individual or collective agreement or custom. Withholding part of an employee's salary is also prohibited under the Cyprus law on Protection of Salaries, which also constitutes such withholding a criminal offence.*

9. The Claimant filed the following requests for relief:

*1. The Claimant requests the FIFA DRC to order the Respondent to pay him, in the bank account sent attached as exhibit 2, the following amounts:*

- i. EUR 1,700, plus legal interest since 01/05/2023, until full settlement.*
- ii. EUR 1,700 plus legal interest since 01/06/2023, until full settlement.*
- iii. EUR 1,700 plus legal interest since 01/07/2023, until full settlement*

#### **b. Position of the Respondent**

10. The Respondent states that the 2nd National Division of Cyprus consists “of two phases: (a) regular season which takes place from September to January; (b) play-off and play-out phase which takes place from January to 30 April of each respective year. Following the unprecedented experience of Covid-19 pandemic, CFA strongly recommends the clubs participating in 2nd National Division to include 30 of May or even June as the expiry date of their respective employment contracts for to avoid confusing extensions and/or amendments in case of unforeseeable events (i.e., extension of the sporting season as it did happen on 2020). Nonetheless, the last salary instalment of the employee's remuneration is always agreed to be paid by no later than 30 April, which constitutes the practical end of the sporting season of the above-mentioned league.”
11. The Respondent refers to the correspondence of 15 July 2023 in which the Club stated that the Claimant failed to pay the utility bills of his apartment and did some damages. The total sum of such bills and damages amounted to EUR 1.678,38. The Respondent informed that this amount was going

to be deducted by the last instalment of Player's remuneration which was payable by no later than 30 April 2023, as per the Contract. Therefore, the Player was entitled solely to the amount of EUR 21,62.

12. The Respondent states that the aforementioned letter remained unanswered by the Claimant. In particular, the Claimant *"failed to challenge the assertions included therein regarding the unpaid utility bills and damages. He also failed to make any comment as to the alleged unpaid salaries corresponding to May 2023 and June 2023 which were supposed to be payable despite of the contrary provisions of the Employment Contract. As such, one may say that he certified de facto the position of the Club."*
13. In the view of the Respondent the dispute shall be resolved based on the principle of *pacta sunt servanda*. As such, the Claimant's considerations regarding the national law *"shall be rejected as clearly irrelevant and inapplicable"*.
14. According to the Respondent, *"the common intention of the Parties is clearly established beyond any reasonable doubt: the total remuneration of the Player amounted to EUR 15.300 net payable in nine (9) equal instalments from August 2023 to April 2023. The latter clearly certified such position via his inaction both towards the Club since the payment date of the last salary instalment"*.
15. The Respondent filed the following requests for relief:

*In the light of the above, Pegeia 2014 respectfully requests the Dispute Resolution Chamber of the Football Tribunal to:*

- (i) Enforce its jurisdiction over the dispute at stake;*
- (ii) Reject the Statement of Claim filed on behalf of Mr. Kareem Ben-Kmayal;*
- (iii) Order Pegeia 2014 to immediately proceed to the effective payment of the amount of EUR 21,62 with 5% interest p.a. as from 1 May 2023;*
- (iv) Order Mr. Kareem Ben-Kmayal to bear any and all costs incurred as to the present proceedings.*

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

16. First of all, the Single Judge (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 16 September 2023 and submitted for decision on 8 November 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. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 1 lit. a) 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), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a British player and a Cypriot club.
18. 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 16 September 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**

19. 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.

### **c. Merits of the dispute**

20. 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 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**

21. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute the payment of certain financial obligations by the Respondent as per the contract.
22. On the one hand, the Single Judge observed that the Claimant claims the salaries from April to June 2023 and in support of his position the Claimant refers to the minimum wage regulations of national law.
23. In this context, the Single Judge acknowledged that the Contract clearly specifies that the last salary would be paid on 30 April 2023. Thus, the Single Judge confirmed that Claimant is entitled to the amounts agreed, and in the terms agreed, in the Contract.
24. Having established the above, the Single Judge turned to the Respondent argumentations regarding certain deductions made on the Claimant's dues. The Single Judge underlined that based on the

specific terms of the Contract, the Respondent agreed to provide accommodation to the Claimant. Moreover, the parties did not include any provision allowing the Respondent to make any deductions or stating that the Claimant shall be responsible for the utility bills of the accommodation provided. Furthermore, the Single Judge observed that the evidence submitted by the Respondent is not conclusive since most of the documents fail to make any specific reference to the Claimant and are exclusively addressed to the Respondent. Thus, the Single Judge decided that the Claimant is entitled to the amount unduly deducted by the Respondent.

25. In view of the foregoing and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the contract concluded between the parties, namely EUR 1,700 net.
26. 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 1 May 2023 until the date of effective payment.

## ii. Compliance with monetary decisions

27. 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.
28. 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.
29. 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.
30. 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.
31. 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**

32. 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.
33. 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.
34. Lastly, the Single Judge 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, Kareem Ben-Kmayal, is partially accepted.
2. The Respondent, Pegeia 2014, must pay to the Claimant the following amount(s):
  - **EUR 1,700 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 May 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**

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