

Decision of the Dispute Resolution Chamber

passed on 7 December 2023

regarding an employment-related dispute concerning
the player **Walter Binene Sabwa Bwalya**

COMPOSITION:

Martín AULETTA (Argentina), Deputy Chairperson
Gonzalo DE MEDINILLA (Spain), Member
Jorge GUTIÉRREZ (Costa Rica), Member

CLAIMANT:

Walter Binene Sabwa Bwalya, Congo DR
Represented by Senn Ferrero Asociados Sports Entertainment

RESPONDENT:

Wydad Athletic Club, Morocco
Represented by Global Sport Consulting

I. Facts of the case

1. The parties to the dispute are the footballer Walter Binene Sabwa Bwalya from DR Congo (hereinafter: *the player* or *the Claimant*) and the club Wydad Athletic Club from Morocco (hereinafter: *the club*, *Wydad* or *the Respondent*).
2. On 20 August 2023, the player and his previous club, Al Ahly SC, mutually terminated their employment relationship.
3. On 21 and 22 August 2023, the player's agent and the club's president exchanged WhatsApp messages concerning the potential hiring of the player. Contextually, the club's president remitted a document dated 21 August 2023, which stated as follows:

"Visa confirmation letter

To whom it may concern

This is to confirm that the Ministry of Foreign Affairs African Cooperation and Moroccan Expatriates of the Kingdom of Morocco had requested Moroccan security authorities to grant entry visa upon arrival for Mrs/Mr. BW AL YA BINENE SABWA WALTER, holder of passport (...)

This Visa Confirmation Letter remains valid until the September 21th, 2023."

4. Equally, the club procured flights to the player, which were forwarded to his agent. The flight reservation is dated 22 August 2023, with the following schedule:
 - Outbound flight from Cairo, Egypt to Casablanca, Morocco on 22 August 2023.
 - Inbound flight from Casablanca, Morocco to Cairo, Egypt on 26 August 2023.
5. On 22 August 2023, the player travelled to Morocco and entered that country.
6. The player submitted that after passing a medical test, he signed a contract with the club on 26 August 2023, which was later notarized on the same date (hereinafter: *the contract*). It is to be noted however that the specimen of the said contract on file is not countersigned by the club.
7. The contract contained *inter alia* the following conditions:
 - Term: one season, namely 2023/2024, with an option of extension by the club for an additional year.
 - Validity: from its date of signature, pending the ratification by the Royal Moroccan FA.
 - A fixed salary of MAD 60,000 gross payable by the end of each month.

- A sign-on fee of MAD 2,000,000, payable in 4 instalments of MAD 500,000 each respectively on 26 August 2023, 31 October 2023, 29 February 2023, and 30 May 2024.
 - Accommodation.
 - Return flight tickets between Morocco and DR Congo.
 - Other performance bonuses.
8. On 28 August 2023, the club issued flight tickets for the player from Casablanca, Morocco to Kinshasa, DR Congo, outbound on the same date and returning on 5 September 2023.
 9. Following the signature of the contract, the player stated that he was paid USD 10,000 by the club in cash, and then travelled to Kinshasa.
 10. Between 29 August 2023 and 5 September 2023, the player via his agent messaged the club's player to enquire about his visa status, to no avail.
 11. On 5 September 2023, the player received an offer for a 2-season long contract from the club OC Safi FC.
 12. On 6 September 2023, the player sent an email to the club, asking about his visa status and underlining the validity of the contract, to no avail.
 13. On 7 September 2023, the player wrote another email to the club, reporting his uncertainty and granting a final deadline of 24 hours for the club to clarify his situation, as the transfer windows all over the world were closed and the window in Morocco was ending in 48 hours. The player also pointed out to the offer received from OC Safi and insisted on the validity of the contract, and that the club had failed to pay him the agreed sign-on fee.
 14. On 27 September 2023, absent any reply from the club, the player terminated the contract, as follows:

"Dear Sirs,

I hereby write you following the Employment Agreement signed with Wydad on 26 August 2023, and my last communications of 6 and 7 September 2023 that have remained unanswered and ignored by the Club to this date.

As a result of the above and in view of the serious breaches to the Employment Agreement (lack of registration before the FIFA TMS and the FRMF, lack of payment of the sign-on-fee on 26 August 2023, lack of any instructions from the Club, etc.) I hereby communicated to Wydad the immediate termination of the Employment Agreement signed on 26 August 2023 with just cause reason.

As a result of the above and following the FIFA Regulations on the Status and Transfer of Players, I hereby invite the Club to proceed with the payment of the total sum of TWO MILLION FIVE HUNDRED THOUSAND MOROCCAN DIRHAMS (2.500.000 MAD) within the following five (5) days, corresponding to the outstanding remuneration and compensation for the early termination of the Employment Agreement with just cause reason.*

This payment shall be made to the bank account details attached to this email.

Please note that if the Club does not proceed with the payment of the referred amount within the granted deadline, I hereby reserve the right to start proceedings against the Club before the competent bodies."

15. On 29 September 2023, the club replied to the player and *inter alia* stated that "we remind you that we did not find reach an agreement because of your unacceptable financial demands and then you stopped all arguing that you have other offers to discuss".
16. The player remained unemployed following the aforementioned deeds.

II. Proceedings before FIFA

17. On 22 October 2023, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the player

18. In his claim, the player argued that the parties concluded a valid and binding employment agreement, i.e., the contract, which contained all the *essentialia negotii* and even started to be executed as the player was paid USD 10,000 in cash. The player referred to case law of FIFA and the Court of Arbitration for Sport (CAS) in support of his position, stating that "*a comprehensive understanding of all the facts and actions taken by the parties within the context of their relationship can led to determine an existing contractual relationship between the parties even in the absence of the signature of one of the parties.*"
19. In continuation, the player submitted he had just cause to terminate the contract, arguing that the breach committed by the club had reached such a level of seriousness, that the essential conditions under which the contract was concluded were no longer present and the player could not in good faith be expected to continue the employment relationship. In particular, the player underlined that he sought instructions from the club on 6 and 7 September 2023, to no avail, and was left with no option but to terminate the contract.
20. What is more, the player outlined that the club failed to undertake the following, therefore violating his personality rights per the jurisprudence of FIFA and CAS.

"[The club] failed to carry out the necessary actions for providing the player with instructions to resume his duties, register him as a player of the first team, and even prevented him from traveling to Morocco by not providing the entry visa in Morocco, incurring in a substantial breach of contract justifying the termination of the employment contract with just cause by the player.

[The club] failed to pay the remaining part of the sign on fee overdue from 26 August 2023 in the amount of MAD 401,174.2"

21. Thus, the player seeks outstanding remuneration and compensation for breach of contract from the club, as follows:

- Outstanding salaries from the signature of the contract until the date of termination on 27 September 2023 in the total amount of MAD 401,174.20 as remaining part of the sign-on fee overdue from 26.08.2023 in the amount of MAD 500,000, less the amount already paid by the Club on 26.08.2023 in the amount of MAD 98,825.80.
- Compensation for the residual value of contract from the termination until the natural expiry at the end of the 2023/2024 season, in the total amount of MAD 2,100,000, considering a salary of MAD 60,000 for 10 months.
- Default interest of 5% p.a. on the aforesaid amounts, accrued from the termination of the contract until the effective date of payment.

22. The player requested the following relief:

"I. The present Claim filed by the Player against Wydad is accepted in its entirety, declaring:

That the Player and Wydad concluded a valid Employment Agreement.

That the Player terminated the Employment Agreement with just cause reason during the protected period as a consequence of the severe breaches of the Club in accordance with art. 17 of the FIFA RSTP.

II. As a result, ruling that Wydad shall to pay the Player the total sum of TWO MILLION FIVE HUNDRED ONE THOUSAND ONE HUNDRED SEVENTY-FOUR MOROCCAN DIRHAMS AND TWENTY CENTS (MAD 2,501,174.2) corresponding to:

Outstanding salaries from the signature of the Employment Agreement, until the date of termination on 27 September 2023 in the total amount of MAD 401,174.2 as remaining part of the sign on fee in accordance with Clause 5.1 b) of the Employment Agreement.

Compensation for the residual value of the Employment Agreement from the termination with just cause by the Player until the natural expiry at the end of the 2023/2024 season, in the total amount of MAD 2,100,000.

III. Ordering the Respondent to pay the interest of 5% per annum be applied to the aforesaid amounts referred in par. II, as of the date of termination of the Employment Agreement with just cause (i.e., as of 28 September 2023) until full payment or in the alternative as of the date of this Claim.

IV. Furthermore, to impose the most severe sporting sanctions on Wydad for provoking the early termination of the Employment Agreement in accordance with Art. 17(4) RSTP of the FIFA RSTP.

V. Ordering the Respondent to pay all the legal and procedural costs, and all other expenses of these proceedings”.

b. Position of the club

23. The club filed a short statement of defense, reproduced below, and requested the claim to be rejected.

“2. Firstly, and foremost, we hardly reject all the player’s allegations that the respondent has signed an employment contract with him or even reached an oral deal.

3. We also reject all the factual the fake factual background included in the claim for the sole purpose to enforce an inexistant and imaginary employment relationship between parties.

4. The real factual background is the following:

- On 20/08/2023, The player has terminated his contract with AL Ahly Club as established by the termination agreement attached to the claim.

- After the termination of the contract, the player was proposed by his agent to Wydad Athletique Club (surely the player was proposed to other clubs).

- Wydad Athletique Club has arranged the player’s arrival to Morocco in order to discuss and negotiate a possible employment relationship and booked for him a round trip ticket Cairo-Casablanca-Cairo from 22 August to 26 August 2023.

- After many negotiation’s rounds, both parties didn’t reach any deal because of the big gap between the financial demands of the player and the financial capacities of the club.

- The player asked to cancel his return flight ticket to Cairo and changing it to Kinshasa because he needs to examine with calm and with his family all the club’s proposal including the respondent’s one.

- Accordingly, the respondent rectified the travel of the claimant but stopped all the negotiation with him and his agent and turned to other possibilities.

- Strangely, the player and his agent harassed the club by many emails and tentative to call the president who were clearly inform them before their departure that he stopped the negotiations and wished to the player a success in his career.

5. From the above factual background it clearly appears that the respondent did never sign any contract with the player.

6. The exhibit 15 of the claimant (offer from OC SAFI on date of 5 August 2023) proves irrevocably that the player is still negotiate with other clubs.

7. Indeed, the offer received from another club in Morocco proves that the player was still negotiating with many clubs and never signed a contract with WAC otherwise his agent would not ask for a formal offer from other clubs.

8. Lastly, regarding the fake employment contract submitted by the claimant (his exhibit 9), we draw your kind attention that the document provided by the claimant is categorically and manifestly fake and clearly different from the template of the employment contract usually used by the club according to the FRMF standard (see attached two signed contracts for the seasons 2022/2023 and 2023/2024).

9. FIFA Football tribunal can also verify in FIFA TMS that the document provided by the player is very different from all the contracts uploaded in the system.

10. In conclusion, no employment contract was signed by the club and no agreement was reached between both parties regarding any possible employment relationship.”

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

24. 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 22 October 2023 and submitted for decision on 7 December 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.
25. 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 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 footballer from DR Congo and a football club from Morocco.

26. 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 22 October 2023, the cited edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

27. 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

28. 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

29. 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 breach of contract.
30. To this effect, the DRC recalled that on one hand, according to the Claimant, he had a valid employment agreement with the club, which was then terminated with just cause due to outstanding remuneration and the club's failure to honour the contract by not registering him.
31. By the same token and on the other hand, the DRC recalled that the Respondent argued that no valid contract was ever concluded between the contending parties.

32. Accordingly, the DRC outlined that the question to be tackled first is whether the parties had entered into a valid and binding contract.
33. In doing so, the Chamber recalled that the validity of a contract cannot be made subject to administrative formalities per art. 18 par. 4 of the Regulations and the jurisprudence of the DRC. By the same token, the Chamber remarked that under its well-established jurisprudence "*the Dispute Resolution Chamber must be very careful with accepting documents, other than the employment contract, as evidence for the conclusion of a labour relationship*" (see, for instance, DRC Decision of 21 September 2012, ref. 912213; DRC Decision of 2 March 2017, ref. 03171643-E or DRC Decision of 9 May 2019, ref. 05190776-E). Thus, the DRC confirmed that decisions determining that a contractual relationship was formed, without having a copy of a signed contract on file, must require a high standard of proof.
34. Along these lines, the Chamber equally recalled that the well-established jurisprudence of the DRC dictates that, in order for an employment contract to be considered as valid and binding, apart from the consent of both the employer and the employee (usually manifested by the signature to the relevant agreement), 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.
35. Furthermore, the DRC outlined that the actual signature of the contract is not the sole (or even a necessary) element to determine whether there was an existing contractual relationship between the parties. Instead, the validity and the enforcement of the contract should be established on the basis of a comprehensive understanding of all the facts and actions taken by the parties within their context of their relationship. Put differently, the DRC confirmed that the signature requirement is essentially the easiest way that a party has to prove that their counterparty has entered into a contract; however, in line with the jurisprudence of both the Football Tribunal and the CAS, an employment agreement can be materialised with the wish to be executed, and the signature can be understood as a requirement to prove the club's acceptance, but it is not the only evidence.
36. In parallel, the Chamber also recalled the content of 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. On this note, the DRC deemed that it was up to the player to prove that the employment relationship on the basis of which he claimed outstanding remuneration and compensation for breach of contract from the club indeed existed.
37. With the above in mind, while the facts stated by the club could reasonably make sense, the DRC found that the same has presented no evidence in support of its allegations. What is more, it found remarkable that if the scenario of pending negotiations was indeed real as alleged by the club, the club itself did reply to the e-mails of the player, which in fact had placed it in default. Consequently, the DRC could not uphold the argumentation of the club.

38. In contrast, the Chamber believed the allegations of the player to the effect that contract started to be performed do have merit. Even if more evidence to this end was desirable, the DRC outlined that the partial payment of USD 10,000 has not been rebutted by the club specifically. More decisively however, the DRC underlined that the club has issued flight tickets to the player exactly as described under the contract.
39. The combination of these factors, in the DRC's view, tips the scale in favour of the player, in that his claim was corroborated by documentary evidence to a sufficient degree as to demonstrate that effectively the parties had mutually given their reciprocal consent and engaged each other in an employment relationship. On this account, the club cannot suddenly withdraw its consent and argue simply that the lack of signature suffices to establish that no contract existed.
40. In fact, the DRC remarked that clubs are required a higher degree of diligence upon hiring players, and it seems that all steps were undertaken to this effect: inviting the player, procuring medical examinations, and signing a contract – which contains all the club's data in the standard for used by the local member association, and was indeed notarized.
41. As such, the DRC concluded that the contract was valid and binding, and that the club failed to register the player and pay him his dues. As such, the player had just cause to terminate the contract and the club thus must be liable to the consequences that follow.

ii. Consequences

42. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the club.
43. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, is equivalent to MAD 401,174.20. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the player said amounts which were outstanding under the contract at the moment of the termination.
44. In addition, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest at the rate of 5% p.a. on the outstanding amounts as from 28 September 2023 until the date of effective payment.
45. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in

particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

46. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
47. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
48. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of MAD 2,100,000 (i.e., the residual value of the contract) serves as the basis for the determination of the amount of compensation for breach of contract.
49. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
50. Indeed, the player has remained unemployed. Therefore, the Chamber concluded that no mitigation applies in the matter at hand.
51. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables and should there be mitigation. Since the latter was not the case, the DRC decided that the player shall not receive additional compensation.
52. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of MAD

2,100,000 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

53. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% p.a. as of 28 September 2023 until the date of effective payment.

iii. Compliance with monetary decisions

54. 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.
55. 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.
56. 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.
57. 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.
58. 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

59. 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.

60. 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.
61. 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, Walter Binene Sabwa Bwalya, is partially accepted.
2. The Respondent, Wydad Athletic Club, must pay to the Claimant MAD 2,501,174.20 **as outstanding remuneration and as compensation for breach of contract without just cause** plus 5% interest over said amount *p.a.* as from 28 September 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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