

Decision of the Dispute Resolution Chamber

passed on 26 October 2023

regarding an employment-related dispute concerning
the player **Izuegbu Abonima Boniface**

BY:

Clifford J. Hendel (USA & France), Deputy Chairperson
Jorge Gutiérrez (Costa Rica), member
Stella Maris Juncos (Argentina), member

CLAIMANT:

Izuegbu Abonima Boniface, Nigeria
Represented by Mr Chijioke Okpanku

RESPONDENT:

Maghreb Association Sportive, Morocco

I. Facts of the case

1. On 2 August 2023, the Moroccan club Maghreb Association Sportive de Fes (hereinafter: *club* or *Respondent*) sent an offer of an employment contract (hereinafter: *the Offer*) to the Nigerian player Izuegbu Abonima Boniface (hereinafter: *Claimant* or *player*).
2. Pursuant to the Offer, the duration of the prospective contract was stipulated as from the date of signature until 30 June 2025.
3. Furthermore, the financial conditions of the abovementioned Offer were as follows:
 - *Annual salary of USD 80,000 for the season 2023-2024;*
 - *Annual salary of USD 100,000 for the season 2024-2025.*
4. The Offer equally stipulated that the Claimant had to pass a medical and physical test to certify that he was able to play football, in order for the eventual contract to be valid.
5. On an unspecified day, the Claimant received an invitation letter from the Egyptian club Ismaily FC to play for the latter club.
6. On 11 August 2023, the Claimant and the Respondent signed an employment contract (hereinafter: *the Contract*) valid as from 11 August 2023 until 30 June 2025.
7. Pursuant to the Contract, the Claimant was entitled to a monthly salary of MAD 35,000, as well as a signature bonus of MAD 400,000, payable in two separate instalments:
 - *MAD 300,000 on 11 August 2023;*
 - *MAD 100,000 on 30 June 2024.*
8. Furthermore, the Claimant was entitled to a performance bonus payment of MAD 560,000, proportional to the number of matches played, for the second season (i.e. 2024/2025).
9. According to the Claimant, the Respondent refused to provide him with a copy of the Contract signed by both parties.
10. On the same day the Contract was signed, the Claimant travelled to Morocco to complete medical and physical tests, using a flight ticket provided by the Respondent.
11. Following the signature of the Contract by the Claimant, the latter was, according to himself, consistently training with the Respondent. According to the Claimant, at this time, no food, drink or adequate living conditions were provided by the Respondent. The Claimant equally pointed out that, due to these circumstances, he fell ill, to which the

Respondent reacted by allegedly ordering the team doctor to provide unprescribed medication.

12. On 22 August 2023, the Respondent informed the Claimant's agent that he was no longer needed, as the head coach did not deem his performance sufficient for the level required.

II. Proceedings before FIFA

13. On 23 August 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

14. In his claim, the player argued that the Respondent terminated the Contract without prior notice and due to sporting performance, which is pursuant to the constant jurisprudence of the DRC, not a just cause.
15. The player further asserted that he turned down a lucrative offer from an Egyptian club to play for the Respondent, which caused a further loss of opportunity to him.
16. The Claimant requested outstanding remuneration of USD 40,000, corresponding to the signature bonus due on 11 August 2023, as well as compensation of USD 140,000 corresponding to the residual value of the Contract as well as USD 50,000 in the value of the lost opportunity for signing for the Egyptian club.

b. Position of the Respondent

17. Despite having been invited to do so, the Respondent failed to provide a position to the claim within the stipulated time limit.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

18. 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 23 August 2023 and submitted for decision on 26 October 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.
19. 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 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 Nigerian player and a Moroccan club.
20. 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 15 February 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

21. 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

22. 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

23. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the basis of the present dispute consisted of the alleged termination of the Contract by the Respondent without just cause.
24. In this context, the Chamber acknowledged that its task was to determine when and how the Contract had been terminated, whether or not such termination resulted with or without just cause, and what the consequences of such termination may be.
25. The Chamber began its deliberations by revisiting the parties' submissions, starting with the Claimant who had argued that the Respondent had suddenly informed him that he was no longer needed and that, due to insufficient sporting performance, he would be discarded from the team. According to the Claimant, this did not constitute a just cause to terminate the Contract, giving rise to liability for the Respondent. The Chamber also noted that the Claimant alleged not having been paid the first instalment of the signature bonus, as well as the first monthly salary for August 2023, as well as losing out on an opportunity of signing a contract with the Egyptian club Ismaily SC.
26. On the other hand, the Chamber recalled that the Respondent did not provide an answer to the claim within the stipulated time-limit, thus leaving the submission of the Claimant uncontested.
27. The Chamber, at this point, wished to refer to the wording of art. 13 par. 5 of the Procedural Rules, according to which a party that asserts a certain fact also bears the burden of proving its veracity.
28. In the case at hand, the Chamber noted that although there was no formal termination letter by either party on file, the Claimant submitted an uncontested text message from the Respondent to his agent in which he was informed by the management of the club that the head coach considered his performance insufficient and that his services were no longer desired.
29. The Chamber considered said correspondence by the club a sufficiently clear way of conveying that the contractual relationship had, from thereon, no scope for continuation. As such, it was firstly established that the Respondent terminated the Contract on 22 August 2023 by way of said message.
30. Having said this, the Chamber turned to the question of just cause.
31. The Chamber recalled its own longstanding jurisprudence, in accordance with which a premature unilateral contractual termination may only be the result of a very substantial or frequent breach of contract by the counterparty. Where there are more lenient

measures available to remedy the contractual relationship, the parties should readily turn to these before immediately departing from the contract. Indeed, a premature contractual termination by one party may only constitute an *ultima ratio measure*.

32. The Chamber recalled that the reason cited by the Respondent in the aforementioned correspondence entailing contractual termination was the insufficient sporting performance of the Claimant. No other potential justification could be observed by the Chamber from the evidence on file, not least due to the fact that the Respondent had not provided its own position to the claim within the granted deadline.
33. In accordance with the longstanding jurisprudence of the Chamber, sporting performance is well-established as not being a just cause for terminating an employment contract unilaterally before its term, falling short of the standard of *ultima ratio* as mentioned above.
34. Therefore, the Chamber concluded that the Respondent terminated the Contract without just cause to the Claimant's detriment.

ii. Consequences

35. 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 Respondent.
36. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to one monthly salary of MAD 35,000 and the first instalment of the signature bonus of MAD 300,000 under the Contract, amounting to MAD 335,000 in total.
37. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination, i.e. MAD 335,000.
38. 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.

39. 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.
40. 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.
41. 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 870,000 (i.e. the residual value of the Contract, comprised of 22 salaries between September 2023 and June 2025, and the second instalment of the signature bonus of MAD 100,000) serves as the basis for the determination of the amount of compensation for breach of contract.
42. The Chamber here wished to specify that the bonus referred to in the Contract ("*prime de rendement*") was to be considered as a conditional amount, dependent on the number of matches played in the respective season, thus excluding it from the scope of being considered as part of the compensation by virtue of its contractual nature.
43. Likewise, taking note of the alleged loss of opportunity of the Claimant by not signing with the Egyptian club, the Chamber observed that the Claimant submitted no copy of a concrete employment contract or offer upon which the value of such potential lost opportunity could be determined. Thus, the Chamber disregarded also this line of argument for the sake of calculating the compensation due to the Claimant in the present case, in line with art. 13 par. 5 of the Procedural Rules.
44. 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.
45. In the case at hand, the Claimant had not found new employment following the contractual termination. Consequently, he was deemed not to have mitigated his damages.

46. Conclusively, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of MAD 870,000 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
47. Lastly, taking into consideration the fact that the Claimant requested no interest, so as not to contravene the principle of *ne eat iudex ultra petita*, the Chamber did not award any interest on the above amount.

iii. Compliance with monetary decisions

48. 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.
49. 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.
50. 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.
51. 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.
52. 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

53. 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,*

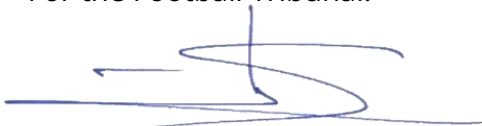
or match agent". Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

54. 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.
55. 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, Izuegbu Abonima Boniface, is partially accepted.
2. The Respondent, Maghreb Association Sportive, must pay to the Claimant the following amount(s):
 - **MAD 335,000 as outstanding remuneration;**
 - **MAD 870,000 as compensation for breach of contract without just cause.**
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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