

Decision of the Dispute Resolution Chamber

passed on 18 October 2023

regarding an employment-related dispute concerning
the player Edgar Calgaroto Filho

BY:

Frans DE WEGER (The Netherlands), Chairperson
Khalid AWAD ALTHEBITY (Saudi Arabia), member
Peter LUKASEK (Slovakia), member

CLAIMANT:

Edgar Calgaroto Filho, Brazil
Represented by Ana Paula da Silva Corrêa

RESPONDENT:

Marumo Gallants FC, South Africa

I. Facts of the case

1. On 13 January 2023, the South African Marumo Gallants FC (hereinafter: *club* or *Respondent*) sent a document with the title "*Invitation*" (hereinafter: *invitation letter*) to the Brazilian player, Edgar Calgaroto Filho (hereinafter: *Claimant* or *player*).
2. The Invitation letter states: "*We confirm that the abovementioned Professional Soccer Player has been invited by Marumo Gallants FC to attend trials/assessment at our club, for a period of approximately 10 days with immediate effect to travel to South Africa as soon as possible. Marumo Gallants FC will be responsible for his accommodation and transport for the duration of his stay in South Africa. Further we confirm that Marumo Gallants FC will take full responsibility of him whilst he is in South Africa and ensure his return to his home country.*"
3. On 13 January 2023, the club issued a document with the title "*offer*" (hereinafter: *offer*) to the player, which reads as follows:

We confirm that the abovementioned Professional Soccer Player has been offered a job to play for Marumo Gallants FC in South Africa.

Marumo Gallants FC will be responsible for his accommodation and transport for the duration of his stay in South Africa.

Offer is as follows:

- Gross salary of 5000 US Dollars
- 1 year contract

Further we confirm that Marumo Gallants FC will take full responsibility of him whilst he is in South Africa and ensure his return to his home country at the end of contract.

4. On 24 January 2023, the player arrived in South Africa and went through a medical examination.
5. On 6 February 2023, the player left South Africa and returned to Brazil.
6. On 10 April 2023, the Claimant put the Respondent in default and requested payment of USD 60,000 as compensation for breach of contract.
7. The player confirmed that he remained unemployed until today.

II. Proceedings before FIFA

8. On 27 July 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

9. In his claim, the Claimant lodged a claim against the Respondent in front of FIFA and requested payment of the following monies:

- USD 60,000 as compensation for breach of contract, corresponding to the residual value (12x USD 5,000);
- USD 505 as reimbursement for amount paid to his former club.

The player further requested 1% interest per month (12% *p.a.*).

10. In this framework, the player argued that he was offered a contract by the Respondent, which he accepted, travelled to South Africa and underwent medical examinations.

11. The player further stated: *"Upon arriving in South Africa, the claimant was submitted to and considered fit in the medical examinations applied by the club. However, after carrying out all the administrative procedures requested by the respondent, the claimant was informed that he would not be under contract. Differently from what was agreed, the club communicated to the athlete that he should go through a period of tests, so that later, if approved, the special employment contract in question could be put into effect. After the claimant questioned the new conditions imposed on him, the respondent dismissed the athlete to return to Brazil."*

12. The Claimant held that transportation and accommodation was covered by the club during his stay in South Africa.

13. On account of the above, the player maintained that the club terminated the contract without just cause and therefore he is entitled to compensation corresponding with the residual value of the contract.

14. Furthermore, he held that he had a pre-contract with a different club which he had to terminate and pay USD 505 in order to commit to the contract in South Africa.

b. Position of the Respondent

15. The Respondent failed to submit its reply to the claim even though it was invited to do so.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

16. 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 27 July 2023 and submitted for decision on 18 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.
17. 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 player and a club.
18. 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 27 July 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 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

20. 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

21. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the matter at hand concerns a claim of a player for breach of contract.
22. In this context, the Chamber acknowledged that its task was to decide if the parties validly concluded a contractual relationship.
23. The members of the Chamber duly noted the Claimant's argumentation that the parties validly concluded a contract.
24. The Respondent, for its part, failed to present its response to the claim of the player, in spite of having been invited to do so. In this way, the Chamber considered that the Respondent renounced its right of defence.
25. Furthermore, as a consequence of the aforementioned consideration, the Chamber concurred that in accordance with art. 21 par. 1 of the Procedural Rules it shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
26. The foregoing having been established, the Chamber had to establish *ex officio* if the documents submitted by the player can be considered as a valid and binding employment contract.
27. In view of the foregoing, the Chamber had to recall 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, 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. After thoroughly analysing the documentation on file, the majority of the Chamber first concluded that that the offer does not specify the remuneration as it mentions "5,000 USD Dollars" but not if such amount was effectively due on a monthly basis. There is a possibility that such amount was meant as a yearly salary.
29. Subsequently, the Chamber turned its attention to the factual framework involving the negotiations between the parties and, specifically, to the correspondence exchanged in the context of the alleged acceptance of the employment proposal. In particular, the majority of the Chamber observed that, in accordance with the documentation provided, the player failed to comply with the formal pre-requisite of accepting explicitly and in writing the proposal of the club.

30. While referring to art. 13 par. 5 of the Procedural Rules and the principle of the burden of proof, the Chamber understood that the player failed to submit enough evidence in order to establish that the *essentialia negotii* were met in the offer and the player did not meet his burden of proof in order to demonstrate that he dully accepted the club's offer.
31. Therefore, the DRC decided by majority that the player's claim is rejected, due to its lack of a contractual basis.

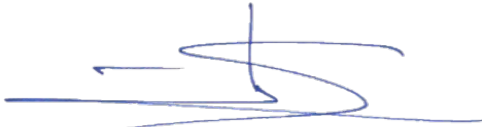
d. Costs

32. 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.
33. 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.
34. 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, Edgar Calgaroto Filho, 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

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777