

Decision of the Dispute Resolution Chamber

passed on 25 October 2023

regarding an employment-related dispute concerning
the player Ismael Diakhite

BY:

Roy VERMEER (The Netherlands)

CLAIMANT:

Ismael Diakhite, Mauritania

Represented by Global Sport Consulting Law Firm

RESPONDENT:

Club Sportif Sfaxien, Tunisia

I. Facts of the case

1. On 1 July 2022, the Mauritanian player, Ismael Diakhite (hereinafter: *the Claimant* or *the player*) and Tunisian club, Sportif Sfaxien (hereinafter: *the Respondent* or *the club*) concluded an employment contract (hereinafter: *the contract*) valid as from the date of signature until 30 June 2023.

2. In accordance with clause 7 of the contract, the player was entitled to the following:

- A monthly salary of TND 14,000.
- A performance bonus of up to TND 130,000, in direct proportion to the number of matches the Claimant participated with the first team (i.e., base performance bonus / number of total matches in the first team * number of matches in which the player participated in the first team).

The player would receive an advance payment of the performance bonus of TND 40,000 at the signature of the contract.

- Other advantages: car and apartment.

3. Clause 45 of the Sporting regulations of the Tunisian Football Federation (TFF) reads as follows:

"Le système de la Coupe de Tunisie SENIORS pour la saison sportive 2023/2024 sera communiqué ultérieurement par le Bureau Fédéral avant le démarrage de cette compétition.

N.B :

- *A la suite du tirage au sort effectué, les matchs seront désignés sur le terrain du club "doublement" de division inférieure par rapport à son adversaire et sous réserve que le terrain du club recevant répond aux dispositions stipulées par l'article 47 des Règlements Sportifs.*
- *Dans le cas où à la suite du tirage au sort, un club de la ligue I doit rencontrer un autre club appartenant à une division inférieure, le match devant les opposer, se déroulera sans la participation des joueurs étrangers."*

Freely translated to English:

"The system for the Tunisian SENIORS Cup for the sports season 2023/2024 will be announced at a later date by the "Bureau Fédéral" before the start of the competition.

N.B:

- *Following the draw, matches will be played on the pitch of the club "doubled" in a lower division than its opponent, provided that the pitch of the receiving club complies with the provisions of article 47 of the Sporting Regulations.*
- *If, following the draw, a League I club has to play another club in a lower division, the match will be played without the participation of foreign players."*

4. On 14 July 2023, the Claimant put the Respondent in default and requested payment of (i) TND 71,429 corresponding the remaining payment of the bonus and (ii) TND 70,000 corresponding to the salaries between February and June 2023, setting a 10 days' time limit in order to remedy the default. However, to not avail.

II. Proceedings before FIFA

5. On 11 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

6. In his claim, the Claimant requested payment of his outstanding remuneration as follows:
 - TND 71,429 corresponding to the remaining balance of the performance bonus plus 5 % interest *p.a.* as from 1 July 2023 until the date of effective payment.
 - TND 14,000 corresponding to February salary plus 5 % interest *p.a.* as from 1 March 2023 until the date of effective payment.
 - TND 14,000 corresponding to March salary plus 5 % interest *p.a.* as from 1 April 2023 until the date of effective payment.
 - TND 14,000 corresponding to April salary plus 5 % interest *p.a.* as from 1 May 2023 until the date of effective payment.
 - TND 14,000 corresponding to May salary plus 5 % interest *p.a.* as from 1 June 2023 until the date of effective payment.
 - TND 14,000 corresponding to June salary plus 5 % interest *p.a.* as from 1 July 2023 until the date of effective payment.

b. Position of the Respondent

7. In its reply, the Respondent requested to partially reject the player's claim.

8. In doing so, the Respondent stated that in accordance with the contract, the performance bonus was to be paid in direct proportion to the number of matches the Claimant participated with the team each season. The mentioned bonus was fixed in accordance with the regulations of the Tunisian Federation of Football.

9. In view of the foregoing the Respondent provided the following calculation: (the player participated in 26 matches and the total number of matches of the club was 37 matches)

$$\text{TND } 130,000 * 37 \text{ matches} / 26 = \text{TND } 91,351$$

10. Considering that the club already paid the player TND 40,000, the player should be entitled to TND 51,351 (TND 91,351- TND 40,000) and not TND 71,429. As to the payment of TND 40,000 the club submitted an invoice signed by the player.

11. Finally, the Respondent requested to reject any penalty for delay.

c. Rejoinder of the Claimant

12. In his rejoinder, the Claimant stated the club participated in 37 matches (26 league matches; 3 Tunisian Cup matches including 2 matches against lower divisions teams; 4 Arab Cup matches and 4 African Cup matches) and that in accordance with art. 45 of the regulations of the TFF, the matches against the club JS Omrane and SS Sfaxien should not be taken into consideration, as foreign players were not able to play. Accordingly, the total number of matches of the first team should be 35.

13. The player further indicated that he participated in 33 matches (24 in the league matches, 1 match in the Tunisian Cup, 4 matches in the African Cup and 4 matches in the Arab club).

14. In view of the foregoing the player amended his request for relief and indicated that he shall receive as performance bonus TND 82,572 (TND 130,000 /35 matches * 33 matches minus TND 40,000).

15. As to the salaries, his request remained unchanged.

d. Final comments of the Respondent

16. The Respondent did not provide FIFA with its final comments within the timeframe granted by the FIFA general secretariat.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

17. First of all, the Single Judge of the Dispute Resolution Chamber (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 11 August 2023 and submitted for decision on 25 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.
18. Subsequently, the Single Judge 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 Mauritanian player and a Tunisian club.
19. Moreover, 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 11 August 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

20. 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. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he 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

21. The 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 he 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

22. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that it pertains to a claim of a player against a club for overdue payables in which the main dispute of the parties is to establish whether the player is entitled to the amounts he requested.
23. With respect to the salaries from February 2023 to June 2023, the Single Judge observed that the club did not dispute that these amounts were due. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the salaries from February to June 2023 i.e., TND 70,000 (5 times TND 14,000).
24. With respect to the performance bonus, the Single Judge observed that the club contested the amount claimed by the player indicating that the club participated in 37 matches and that the player only played in 26 of them. Regarding this, the Claimant contested that although the club played indeed 37 matches, he was unable to play in 2 of them due to TFF regulations and that, therefore, the total number of matches to be considered as played by the club should be 35. Aside from the above, the Single Judge further stressed that the Respondent did not provide its final comments on the subsequent information provided by the player in his rejoinder.
25. In view of the foregoing, the Single Judge analysed the evidence provided by the Claimant and was able to determine the following:
 - a. The regulations of the TFF stated in its article 45 that foreign players, such as the Claimant, would not participate in matches with clubs of a lower division.
 - b. it can be retrieved from the evidence on file that the clubs JS Omrane and SS Sfaxien were in the season 2022/2023 in the League 2.
 - c. The player participated in 24 matches in the Tunisian League 1.
 - d. The player participated in the Tunisian cup in the match against Olympique de Beja.
 - e. The player participated in 4 matches in the African Cup.
 - f. The player participated in 4 matches of the "Coupe du King Salman des club Champions".

26. Moreover, the Single Judge noted that as to the total number of matches that both parties agreed that the total matches in which the club participated in the season 2022/2023 was 37.
27. In view of the foregoing and taking into account (i) the total matches played by the club (37 in total), (ii) the lack of response by the Respondent as to the player's rejoinder and (iii) the evidence provided by the player (see point 25 lit. a and b); the Single Judge concluded that the basis for the number of matches as to the present case should be 35. Finally, as per the evidence provided (see point 25), the Single Judge recalled that the player participated in 33 matches.
28. In view of the foregoing, the player is entitled to TND 82,571.43 (TND 130,000/35*33 minus TND 40,000). As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant TND 82,571.43.
29. Lastly, taking into consideration the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Single Judge decided to award the player interest at the rate of 5% *p.a.* on the following amounts:
 - On TND 14,000 as from 1 March 2023 until the date of effective payment;
 - On TND 14,000 as from 1 April 2023 until the date of effective payment;
 - On TND 14,000 as from 1 May 2023 until the date of effective payment;
 - On TND 14,000 as from 1 June 2023 until the date of effective payment;
 - On TND 14,000 as from 1 July 2023 until the date of effective payment;
 - On TND 82,571.43 as from 1 July 2023 until the date of effective payment.

ii. Art. 12bis of the Regulations

30. In continuation, the Single Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
31. To this end, the Single Judge confirmed that the player put the club in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
32. Accordingly, the Single Judge confirmed that the club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
33. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in

mind that this is the fourth offense (FPSD-3618, FPSD-9127, FPSD-9128) by the club within the last two years, the Single Judge decided to impose a warning and a fine of USD 7,500 on the club in accordance with art. 12bis par. 4 lit. a and c of the Regulations.

34. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

35. 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.
36. 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.
37. 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.
38. 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.
39. 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

40. 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.

41. 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.
42. 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, Ismael Diakhite, is accepted.
2. The Respondent, Club Sportif Sfaxien, must pay to the Claimant the following amounts:
 - **TND 14,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 March 2023 until the date of effective payment;
 - **TND 14,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 April 2023 until the date of effective payment;
 - **TND 14,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 May 2023 until the date of effective payment;
 - **TND 14,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2023 until the date of effective payment;
 - **TND 14,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 July 2023 until the date of effective payment;
 - **TND 82,571.43 as outstanding remuneration** plus 5% interest *p.a.* as from 1 July 2023 until the date of effective payment.
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. 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.
5. 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.
6. This decision is rendered without costs.

7. A warning and a fine in the amount of **USD 7,500** is imposed on the Respondent, **which must be paid to FIFA within 30 days of notification of this decision**. Such fine must be paid to the following bank account with a clear reference to the case **FPSD-11307**:

UBS Zurich

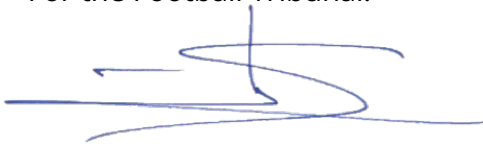
Account number 230-366677.61N (FIFA Players' Status)

Clearing number 230

IBAN: CH12 0023 0230 3666 7761 N

SWIFT: UBSWCHZH80A

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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