

Decision of the Dispute Resolution Chamber

passed on 6 December 2023

regarding an employment-related dispute concerning
the player Ali Diakite

BY:

Calum BEATTIE (Scotland)

CLAIMANT:

Ali Diakite, Côte d'Ivoire

RESPONDENT:

HIBERNIANS, Malta

I. Facts of the case

1. On 31 January 2022, the player and Hibernians concluded an employment contract valid as from the date of signature until 31 May 2022, extendable for the season 2022/2023 (*i.e. Art. 1.1. "This contract shall be valid for one (1) football season, and shall come into effect on the signing of this agreement and terminate naturally on the 31st May 2022."*)
2. However, the contract stipulated the following:
"1.2 The Club shall have the unilateral option to extend this agreement and retain the services of the Player for football season 2022/2023. Should the Club wish to exercise such option to extend this agreement for another football season, it shall inform the Player, in writing, of the exercise of this option by not later than the 31st May 2022."
3. According to art. 2.1 of the contract, the player was entitled to EUR 2,795 gross per month, or EUR 3,335 gross if the contract is extended into the season 2022/2023.
4. Art. 2.2. of the contract stipulated the following:
"The Club and the Player agree that the Player shall be paid for his services by the Club throughout the competitive football season, and therefore the first day which shall be calculated for salary is to be the first day in which the player starts training with the Club, while the last day shall be the day in which the Club plays its last competitive match in the MFA football season."
5. On 13 July 2023, the player sent a default notice, requesting the payment of EUR 10,005 within 15 days, corresponding to the following amounts:
 - 3.335 EUROS - Regular salary of March 2023
 - 3.335 EUROS - Regular salary of April 2023
 - 3.335 EUROS - Regular salary of May 2023

II. Proceedings before FIFA

6. On 11 October 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and requested the payment of EUR 4,000, plus 5% interest p.a.
7. The player explained that the club paid him EUR 6,000 after his default notice.
8. In its reply, the club explained that the contract stipulated that it would last until the last competitive match of 2022/2023, which occurred on 1 May 2023 (evidence on file). Hence, the club argued that the full remuneration was paid.
9. In his replica, the Claimant insisted that the contract was valid until 31 May 2023.

10. The player considered that the contradiction between clauses 1.1 and 2.2. of the contract cannot be interpreted against him.
11. In its duplica, the Respondent insisted in its previous argument.
12. In particular, the Respondent argued that, while it is true that clause 1.1 refers to the football season that terminates naturally on 31 May 2022 (and by extension, 31 May 2023), this clause must not be read in isolation and the generality of the clause must be read in conjunction with 2.2, which deals specifically with remuneration.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. 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, it took note that the present matter was presented to FIFA on 11 October 2023 and submitted for decision on 6 December 2023. Taking into account the wording of art. 34 of the May 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.
2. 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 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 an player from Côte d'Ivoire and a club from Malta.
3. 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 11 October 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

4. 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 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

5. Its 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

6. The foregoing having been established, the Single Judge moved to the substance of the matter, which concerns the payment of outstanding remuneration arising from an employment contract.
7. The Single Judge noted that player initially requested his salaries from March to May 2023, i.e. $3,335 \times 3 = \text{EUR } 10,005$, but acknowledged a partial payment of EUR 6,000. The Judge also observed that the club explained that the salary of May 2023 is not due, since the contract expired on 1 May 2023.
8. In this respect, the Judge noted that, while it is true that clause 1.1 of the contract indicates a termination date on 31 May 2022 (and extended into 31 May 2023), clause 2.2. specifically indicates that “the last day shall be the day in which the Club plays its last competitive match in the MFA football season”. In this respect, the Judge verified that the club provided evidence that the last day of the season was on 1 May 2023.
9. In this respect, the Judge referred to the established legal principle of '*specialia derogant generalibus*', according to which specific provisions within a contract take precedence over more general ones. In the employment contract between the player and Hibernians, the Judge pointed-out that Clause 2.2 stands as a specific provision governing the calculation of remuneration, expressly linking the termination date for salary purposes to the conclusion of the club's last competitive match in the MFA football season.
10. In addition, the Judge noted that there is no explicit mention of a termination date extending to 31 May 2023. The Judge understood that any reference to 31 May 2023 is in fact based on a theoretical extrapolation from 31 May 2022 rather than a specific provision within the contract.

11. Thus, the Judge concluded that the player should receive his salary until (and including) 1 May 2023. The following table summarizes the player's entitlements and outstanding remuneration.

Month	Entitlement (EUR)	Partial Payment (EUR)	Outstanding Due (EUR)
March 2023	3,335		
April 2023	3,335		
May 2023 (1 day)	111		
Total	6,781	6,000	
Outstanding			781

12. As a result, the Judge established that player is entitled to EUR 781.
13. In addition, in accordance with the jurisprudence of the FT and the request of the Claimant, the Judge decided to award 5% interest p.a. as from the due dates..

ii. Compliance with monetary decisions

14. Finally, taking into account the applicable Regulations, the 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.
15. In this regard, the 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.
16. Therefore, bearing in mind the above, the 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.
17. 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.

18. The 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.
19. 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 first offense by the club within the last two years, the Single Judge decided to impose a warning on the club in accordance with art. 12bis par. 4 lit. a) of the Regulations.

d. Costs

20. The 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 Judge decided that no procedural costs were to be imposed on the parties.
21. Likewise, and for the sake of completeness, the 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.
22. Lastly, the Judge concluded his 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, Ali Diakite, is partially accepted.
2. The Respondent, HIBERNIANS, must pay to the Claimant the following amount:
 - **EUR 781 as outstanding remuneration** plus 5% interest *p.a.* as from 2 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.
8. A **warning** (art. 12 bis of the Regulations) is imposed on the Respondent.

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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