

Decision of the Players Status Chamber

passed on 5 December 2023

regarding an employment-related dispute concerning
the coach Rodion Gacancin

BY:

Luis Kanonnikoff (Paraguay), Single Judge of the PSC

CLAIMANT:

Rodion Gacancin, Croatia

Represented by Ivan Smokrović

RESPONDENT:

Hajer Club, Saudi Arabia

Represented by Global Sport Consulting

I. Facts of the case

1. On 18 June 2023, the Croatian coach, Rodion Gacancin (hereinafter: *Claimant* or *coach*) and the Saudi club, Hajer (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid as from 1 July 2023 until 31 May 2024.
2. The Claimant was employed as head coach.
3. According to the contract, the Respondent undertook to pay the Claimant the following monies:
 - USD 10,000 as *"contract provider payment"* on 1 October 2023;
 - USD 12,000 as monthly salary, payable at the end of each month.
4. Art. 4 lit. B of the contract states: *"The first party provides the second party and his wife with (1) airline tickets (economy class) at the beginning and end of the contract between Croatia to Saudi Arabia and back (round trip)."*
5. Art. 7 of the contract reads as follows: *"If either party terminates the contract with just cause or without just cause an agreed compensation of 24000 USD must be paid to the injury party. This liquidated damage clause is fair and proportionate and agreed between both parties after long negotiation."*
6. On 29 September 2023, the club terminated the contract with the coach since *"the results were not as expected"*. The club pointed out that the outstanding remuneration and compensation in accordance with art. 7 of the contract will be remitted to the coach *"as soon as possible"*.
7. The coach confirmed that he remained unemployed until today.

II. Proceedings before FIFA

8. On 13 October 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 requested the following monies:

- USD 24,000 as outstanding remuneration (August and September 2023)
- USD 10,000 corresponding to the *"contract provider payment"* due on 1 October 2023;
- USD 96,000 as compensation (salaries October 2023 and May 2024, 8x USD 12,000);
- USD 3,000 as *"return air tickets"* Croatia-Saudi Arabia;
- USD 72,000 as additional compensation.

The Claimant requested payment of 5% interest *p.a.* as of the due dates.

10. In his claim, the coach argued that the club terminated the contract without just cause.

11. According to the Claimant the sporting results *"cannot constitute a just cause for dismissal"*.

12. On account of the above, the coach held that he is entitled to his outstanding dues and compensation for breach of contract, corresponding to the residual value of the contract.

13. Regarding art. 7 of the contract, the Claimant argued that it is solely in favour of the club and disproportionate and shall be declared null and void.

14. The coach submitted his air ticket from Saudi Arabia to Croatia on 4 October 2023 in the amount of SAR 2,570 (approx. USD 700).

b. Position of the Respondent

15. In its reply, the Respondent requested to *"consider the termination made by mutual agreement"* and to order the club to pay the outstanding remuneration in the amount of USD 24,000 as well as compensation in the amount of USD 24,000 (in accordance with art. 7 of the contract).

16. The club argued that the parties negotiated a termination agreement, which was verbally agreed, However, subsequently the coach refused to sign the agreement.

17. On account of the above, the club pointed out that it had no other choice than to terminate the contract unilaterally due to the sporting results.

18. The club acknowledged that sporting results do not constitute a just cause to terminate the contract, however, it argued that art. 7 of the contract is applicable.

19. According to the club, said clause is clear and balanced, giving both parties the same rights.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

20. First of all, the Single Judge of the Players' Status 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 13 October 2023 and submitted for decision on 5 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.
21. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. f) of the Regulations on the Status and Transfer of Players (May 2023), he is competent to deal with the matter at stake, which concerns an employment-related dispute between a club and a coach of an international dimension.
22. 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), and considering that the present claim was lodged on 13 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

23. 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 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

24. His 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

25. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the matter at hand concerns a claim for breach of contract.

26. In this context, the Single Judge acknowledged that his task was to decide if the club had just cause to terminate the contract or not, and to decide the consequences thereof.

27. The Single Judge noted that according to the Claimant, the club terminated the contract without just cause due to sporting performance. The coach held that art. 7 of the contract is not applicable as it is in favour of the club and disproportionate.

28. The Single Judge also noted that the Respondent argued that the coach verbally agreed to the mutual termination before refusing to sign the termination agreement, which left the club no choice than to unilaterally terminate due to the poor results. The club argued that art. 7 of the contract is applicable as it is balanced.

29. On account of the above, the Single Judge wished to emphasize that no mutual termination agreement is on file and that the club terminated the contract on 29 September 2029 due to poor results.

30. In accordance with the jurisprudence of the Football Tribunal, poor performance does not constitute a reason to terminate the contract. Therefore we can conclude that the club had no just cause to terminate.

31. At this point, the Single Judge was eager to emphasise that, in accordance with his well-established jurisprudence, only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order to ensure the fulfilment of the contractual duties by the counterparty, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.

32. Furthermore, the Single Judge recalled in line with the Chamber's long-standing jurisprudence, that unsatisfactory performance cannot be a valid reason for an employer to cease paying due salaries or terminate an employment contract, as this is a purely unilateral and subjective evaluation by the club.
33. On account of the aforementioned, the Single Judge decided that the club had unlawfully terminated the employment contract with the coach and should be held liable for such breach.

ii. Consequences

34. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
35. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the coach, are equivalent to 2 monthly salaries (August and September 2023) under the contract, amounting to USD 24,000.
36. 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 amounts which were outstanding under the contract at the moment of the termination, *i.e.* USD 24,000.
37. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from the respective due dates until the date of effective payment.
38. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the coach by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 par. 2 of Annexe 2 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 remuneration and other benefits due to the coach under the existing contract and/or the new contract and the time remaining on the existing contract.
39. In application of the relevant provision, the Single Judge 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.

40. In this regard, the Single Judge took note of the wording of art. 7 of the contract, which established that *"If either party terminates the contract with just cause or without just cause an agreed compensation of 24000 USD must be paid to the injury party. This liquidated damage clause is fair and proportionate and agreed between both parties after long negotiation."*
41. After analysing the content of the aforementioned clause, the Single Judge concluded that it did not fulfil the criteria of reciprocity and proportionality, in line with the Chamber's longstanding jurisprudence, and therefore could not be taken into account for establishing the amount of compensation payable to the Claimant. In particular, the Single Judge noted that a compensation of two monthly salaries is foreseen for a contract with the duration of one season. In the case at hand, there are 8 months left on the contract. On account of the above, the Single Judge concluded that the clause is not proportional and therefore shall not be applied.
42. As a consequence, the Single Judge determined that the amount of compensation payable by the Claimant to the Respondent had to be assessed in application of the other parameters set out in art. 6 par. 2 of Annexe 2 of the Regulations. The Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
43. Bearing in mind the foregoing as well as the claim of the coach, the Single Judge proceeded with the calculation of the monies payable to the coach under the terms of the contract until its term. Consequently, the Single Judge concluded that the amount of USD 106,000 (*i.e.* 8x USD 12,000 plus USD 10,000, October 2023 until May 2024) serves as the basis for the determination of the amount of compensation for breach of contract.
44. Moreover, the Single Judge decided that the coach shall be entitled to his flight ticket back to Croatia. He submitted evidence of the value of USD 700, which is added to the calculation of the compensation.
45. In continuation, the Single Judge verified whether the coach 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 Single Judge as well as art. 6 par. 2 lit. b) of Annex 2 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 coach's general obligation to mitigate his damages.
46. In this respect, the Single Judge noted that the coach remained unemployed since the unilateral termination of the contract.

47. The Single Judge referred to art. 6 par. 2 lit. a) of Annex 2 of the Regulations, according to which, in case the coach did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.
48. In this respect, the Single Judge decided to award the coach compensation for breach of contract in the amount of USD 106,700 as the residual value of the contract (plus flight ticket).
49. Lastly, taking into consideration the coach's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the coach interest on said compensation at the rate of 5% *p.a.* as of 1 October 2023 until the date of effective payment.

iii. Compliance with monetary decisions

50. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 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.
51. 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.
52. 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. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
53. 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.
54. 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. 8 par. 8 of Annexe 2 of the Regulations.


d. Costs

55. 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 Chamber decided that no procedural costs were to be imposed on the parties.
56. 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.
57. Lastly, the Single Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players Status Chamber

1. The claim of the Claimant, Rodion Gacancin, is partially accepted.
2. The Respondent, Hajer Club, must pay to the Claimant the following amount(s):
 - **USD 12,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 September 2023 until the date of effective payment;
 - **USD 12,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 October 2023 until the date of effective payment;
 - **USD 106,700 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 1 October 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. 8 of Annexe 2 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. 8 par. 7 and 8 of Annexe 2 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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