

Decision of the Players' Status Chamber

passed on 9 October 2023

regarding an employment-related dispute concerning
the coach Sener Gencturk

COMPOSITION:

Javier VIJANDE PENAS (Argentina), Chairperson
Castellar GUIMARAES NETO (Brazil), member
Jesús ARROYO (Spain), member

CLAIMANT/COUNTER-RESPONDENT:

Sener Gencturk, Türkiye
Represented by Mincu Paul Alenxandru

RESPONDENT/COUNTER-CLAIMANT:

Al Raed, Saudi Arabia
Represented by Pedro Macieirinha

I. Facts of the case

1. On 27 July 2022, the Turkish coach, Sener Gencturk (hereinafter: *the coach* or *the Claimant/Counter-Respondent*) and the Saudi Arabian club, Al Raed (hereinafter: *the club* or *the Respondent/Counter-Claimant*) concluded an employment contract (hereinafter: *the contract*) valid as from 1 July 2022 until 30 June 2024.
2. According to the contract, the club undertook to pay the coach a monthly salary of USD 7,000 net, payable at the end of each month.
3. Clause 2 of the contract reads as follows:

“Under this contract, the [coach] is specifically obligated to:

1) Assume sole responsibility for preparation and implementation of first team trainings and selection of players to be the first team squad (including selection of players to participate in any match in any competition, in which the First team participates);

2) Managing the first team during all competitions in which the first team participates, including the competitions of the Kingdom of Saudi Arabia and AFC, for which the first team will qualify.

3) Training management with the team coach and first team medical staff.

4) Direct participation in the preparation of the first team for all competitions in which the first team participates.

5) Preparing all training plans for the first team as well as plans for additional activities and development for players and members of the coaching staff.

6) Cooperating with the club's board of directors, the sporting director of the club and other persons designated by the club.

7) Collaborate with the persons designated by the Club responsible for the preparation and management of Club's First Team.

8) Take care of a property rendered to him, including i.e., sport equipment, for which he is liable;

9) Take care of his health and Assistant Coach fitness in maximum meaning and he shall attend the medical examinations, if required.

10) Provide the Club's Management Board with all reasonably requested information or explanation which are connected with the subject matter of the Contract.

11) Be responsible for all trainings, camps, official and friendly games of the First Team.

12) Observe diligently all agreements concluded by the Club, including but not limited to agreements concluded with the Club's technical sponsors, Club's major sponsors and all other sponsors and partners of the Club.

13) Wear sport clothes indicate and delivered by the Club, together with advertisement placed therein, unless the Club agrees otherwise.

14) Accept the use and disposition of his image rights by the Club as coach exclusively in any media and those of his financial rights arising there from by the Club only during his Contract.

15) Accept the following matters but without limitation, without demanding any remunerations or compensation during the term of his employment for the disposition of his visual images (both in motion or not), names or nicknames on the following namely.

- Club's emblem, brand, color or other merchandise goods by the Club (shirt, training suits, scarf, memory stamps, money, etc.) or stationeries as determined by the Club.

- TV, radio, newspapers, magazines, periodical publishing, billboards, panel and etc., owned or controlled directly or indirectly by the Club as to be determined exclusively by the Club."

4. Clause 5.1 of the contract reads as follows:

"Team Matches Bonuses

50% (i.e., fifty percent) of all First Team matches bonuses (victory) to be paid to the players of the First Team of the Club will be paid to Mr. SENER GENCTURK the Assistant Coach (at the last day of every month following the sporting performances)."

5. Clause 5.2 of the contract reads as follows:

"Objective and Sporting Bonuses

[the coach] rewards are finally due on May 31 of each season in case the club achieve the objectives below for the duration of this contract, the coach shall be entitled to :

*in Saud Pro League” for the first 4 bonus like “Top Four position in Saudi Pro League”
[...]*

6. Clause 8 of the contract reads as follows:

“A. Both parties are entitled to terminate this contract before its end and for whatsoever reason provided that the counterparty shall be paid the following compensation:

The party that terminates the contract shall pay the other party the equivalent of four months’ salary as penalty clause with mutual consent.

B. In case the Club terminates the contract with The Head Coach. SUMUDICA MARIUS-NINEL, the contract of the Assistant Coach shall be terminated automatically as well and the Club pays the penalty clause mentioned in this contract clause (8.A).

C. In case the Head Coach terminates the contract with The Club, the contract of the Assistant Coach shall be terminated automatically as well and pay the Club the penalty clause mentioned in this contract (8.A)”

7. On 15 June 2023, the head coach, Mr. Şumudică Marius-Ninel, sent to the club a proposal of the training camp location, duration and training schedule.
8. On 20 June 2023, the legal representative of the coach sent a letter to the club in the name of the entire coaching staff (including the coach), asking it to clarify the details of the team reunion which appeared in the supporters’ website and to provide airplane tickets for the coach in order to join the team camp.
9. On 22 June 2023, the club, through its representative, mentioned that, if any communication is needed, it would be duly informed in due course.
10. On the same date, 22 June 2023, the legal representative of the coach requested the club to respond to the questions addressed in the letter of 15 June 2023 in order to know the position of the club.
11. On 27 June 2023, the club requested to have a video-conference meeting between the legal representatives of the two parties.
12. Between 27 June 2023 and 28 June 2023, various communications were exchanged between the parties, in order to set the details of a video-conference meeting.
13. On 30 June 2023, the videoconference between the parties allegedly took place.
14. On 1 July 2023, the club sent a termination notice to the coach.

15. On an unspecified date, the coach signed an employment contract with the Turkish club, Gaziantep Futbol Kulübü A.Ş. valid as from 8 September 2023 until 30 June 2024, receiving a total salary for the period of TRY 990,000 / USD 36,884.1.

II. Proceedings before FIFA

16. On 3 July 2023, the Claimant/Counter-Respondent filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the coach

17. On 3 July 2023, the coach lodged a claim for breach of contract in which he stated that the club unilaterally terminated the contract and accordingly, the club shall pay 4 salaries in accordance clause 8 lit. A of the contract.
18. The coach further indicated that until the termination of the contract, the club owed him May and June salaries (USD 14,000) and the victory bonus of USD 4,000 in accordance with clause 5.1 and 5.2 of the contract. On this point, the coach provided with evidence that the club won a match against the club Damak.
19. In view of the foregoing, the coach requested the following relief (quoted *verbatim*):

"A. To order AL RAED SPORT CLUB to pay Mr. Sener Gencturk the following outstanding contractual salaries:

- a) USD 7.000 / net representing contractual salary due for May 2023 and interest of 5% per annum calculated starting with 31.05.2023 until the date of the effective payment;*
- b) USD 4,000 / net representing victory bonus for winning the game against Damac FC on 15 May 2023 and 5% per annum calculated starting with 31.05.2023 until the date of the effective payment;*
- c) USD7.000 / net representing contractual salary due for June 2023 and interest of 5% per annum calculated starting with 30.06.2023 until the date of the effective payment;*

B. To order AL RAED SPORT CLUB to pay Mr. Sener Gencturk a compensation of 28.000 USD / net and an interest of 5% per annum calculated starting with 01.07.2023 until the date of the effective payment."

b. Position of the club and counterclaim

20. On 2 August 2023, the club rejected the claim of the coach and filed a counterclaim.
21. The club first stated that it terminated the contract in accordance with the termination clause agreed between the parties or, if not so with just cause.
22. The club stated that the coach failed to comply with his contractual obligations towards the club in accordance with clause 2 of the contract as the coach *inter alia*: failed to prepare the new sports season; did not present any report/instructions about former players; did not present any report/instruction about the methodology and the internship for the new season; did not present any idea or project for the pre-season; did not dedicate exclusively to his *"salaried activity and his sporting abilities at the Club and failed to do everything to maintain and if possible, to increase the sports value of the Club"*; and his behaviour was harmful and incompatible with his professional activities.
23. In view of the above, the club terminated the contract with just cause and the club shall be entitled to compensation in accordance with art. 6 of the Annexe 2 of the Regulations on the Status and Transfer of Players (RSTP). Thus, the club shall be entitled to USD 84,000 plus 5% interest as from 1 July 2023 until the effective payment.
24. Subsidiarily, as to the bonus, clause 5.1 of the contract did not fix a specific amount, thus the coach should not be entitled to that amount. As to clause 8 of the contract, the coach should only be entitled to the penalty clause of 4 months salaries and, he should not be entitled to May and June salary.
25. In view of the foregoing, the club requested the following relief (quoted *verbatim*):

"A) The claim shall be rejected.

B) The Respondent Club terminated the Professional Trainer Contract with the Coach with just cause;

C) The Respondent Club shall not be liable to pay to the [coach] the amounts of:

i) USD 7.000 / net representing contractual salary due for May 2023 and interest of 5% per annum calculated starting with 31.05.2023 until the date of the effective payment;

ii) USD 4,000 / net representing victory bonus for winning the game against Damac FC on 15 May 2023 and 5% per annum calculated starting with 31.05.2023 until the date of the effective payment;

iii) USD 7.000 / net representing contractual salary due for June 2023 and interest of 5% per annum calculated starting with 30.06.2023 until the date of the effective payment;

iv) compensation of 28.000 USD / net and an interest of 5% per annum calculated starting with 01.07.2023 until the date of the effective payment;

D) The [club] shall not be subject to the imposing of sporting sanctions.

E) The counterclaim shall be accepted.

F) The Claimant Counter-respondent shall be liable and condemned to pay compensation to the Respondent Counterclaimant in the total amount of 84.000,00 USD, plus interest at 5% rate since 1 July 2023 until effective payment.

G) Subsidiarily, in the event of the abovementioned isn't accepted:

g.1) the Respondent Club shall not be liable to pay to the [coach] the amounts of:

i) USD 7.000 / net representing contractual salary due for May 2023 and interest of 5% per annum calculated starting with 31.05.2023 until the date of the effective payment;

ii) USD 7,000 / net representing victory bonus for winning the game against Damac FC on 15 May 2023 and 5% per annum calculated starting with 31.05.2023 until the date of the effective payment;

iii) USD 7.000 / net representing contractual salary due for June 2023 and interest of 5% per annum calculated starting with 30.06.2023 until the date of the effective payment;

g.2) the Respondent Club shall only be liable to pay to the Claimant the compensation amount of 28.000 USD / net and an interest of 5% per annum calculated starting with 01.07.2023 until the date of the effective payment."

c. Position of the coach to the counterclaim

26. In his reply to the counterclaim the coach stated as to the alleged just cause claimed by the club, that it did not provide any evidence that the coach had not fulfilled with his

contractual obligations. On the contrary, the club ignored all the coach request's and cut off any communication with him. Consequently, the counterclaim shall be rejected.

27. Moreover, the coach should be entitled to the outstanding salaries and compensation for the unilateral termination. As to the compensation, the coach stated that art. 8 lit a of the contract, as recognised by the club as a buyout clause, should apply in the present case.
28. As to the bonus, the coach stated the following:

"Moreover, the Club stipulates in the counterclaim [...] that the bonus is based on the sole discretion of the employer.

It is vital to be aware of the fact that performance related bonuses can be potestative and as a result the bonuses need to be paid by the Club to the Coach. In a DRC decision of 30 November 2007, no. 1171304, the Chamber considered that the performance related criteria to which the payments were allegedly linked appeared to be of a highly subjective nature, entailing that it is left to the complete and utter discretion of the club whether or not it is willing to pay the relevant bonuses to the player".

29. In view of the foregoing, the coach shall be entitled to the outstanding remuneration, bonus and compensation.
30. The coach requested to reject the counterclaim, and his request for relief remained unchanged.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

31. First of all, the Players' Status Chamber (hereinafter also referred to as *Chamber* or *PSC*) 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 3 July 2023 and submitted for decision on 9 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.
32. 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. 2 in combination with art. 22 lit. c) of the RSTP (May 2023 edition), the Players' Status Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Turkish coach and a Saudi Arabian club.
33. 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 RSTP (May 2023 edition) and considering that the present claim was lodged on 3 July 2023 and the counterclaim on 2 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

34. 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

35. 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

36. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the justice of the early termination of the contract.
37. In this context, the Chamber took note that the club argued that it terminated the contract in accordance with the termination clause agreed therein and if not applicable, it terminated the contract with just cause as the coach failed to comply with his contractual obligations towards the club.
38. On the other hand, the Chamber remarked that the coach argued that it was the club that terminated the contract without just cause as he fulfilled with his obligations, and that the club did not provide any evidence as to the allegations made.
39. In view of the foregoing, the Chamber acknowledged that its task was to determine the justice of said termination and the consequences that follow.
40. In doing so, the Chamber first recalled its long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. 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 for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.
41. Then, the Chamber observed that as to the allegations raised by the club that the coach failed to comply with his contractual obligations towards the club, the club bore the burden of proving it. Nonetheless, no evidence was provided in this respect. On the contrary, it appears that the coach was sending communications in order to perform his duties, and actively requesting feedback from the club, to no avail.
42. In view of the foregoing, the Chamber stressed that the club failed to prove that in fact the termination was a *ultima ratio* situation. Consequently, the Chamber concluded that the club terminated the contract on 1 July 2023 without just cause and the club should be held liable for the breach of the contract and its early termination.

ii. Consequences

43. 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 club.

44. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the coach, are equivalent to 2 salaries under the contract, amounting to USD 14,000 net.
45. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the coach the amounts which were outstanding under the contract at the moment of the termination, i.e., USD 133,000 net.
46. In addition, taking into consideration the coach's request as well as the constant practice of the Chamber in this regard, the latter decided to award the coach interest at the rate of 5% p.a. on the outstanding amounts as follows:
- On the amount of USD 7,000 net from 1 June 2023 until the date of effective payment.
 - On the amount of USD 7,000 net from 1 July 2023 until the date of effective payment.
47. Subsequently, the Chamber passed to analyse whether the coach was entitled to the bonus he claimed. The Chamber noted that the contract did not specify the amounts that the coach would be entitled to, and the coach did not provide further evidence on this point. In view of the foregoing, the Chamber concluded that the coach did not meet his burden of proof that he is entitled to the amount claimed, and therefore, the Chamber rejected to award the bonus to the coach.
48. Having stated the above, the Chamber 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 Chamber 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.
49. 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.
50. In this regard, the Chamber took note of the wording of clause 8 lit. A of the contract which established that:

"Both parties are entitled to terminate this contract before its end and for whatsoever reason provided that the counterparty shall be paid the following compensation: the party that terminate the contract shall pay the other party the equivalent of four months' salary as penalty clause with mutual consent."

51. Subsequently, the Chamber noted that the coach requested the application of said clause. Accordingly, the PSC acknowledged that USD 28,000 net corresponded to four monthly salaries per the contract (i.e., 4/12 of the residual value). Consequently, the PSC was firm to determine that such amount was neither unreasonable nor excessive in accordance with the jurisprudence of the Football Tribunal.
52. Consequently, and bearing in mind the above considerations and the coach's clear position and *petitum*; the Chamber decided that he should be entitled to USD 28,000 net as compensation for breach of contract.
53. Lastly, taking into consideration the coach's request as well as the constant practice of the Chamber in this regard, the latter decided to award the coach interest on said compensation at the rate of 5% p.a. as of 1 July 2023 until the date of effective payment.

iii. Compliance with monetary decisions

54. Finally, taking into account the applicable Regulations, the Chamber 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.
55. In this regard, the PSC 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.
56. Therefore, bearing in mind the above, the PSC decided that the club must pay the full amount due (including all applicable interest) to the coach within 45 days of notification of the decision, failing which, at the request of the coach, 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 club in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
57. The club shall make full payment (including all applicable interest) to the bank account provided by the coach in the Bank Account Registration Form, which is attached to the present decision.
58. The PSC 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.

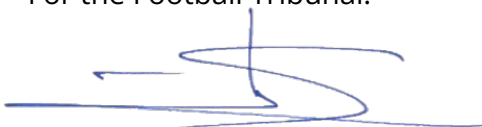
d. Costs

59. 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.
60. 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.
61. Lastly, the PSC 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/Counter-Respondent, Sener Gencturk, is partially accepted.
2. The Respondent/Counter-Claimant, Al Raed, must pay to the Claimant/Counter-Respondent the following amounts:
 - **USD 7,000 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2023 until the date of effective payment;
 - **USD 7,000 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 July 2023 until the date of effective payment;
 - **USD 28,000 net as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 1 July 2023 until the date of effective payment.
3. Any further claims of the Claimant/Counter-Respondent 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/Counter-Claimant 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/Counter-Respondent** 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).

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