

Decision of the Players Status Chamber

passed on 21 November 2023

regarding a contractual dispute concerning the match agent Marjan Horvat

BY:

Julie JORGENSEN (Denmark), Single Judge

CLAIMANT:

FC Koper, Slovenia

Represented by Mr Janez Pejovnik

FIRST RESPONDENT:

FK Partizan, Serbia

SECOND RESPONDENT:

Marjan Horvat, Slovenia

I. Facts of the case

1. On 31 May 2022, FC Koper (hereinafter: *the Claimant*) and FK Partizan (hereinafter: *the First Respondent*) concluded a Match Agreement (hereinafter: *the Contract*) for a friendly match to be played between them on 20 June 2022 in Kidričevo, Slovenia (hereinafter: *the Match*).
2. The Contract specified that the organiser of the Match is "TEAM SPORTS CAMP – MARJAN HORVAT (FIFA Match Agent)", i.e. Marjan Horvat (hereinafter: *the Second Respondent*).
3. Within the Contract, both the Claimant and the First Respondent agreed to "confirm the above mentioned game", i.e. the Match.
4. The Contract includes the following clauses:
 - (i) "In case of default one of the TEAM to take part in the MATCH the Team may be held responsible for losses caused by such act."; and
 - (ii) "Either party may terminate this contract with immediate effect upon notice to the other party if there is an event of force majeure (fire, explosion, earthquake, epidemic etc.) that prevents the staging of the match. In this case the parties of the contract are relieved from the responsibility under obligations."
5. On 19 June 2022, i.e. one day before the Match, the First Respondent withdrew from the Match by notifying the Claimant by e-mail (hereinafter: *the Cancellation*).
6. On 21 June 2022, the Second Respondent organised a substitute friendly match between the Claimant and FK Radnički Niš in Slovenske Konjice, Slovenia (hereinafter: *the Substitute Match*) on the basis of a new contract concluded between the Claimant and the Second Respondent (hereinafter: *the Substitute Match Contract*) from the same date.

II. Proceedings before FIFA

7. On 7 November 2022, 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

8. According to the Claimant, due to the Cancellation and the Match not taking place, the First Respondent and Second Respondent are in breach of the Contract without just cause, i.e. there was no *force majeure* event.

9. Further, the Claimant argued that its team had to “(...) *stay one more day [near the location of the Match] (...)*” to participate in the Substitute Match resulting in the following damages (hereinafter: *the Damages*):

- (i) accommodation costs on 20 June 2022: EUR 2,916 (hereinafter: *the Accommodation Costs*);
- (ii) accommodation costs on 30 June 2022: EUR 1,500 (hereinafter: *the Additional Accommodation Costs*);
- (iii) transportation costs between 18 and 20 June 2022: EUR 600 (hereinafter: *the Transportation Costs*);
- (iv) Second Respondent’s fee: EUR 1,000 (hereinafter: *the Match Agent Costs*); and
- (v) Substitute Match costs: EUR 500 (hereinafter: *the Substitute Match Costs*).

10. According to the Claimant, despite “*many written and oral warnings*”, the First Respondent and Second Respondent failed to compensate the Claimant for the Damages resulting from the Cancellation, i.e. breach of the Contract.

11. Finally, the Claimant argued that the First Respondent had committed an unlawful breach of the Contract and is mutually responsible with the Second Respondent to compensate it for the Damages.

12. The requests for relief of the Claimant, were the following:

- (i) EUR 6,516 as for the Damages; and
- (ii) EUR 2,000 as contribution to its legal costs in relation to the claim at hand before FIFA.

b. Position of the First Respondent

13. In its submission, the First Respondent argued that the Cancellation occurred due to *force majeure* since its team had several injured players which was communicated in a phone conversation between the sports directors of the First Respondent and the Claimant (hereinafter: *the Verbal Agreement*).
14. First, the First Respondent noted that the Second Respondent organised the Substitute Match for the Claimant therefore not interfering with its sporting plans to play friendly matches.
15. Second, the First Respondent questioned the Claimant's entitlement to the Damages as it had entered in the Substitute Match Contract with the Second Respondent following the Cancellation and disputed the Claimant's request for the Damages as follows:
 - (i) Accommodation Costs and Additional Accommodation Costs: according to the First Respondent, there are no additional costs clearly stated in the invoice provided by the Claimant, i.e. the accommodation period is between 18 and 20 June 2022, i.e. before the Cancellation on 19 June 2022;
 - (ii) Transportation Costs: according to the First Respondent there are no transportation costs for the Match as the provided services are for the period between 18 and 20 June 2022 which is not relevant as both the Claimant and the First Respondent did not travel to the Match location before 20 June 2022;
 - (iii) Match Agent Costs: the First Respondent rejected the Claimant's request and provided evidence that the Second Respondent had issued an invoice to the Claimant on 19 June 2022 without any Match Agent Costs for the cancelled Match; and
 - (iv) Substitute Match Costs: the First Respondent argued that the Claimant's claims are not backed by any evidence nor "*proof of the payment of these alleged costs*".
16. Finally, the First Respondent argued that no losses occurred for the Claimant from the Cancellation hence no Damages can be claimed on the basis of the Contract. According to the First Respondent, it was the Claimant's decision to play the Substitute Match and stay for an additional period at the relevant location.
17. The request for relief of the First Respondent was that the Claimant's claim is rejected in its entirety as unfounded.

c. Position of the Second Respondent

18. In its submission, the Second Respondent reiterated the First Respondent's position concerning the Verbal Agreement and the fact that the First Respondent did not have a full team at its disposal to be fielded for the Match.
19. First, the Second Respondent informed that he had organised the Substitute Match for the Claimant and issued a new invoice to the Claimant without any charges for the Match.
20. Second, the Second Respondent informed that it had organised two matches for the Claimant in June 2022:
 - (i) friendly match with FC Cluj on 18 June 2022; and
 - (ii) Substitute Match on 21 June 2022.
21. Third, the Second Respondent informed that since the Substitute Match was played on 21 June 2022, the Claimant did not inform the Second Respondent about any "(...) *additional costs of hotel or transfers*" otherwise that would have been added to the Substitute Match Contract between them from the same date.
22. Finally, the Second Respondent informed that the First Respondent played their first match on 24 June 2022, i.e. after the injury issues within their team were resolved.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

23. First of all, the single judge of the Players Status Chamber (hereinafter also referred to as *the Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 7 November 2022 and submitted for decision on 21 November 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules, the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
24. Subsequently, Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 22 par. 1 of the Match Agents Regulations (hereinafter: *the Regulations*), the Players Status Chamber is competent to deal with the matter at stake, which concerns a contractual dispute with an international dimension between a Slovenian club as a claimant and a Serbian club and Slovenian match agent as respondents.
25. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that Match Agent Regulations (2003 edition) (hereinafter: *the Regulations*) are applicable as to the substance.

b. Burden of proof

26. 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

27. 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

28. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the Claimant disputes that a *force majeure* event took

place and that it is eligible to receive compensation for incurred Damages on the basis of the Contract while the First Respondent and Second Respondent were claiming that the First Respondent's team was not ready to participate in the Match due to injuries, i.e. a *force majeure* event, and that the Claimant is not entitled to any Damages.

29. In this context, the Single Judge acknowledged that her task was to first establish whether the Contract is valid pursuant to the requirements in the Regulations.
30. First, in consideration of the Contract, the Single Judge noted that it was signed and stamped by both parties, the Claimant and the First Respondent, on the letterhead of the Second Respondent.
31. Second, the Single Judge noted that the Contract stipulates that "*Commercial and Media Rights are regulated in a separate Agreement*" (hereinafter: *the Separate Contract*) but that such Separate Contract was not provided by the Claimant nor any other party. Further, the Single Judge noted that when requested to provide the Separate Contract by the FIFA administration, the Claimant provided the following explanation: "*Regarding the document (separate Agreement) referred to as "Commercial and Media Rights" the Claimant explains that such document has never been entered into. Such document has never been even drafted or negotiated; it is simply stated in the Match Agreement but has never existed.*"
32. Third, the Single Judge recalled the provisions of art. 18 par. 1 of the Regulations which regulate the mandatory parts of a contract concerning match agent services (hereinafter: *the Mandatory Provisions*):
 - (i) "*expenses for travel, board and basic living costs of the contractual parties*";
 - (ii) "*the total net indemnification (after deduction of all charges, levies or taxes) due to the contractual parties*";
 - (iii) "*the conditions that shall apply if a match is (or matches are) cancelled in the case of force majeure*";
 - (iv) "*the conditions that shall apply if a player who was due to have been fielded under the terms of the contract does not appear in the team (including reasons of force majeure)*"; and
 - (v) "*the fact that the parties concerned shall be aware of these regulations and undertake to observe the provisions therein*".
33. Further, the Single Judge recalled that par. 2 of art. 18 of the Regulations states very clearly the following: "*Contracts that do not include one or more of the above provisions shall be null and void.*" In addition, the Single Judge noted that the clause containing the compensation

conditions for a specific player not appearing is not required as there were no agreements in the Contract requiring any specific players to appear in the first place.

34. Therefore, the Single Judge turned to identifying the relevant Mandatory Clauses in the Contract and established that two Mandatory Clauses are missing:

- (i) *"expenses for travel, board and basic living costs of the contractual parties";* and
- (ii) *"the total net indemnification (after deduction of all charges, levies or taxes) due to the contractual parties";*

35. Lastly, the Single Judge established that the Contract is not a valid contract in accordance with the Regulations and is to be considered as null and void in accordance with art. 18 par. 2 of the said Regulations.

ii. Consequences

36. Having stated the above, the Single Judge turned her attention to the question of the consequences of the Contract being null and void.

37. The Single Judge concluded that, due to the fact that the Contract is null and void in the context of the Regulations, there are no grounds to consider it further in the context of the dispute at hand and examine the merits of the Claimant's position and its requests.

38. As a consequence, the Single Judge decided that the Claimant's claim should be rejected.

d. Costs

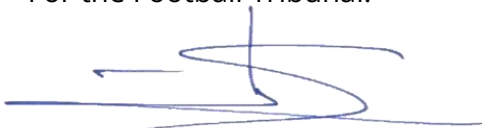
39. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.

40. 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.

IV. Decision of the Players Status Chamber

1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, FC Koper.
2. The claim of the Claimant, FC Koper, is rejected.
3. 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