

Decision of the Players' Status Chamber

passed on 24 October 2023

regarding an employment-related dispute concerning
the coach Igor Jovičević

BY:

Louis Everard (the Netherlands)

CLAIMANT:

SC Dnipro-1, Ukraine

RESPONDENT:

Igor Jovičević, Croatia

I. Facts of the case

1. On 23 September 2020, the Ukrainian club SC Dnipro-1 (hereinafter: *Claimant* or *club*) and the Croatian coach Igor Jovicevic (hereinafter: *coach* or *Respondent*) concluded an employment contract (hereinafter: *the Contract*) valid as from the date of signature until 30 June 2022.

2. According to art. 2.1 of the Contract, the parties agreed as follows:

"The Contract is valid from 23 September 2020 until 30 June 2022 (...). This Contract may be extended on the conditions agreed by the Parties, or may be concluded for a new period by the mutual agreement of the Parties."

3. In accordance with art. 5.2 of the Contract, the Claimant undertook to pay the Respondent a monthly salary of EUR 19,000 net, payable by no later than the 20th day of the next respective month.

4. Furthermore, according to same provision in the Contract, the Respondent was entitled to a salary raise to EUR 22,500 net per month in case at the end of the season 2020/2021, the club placed 5th or above in the league table.

5. Equally, the Contract stipulated in art. 2.5.3 thereunder the following conditions for unilateral premature termination:

"This Contract may be terminated by the Head Coach before the expiration of its term (...) In case of payment by the Head Coach or any third party on his behalf to the bank account of the club of the sum in amount of EUR 250,000 net as compensation for unilateral early termination of the Contract by Head Coach."

6. On the same day, the parties signed an additional agreement to the Contract (hereinafter: *the Additional Agreement*) in accordance with which further terms concerning the parties' contractual relationship were agreed upon.

7. In accordance with art. 5 of the Additional Agreement, the parties agreed as follows:

"The Parties have agreed that the term of the Contract may be extended by the Club till 30.06.2023 in case the latter directs to the [Respondent] a written notice regarding the extension of the term of the Contract not later than or before 20 June 2022. In case of extension of the term of the Contract by the Club, the salary of the Head Coach will be EUR 25,000 net per month starting from July 2022."

8. Moreover, the Additional Agreement stipulated the following conditional bonus payments:
 - EUR 2,000 net for every official match win;
 - EUR 4,000 net for a win in an official match against Shakhtar Donetsk or Dynamo Kiev;
 - EUR 100,000 net for either 1) placing third or higher in the league table; 2) qualifying for UEFA Europa League; or 3) winning the Ukrainian Cup.
9. At the beginning of June 2022, the Respondent allegedly requested the Claimant to “give him the right to choose between staying and leaving”, depending on whether the pre-season camp of the Claimant would take place in Ukraine or abroad. The Claimant acknowledged such request and held off on activating the unilateral extension contained in art. 5 of the Additional Agreement.
10. On 6 June 2022, the Claimant became aware of rumours surrounding the Respondent’s alleged negotiations with Shakhtar Donetsk. The Claimant purportedly requested the Respondent’s position on this, to which the latter allegedly stated that the rumours would be untrue, and that he was planning for the new season with the Claimant.
11. Between 10 June and 20 June, the parties purportedly had extensive discussions and consultations about organizing the upcoming season, as well as relocating the team abroad due to the armed conflict taking place in Ukraine.
12. On 15 June 2022, according to the Respondent, he had a phone call with the President of the Claimant, once again pleading his loyalty and commitment to the Claimant for the new season.
13. On 17 June 2022, the Claimant purportedly confirmed that the pre-season would take place in Slovenia, in accordance with the purported wish of the Respondent.
14. On the same day, the Claimant formally notified its intention to unilaterally extend the Contract, in accordance with art. 5 of the Additional Agreement.
15. Thereafter, the Respondent allegedly began ignoring various attempts by the Claimant to communicate.
16. On 24 June 2022, the Claimant became aware of media rumours stating that the Respondent was “99% likely to join Shakhtar as new head coach”.
17. On 27 April 2022, a Ukrainian media outlet published an interview with the Respondent in which the latter stated that “at the moment, I am the coach of Dnipro-1. I refused many clubs and will keep refusing”.

18. On 29 June 2022, the Respondent addressed the Claimant in a letter, stating that he does not consider himself bound by any contractual relationship to the latter, and that as of 30 June 2022, the Contract was expired and he was free to sign a new contract elsewhere. Furthermore, the Respondent requested the payment of various outstanding remuneration instalments, which were subsequently dealt with in other proceedings before the Football Tribunal (FPSD-9709).
19. On 14 July 2022, the Respondent was officially announced as head coach of Shakhtar Donetsk.

II. Proceedings before FIFA

20. On 15 September 2023, the Claimant lodged a claim against the Respondent in front of FIFA. A summary of the parties' positions is outlined below.

a. Position of the Claimant

21. In its claim, the Claimant argued that the Respondent ignored the unilateral extension of the Contract, which was validly agreed upon under art. 5 of the Additional Agreement, and signed a new contract with Shakhtar Donetsk after misleading the Claimant that he would remain the head coach for the upcoming season.

22. The Claimant emphasised that the Respondent abused the uncertainty caused by the war in Ukraine to enter into a contractual agreement with his new club.

23. The Claimant argued that, as the Contract was validly extended, the Respondent unlawfully "suspended" his Contract when signing with Shakhtar, as Annexe 7 of the RSTP specifies that players and coaches whose contracts have been suspended may not sign another contract with a club affiliated to either Ukrainian Association of Football (UAF) or Football Union of Russia (FUR).

24. The Claimant wished to point also to the provision contained in the Contract as to unilateral termination of the Contract by the Respondent, which outlined that the latter may depart prematurely from the Contract against a compensatory payment of EUR 250,000 net.

25. In conclusion, the Claimant requested EUR 250,000 net as compensation for breach of contract without just cause.

b. Position of the Respondent

26. Despite having been invited to do so, the Respondent failed to provide his answer to the claim.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

27. 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 15 September 2023 and submitted for decision on 24 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.
28. Subsequently, the Single Judge 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 Regulations on the Status and Transfer of Players (May 2023 edition), the former is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Ukrainian club and a Croatian coach.
29. 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 15 September 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

30. 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

31. 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 he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

32. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the basis of the present dispute revolved around an alleged termination of the Contract by the Respondent without just cause.
33. In this context, the Single Judge acknowledged that his task was to determine whether the Contract had, as claimed by the club, extended unilaterally, if not, whether or not the Respondent subsequently validly suspended it and, by consequence, if any liability may arise for the latter for potentially unlawfully terminating the Contract.
34. Prior to entering the analysis of the case at hand, the Single Judge recalled the parties' respective submissions.
35. On one hand, the Claimant asserted that the Respondent terminated the Contract without just cause, disregarding a lawful unilateral extension and signing a new contract with another club instead. The Single Judge also took note that the Claimant wished to point towards the fact that the signature of the new contract with Shakhtar by the Respondent cannot be justified under Annexe 7 of the RSTP, as contracts during a period of suspension signed with Ukrainian or Russian clubs are exempt therefrom.
36. On the other hand, the Single Judge observed that the Respondent failed to provide a position to the claim at all. In accordance with art. 21 par. 2 of the Procedural Rules, the Single Judge recalled that, by way of consequence, the decision would be made based on the arguments and documentation on file.
37. Equally, the Single Judge wished to refer to the wording of art. 13 par. 5 of the Procedural Rules, in accordance with which a party that asserts a certain fact also bears the burden of proving its veracity.
38. Having established this, the Single Judge moved on to consider the question of the contractual extension. In this respect, the Single Judge revisited the wording of art. 5 of the Additional Agreement, which stipulated as follows:
- "The Parties have agreed that the term of the Contract may be extended by the Club till 30.06.2023 in case the latter directs to the [Respondent] a written notice regarding the extension of the term of the Contract not later than or before 20 June 2022. In case of extension of the term of the Contract by the Club, the salary of the Head Coach will be EUR 25,000 net per month starting from July 2022."*
39. The Single Judge, at this stage, wished to emphasise that the above clause was contained exclusively in the Additional Agreement, and was not reflected in the Contract.

40. Equally, the Single Judge wished to recall the financial terms of the Contract which had been established prior to the date of the purported extension, namely a monthly salary of EUR 22,500 net, as well as various conditional bonuses stipulated in the Additional Agreement – EUR 2,000 net for every match win, EUR 4,000 net for wins in official matches against Shakhtar Donetsk and Dinamo Kiev, and EUR 100,000 net for certain objectives in domestic and international competitions.
41. With this in mind, the Single Judge began to analyse the terms of the purported extension, in the context of the existing financial terms under the Contract and, as an integral part thereof, the Additional Agreement.
42. The Single Judge deemed that the key aspect of remuneration was insufficiently clear for the purposes of leading to a contractual extension. Whereas the exact monthly remuneration had been fixed, no conditional benefits had been included therein.
43. The Single Judge observed that the Additional Agreement, in this respect, clearly stipulated that its validity expires on 30 June 2022, and that the extension clause in art. 5 limited itself to extending the duration of the Contract. It was the Single Judge's opinion that, in the absence of any formal indication as to whether or not the financial terms of the Additional Agreement's term would also carry on into the extended period, it was unclear to what extent the benefits contained therein would also form part of the conditions of the extended Contract. The Single Judge, thus, considered such lack of clarity to clearly undermine the applicability of the unilateral extension.
44. Furthermore, and only for the sake of completeness, the Single Judge deemed that, even if clear, to the extent of including the conditional bonuses as described in the Contract, the terms offered under the unilateral extension would not have amounted to a financially substantial increase.
45. With the above factors in mind – that the conditions of the extended Contract were not clear from the outset, and that they, even under a favourable hypothetical interpretation, did not amount to a substantial improvement of the previous terms – the Single Judge considered that the unilateral extension of the Contract, had it taken place, would have resulted in the coach being at the mercy of the club.
46. The Single Judge wished also to point out that, although the Claimant made several assertions as to alleged commitments made by the Respondent as to staying with the club beyond the term of the Contract, the lack of concrete evidence to this effect led to such potential context not being applicable for the sake of interpreting the clause in question.
47. Thus, the Single Judge considered that the unilateral extension clause in art. 5 of the Additional Agreement should be held as invalid, and that the Contract was not extended on 17 June 2022.

48. With the above in mind, the Single Judge moved on to consider the consequences of such conclusion.
49. Indeed, as pointed out in the correspondence sent by the coach on 29 June 2022, in the absence of an extension of the Contract, the original term would expire on 30 June 2022 as stipulated therein.
50. The Single Judge also recalled that, at the time of expiry of the Contract – i.e. 30 June 2022 – there were no outstanding amounts due by either party under the Contract.
51. Therefore, as the Contract had been held to have naturally expired, excluding the scope for any compensation to be paid, and no outstanding amounts were due at the time of the Contract's expiry, the Single Judge concluded that no liability could arise for the Respondent in the present case.
52. Thus, and in conclusion, the Single Judge decided to reject the claim of the club in its entirety.

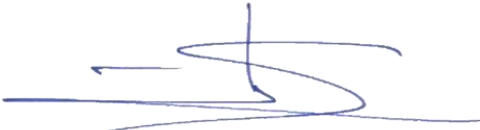
d. Costs

53. 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.
54. 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.
55. Lastly, the Single Judge concluded his 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, SC Dnipro-1, is rejected.
2. 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