

Decision of the Players' Status Chamber

passed on 21 November 2023

regarding an employment-related dispute concerning
the coach Dean Klafuric

BY:

Julie JORGENSEN (Denmark)

CLAIMANT:

Coach Dean Klafuric, Croatia

Represented by Hrvoje Raic

RESPONDENT:

Honved FC, Hungary

Represented by Tamás Bajáky

I. Facts of the case

1. On 23 October 2022, the Croatian coach Dean Klafuric (hereinafter: *the Claimant* or *the coach*) and the Hungarian club Honved FC (hereinafter: *the Respondent* or *the club*) concluded an employment contract (hereinafter: *the Contract*) valid from 24 October 2022 until 30 June 2024.
2. Art. 2 of the Contracts states *inter alia* as follows:

For the services to be performed by the Head Coach under this Employment Contract, from 24 October 2022 until 30 June 2023 the HFC will pay a fixed monthly coaching fee in Hungarian forints equivalent to net 10.000 EUR, which at the time of signing is a total gross amount of HUF 4.904.000/month, i.e. monthly four million nine hundred and four thousand Hungarian Forints, from 1 July 2023 until 30 June 2024 the HFC will pay a fixed monthly coaching fee in Hungarian forints equivalent to net 10.000 EUR, which at the time of signing is a total gross amount of HUF 5.390.100/month, i.e. monthly five million three hundred and ninety thousand and one hundred Hungarian Forints ("Base Salary").

Date of salary payment is by the 10th of each month following the month of performance, to the bank account chosen by the Head Coach by bank transfer in Hungarian Forints.

INCENTIVE COMPENSATION. The HFC agrees to pay the Head Coach additional individual compensation in accordance with the following conditions:

i. a net amount in Hungarian forint equivalent to net 350 EUR/point for each point gained by the Team, which, taking into account the exchange rate set by the Hungarian National Bank valid and applicable at the time of signing this Employment Contract, is a total gross amount of HUF 170.120, i.e. one hundred and seventy thousand and one hundred and twenty Hungarian Forints for each point achieved by the Team in the Hungarian Championship.

HFC shall pay the amounts of this Incentive compensation - after fulfillment all relevant conditions - until the 20th day of the month following the relevant month (at the latest at the same time as the payment of the team premium) to the Head Coach, by bank transfer, in Hungarian Forints. For avoidance of doubt, all incentive compensation found below are available for the Head Coach to achieve at anytime throughout the term of this employment contract.

3. Art. 3 of the Contracts states *inter alia* as follows:

1. TERMINATION BY THE CLUB.

1.1 . Right of the Club to Terminate Without Cause. In its sole discretion and at any time during the Term of this Employment Contract, the Club has the right to terminate this Employment Contract without cause, with immediate effect upon written notice to the Head Coach.

1.2. Club Separation Payment. If the Club terminates this Employment Contract without cause, with immediate effect, then the Club shall pay the Head Coach a separation payment ("Club Separation Payment") equal to 5 (five) months' Base Salary, set out in point II.I. of the present Employment Contract.

1.3. *Separation Payment Schedule. Payment of the Club Separation Payment shall be made in five equal installments, subject to all applicable tax reporting and withholding requirements, within 5 (five) months after the date of termination of this Employment Contract, by bank transfer, in Hungarian Forints.*

2. TERMINATION BY HEAD COACH.

2.1. *Right of Head Coach to Terminate Without Cause. In his sole discretion and at any time during the Term, the Head Coach shall have the right to terminate this Employment Contract without cause, with immediate effect upon written notice to the Club.*

2.2. *Head Coach Separation Payment. If Head Coach terminates this Employment Contract without cause, with immediate effect at any time during the Term, then the Head Coach (or a third party on behalf of the Head Coach) shall pay the Club a separation payment ("Head Coach Separation Payment") equal to 5 (five) months Base Salary, set out in point II. I. of this Employment Contract.*

2.3. *Separation Payment Schedule. Payment of the Head Coach Separation Payment shall be made in a lump sum, subject to all applicable tax reporting, within 15 days of the date of termination of this Employment Contract, by bank transfer, in Hungarian Forints.*

4. On 28 May 2023, the Respondent sent to the Claimant a document titled as "*Record of receipt of documents*" (hereinafter: *the First Notice*).
5. On 30 June 2023, the Respondent sent to the Claimant another document (hereinafter: *the Second Notice*), and, *inter alia*, stated that the Coach had failed to inform the Club about an incident of one of its players.
6. On 26 July 2023, the Claimant sent a letter to the Respondent.
7. On 9 August 2023, the Respondent sent a response to the aforementioned letter.
8. On 1 September 2023, the Claimant concluded an employment contract with the Bosnian club Velez Mostar valid until 30 June 2025.

II. Proceedings before FIFA

9. On 11 September 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

10. The Claimant sustains that the Contract was terminated by the Respondent when it sent the First Notice on 28 May 2023 and that this termination was without just cause.

11. The Claimant states that in addition to the aforementioned, the Club appointed on 1 June 2023 a new head coach.
12. In the view of the Claimant, the Second Notice has no legal effect whatsoever given that the Club had already unilaterally terminated the Contract.
13. The Claimant underlined that the Respondent had not raised any previous objections with regards to Coach and/or his performance of his duties and deems *"quite astonishing that the Club has the nerve to accuse him of violating the Employment contract which was previously terminated by the Club itself, which actions of the Club just showcase bad faith on the part of the Club"*.
14. The Claimant sustains that following the notices, the Respondent paid him the monthly remuneration for May 2023 and June 2023, but has failed to pay remuneration in total of net EUR 1,237.32 broken down as follows:
 - *balance of bonus for 3 points achieved in a match against Kecskemet on 5 May 2023 in net EUR 887.325, and*
 - *bonus for 1 point achieved in a match against Debrecen on 13 May 2023 in net EUR 350.00*
15. As to the matter of the compensation, the Claimant argues that at the time of termination he was entitled to receive more than 14 full salaries (May 2023 salary including), while according to clause III. 1. 2. of the Contract, he would only be entitled to 5 monthly salaries. The Claimant considers *"such amount is disproportionately low and in turn, that the above mentioned provision of the Employment contract was invalid, null and void."*
16. As a consequence, the Claimant request compensation in *"net total of EUR 132,000, as residual value of his monthly remunerations in the period from 1/7/2023 until 30/6/2024"*.
17. The Claimant filed the following requests for relief:
 - I. to ascertain that the Respondent terminated the Employment contract signed with the Claimant without just cause; and*
 - II. to condemn the Respondent to pay in favor of the Claimant outstanding remuneration of net EUR 1,237.32, which matured on 29/5/2023, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and*
 - III. to condemn the Respondent to pay in favor of the Claimant compensation for breach of the Employment contract without just cause of net EUR 132,000.00 (one hundred and thirty-two thousand euros), which matured on 29/5/2023, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and*
 - IV. to condemn the Respondent to pay all relevant taxes, state contributions and surcharges, on top of the above-mentioned net amounts, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent;*

or alternatively

to condemn the Respondent to provide the Claimant with the corresponding tax certificates concerning the payment of all the above specified net amounts alongside all the net amounts already paid to the Claimant during the term of the Employment contract, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

V. to condemn the Respondent to pay in favor of the Claimant default interest of 5% per year on the aforementioned amounts starting from the respective date of maturity until the effective date of the payment, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent;

b. Position of the Respondent

18. In its reply, the Respondent states that between 28 May 2023 and 21 June 2023 the Claimant left Hungary and the parties exchanged drafts a mutual termination agreement. The Respondent sustains that this means that the Claimant did not consider his employment contract terminated.
19. The Respondent argues that *"during the consultations between the parties. exactly on 21.06.2023 the Respondent became aware that a member of the adult men's football team - operated by the Respondent (Budapest Honved FC) - Herdi Prenga was driving a vehicle registered under the registration number ZG6880IF at 4:22 a.m. n 22.01.2023, in a drunken state resulting from the consumption of alcoholic beverages"* and that in order to investigate what happened, the Respondent wrote to Claimant and the player on 23 June 2023 to request full information.
20. The Respondent adduces that the Claimant was informed of such incident and failed to disclose it to the Respondent.
21. The Respondent refers to Hungarian Law and sustains that according to art. 52 of the Hungarian Labour Code, the employee shall carry out his work personally, with the usual skill and care; in accordance with the rules, regulations, instructions and customs applicable to his work, furthermore, is obliged to behave in a manner befitting the trust and confidence required for the performance of his duty.
22. The Respondent states that the Claimant has disregarded the provisions of 52 (l) c and d of the Hungarian Labour Code and deliberately breached an essential obligation arising from the employment relationship.
23. The Respondent concludes that on the basis of art. 78 of the Hungarian Labour Code the Contract was terminated with immediate effect on 30 June 2023.
24. The Respondent concludes stating that the Claimant's salary for the months May and June 2023 was paid and deems that *"we take the view that the Claimant's claim is disputed both in terms of its legal basis and its amount, the Respondent did not breach the provisions of his employment contract, the Claimant shall have no legitimate or valid claim against the Respondent."*

c. Final comments of the Claimant

25. The Claimant states that the Club itself confirmed that the Contract was terminated with the Coach by publishing on its official website.
26. In the view of the Claimant, the Respondent is *“now trying to fabricate that the said incident, which by the way happened in January 2023, led to the dismissal of the Coach in May 2023, which fabrication of the Club constitutes nothing more but a poorly executed attempt of the Club to accuse the Coach that it had somehow breached his Employment contract, which is obviously not the case.”*
27. The Claimant further states that *“even if the Club was not made aware of the certain incident of a football player of this type by omission of a football coach, such omission of a football coach would not constitute a just cause for termination since it would be an ultima ratio measure”*.
28. The Claimant reiterates his previous request for relief.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

29. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *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 11 September 2023 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 Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
30. 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. c) of the Regulations on the Status and Transfer of Players (May 2023), she is competent to deal with the matter at stake, which concerns an employment-related dispute between a club / an association and a coach of an international dimension.
31. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she 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 11 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

32. 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.

c. Merits of the dispute

33. Her 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 she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

34. The foregoing having been established; the Single Judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute the justice of the termination of the Contract.

35. In this context, the Single Judge acknowledged that her task was to determine if the Contract had been terminated by the First Notice as adduced by the Claimant or by means of the Second Notice as alleged by the Respondent.

36. In this regard, the Single Judge referred herself to the First Notice and observed that it states as follows:

The Employer has given the following documents to the Employee Dean Klafuric

- *termination of employment contract*
- *agreement on termination of Employment contract*

The Employee acknowledges that he has received the above documents at the time stated above.

In view of the provisions of the law, the termination notice of the Employer shall be deemed to have been communicated, in which circumstance it may be concluded that the employment relationship is terminated by the termination notice made by the Employer.

37. The Single Judge underlined that the said document is clear and leaves no room for interpretation as to the fact that the termination of the Contract had been communicated. Thus, the Single Judge found that the Contract had been effectively terminated on 28 May 2023 with the First Notice.

38. As a consequence of the above, the Single Judge remarked that any communications or documentation produced and exchanged after the said date are irrelevant to the matter of termination.

39. Having established the above, the Single Judge had to determine if the said termination was with or without just cause.

40. In this regard, the Single Judge underscored that the Respondent failed to provide any valid reason in the First Notice for terminating the Contract. Thus, it is proposed that the termination was without just cause.

41. Based on the foregoing, the Single Judge rejected the Respondent's argumentation and determined that the latter terminated the Contract without just cause.

ii. Consequences

42. Having stated the above, the members of the Single Judge turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.

43. The Chamber observed that the Claimant requests the amount of EUR 1,237.32 net as performance bonuses which were outstanding at the time of termination, Moreover, the Single Judge noted that the Respondent has failed to challenge this entitlement and/or to provide proof of payment of the amounts requested.

44. 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. EUR 1,237.32 net.

45. 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 28 May 2023 until the date of effective payment.

46. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 6 Annex 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 law of the country concerned, the specificity of sport and further objective criteria.

47. 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.

48. In this regard, the Single Judge took note of the wording of clause 3 of the Contract, which established that:

1. TERMINATION BY THE CLUB.

1.1 . Right of the Club to Terminate Without Cause. In its sole discretion and at any time during the Term of this Employment Contract, the Club has the right to terminate this Employment Contract without cause, with immediate effect upon written notice to the Head Coach.

1.2. Club Separation Payment. If the Club terminates this Employment Contract without cause, with immediate effect, then the Club shall pay the Head Coach a separation payment ("Club Separation Payment") equal to 5 (five) months' Base Salary, set out in point II.I. of the present Employment Contract.

1.3. Separation Payment Schedule. Payment of the Club Separation Payment shall be made in five equal installments, subject to all applicable tax reporting and withholding requirements, within 5 (five) months after the date of termination of this Employment Contract, by bank transfer, in Hungarian Forints.

2. TERMINATION BY HEAD COACH.

2.1. Right of Head Coach to Terminate Without Cause. In his sole discretion and at any time during the Term, the Head Coach shall have the right to terminate this Employment Contract without cause, with immediate effect upon written notice to the Club.

2.2. Head Coach Separation Payment. If Head Coach terminates this Employment Contract without cause, with immediate effect at any time during the Term, then the Head Coach (or a third party on behalf of the Head Coach) shall pay the Club a separation payment ("Head Coach Separation Payment") equal to 5 (five) months Base Salary, set out in point II. I. of this Employment Contract.

2.3. Separation Payment Schedule. Payment of the Head Coach Separation Payment shall be made in a lump sum, subject to all applicable tax reporting, within 15 days of the date of termination of this Employment Contract, by bank transfer, in Hungarian Forints.

49. After analysing the content of the aforementioned clause and the circumstances of the case, the Single Judge concluded that it fulfilled the criteria of reciprocity and proportionality, in line with the longstanding jurisprudence of the Football Tribunal, and therefore was to be applied in the case at hand to determine the amount of compensation payable by the Respondent to the Claimant.
50. In addition to the above, the Single Judge noted that it is undisputed between the parties that the Respondent paid the salary of June 2023. Thus, the Single Judge deemed that this amount shall be deducted from the compensation amount due.
51. Consequently, the Single Judge decided that the amount of EUR 40,000 (i.e. four monthly salaries) as per the compensation clause agreed between the parties in the contract, is due to the coach by the club.
52. Lastly, 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 on said compensation at the rate of 5% p.a. as of 28 May 2023 until the date of effective payment.

iii. Compliance with monetary decisions

53. 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.

54. 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.
55. 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.
56. 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.
57. 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

58. 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.
59. 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.
60. Lastly, the Single Judge concluded her 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, Dean Klafuric, is partially accepted.
2. The Respondent, Honved FC, must pay to the Claimant the following amount(s):
 - **EUR 1,237.32 net as outstanding remuneration** plus 5% interest *p.a.* as from 28 May 2023 until the date of effective payment;
 - **EUR 40,000 net as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 28 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. 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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