

Decision of the Dispute Resolution Chamber

passed on 8 November 2023

regarding an employment-related dispute concerning
the player Tall Lamine Junior

BY:

Iñigo RIESTRA (Mexico)

CLAIMANT:

Tall Lamine Junior, Senegal

RESPONDENT:

ŠD NK Olimpija Ljubljana, Slovenia

I. Facts of the case

1. On 3 August 2021, the player Tall Lamine Junior and ŠD NK Olimpija Ljubljana concluded a "Professional football contract" valid as from the date of signature until 30 June 2024.
2. Accordingly, the parties were entitled to the following:
"Period from 03.08.2021 until 30.06.2022
- a monthly gross amount of EUR 5.833,00 +VAT, by the 20 day of the month for the previous month, with statutory default Interest charged from the day of arrears until the day of payment in the event of arrears,
Period from 01.07.2022 until 30.06.2023
- a monthly gross amount of EUR 7.500,00 +VAT, by the 20 day of the month for the previous month, with statutory default Interest charged from the day of arrears until the day of payment in the event of arrears"
3. On 16 August 2022, the parties concluded a termination agreement.
4. Accordingly, the club agreed to pay to the player, the following:
"(i) the amount of 5.883,00 EUR (+ VAT if applicable) representing monthly salary for June 2022 at the latest on 20.8.2022;
(ii) the amount of 30.000,00 EUR(+ VAT if applicable) representing four (4) monthly salaries as a compensation because of premature termination of the CONTRACT to be paid to the PLAYER at the latest on 2 November 2022."
5. On 1 March 2023, the club paid EUR 10,000.
6. On 30 June 2023, the club paid EUR 5,000.
7. On 18 August 2023, the club paid EUR 9,946.03

II. Proceedings before FIFA

8. On 10 August 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and requested the payment of EUR 15,000 net, plus 5% interest p.a. as follows:
- on the amount of EUR 10,000 from 3 November 2022 until 1 March 2023;
- on the amount of EUR 5,000 from 3 November 2022 until 30 June 2023;
- on the amount of EUR 15,000 from 3 November 2022 until the effective payment is done and completed.
9. The player acknowledged that the club paid the salary of June 2023 (albeit with delay)
10. In its reply, the Respondent considered the claim of the player to be unfounded.
11. The Respondent considered that the payment of the outstanding amount of the invoice (12,557.78 EUR) is unfounded and in direct contradiction to mandatory statutory provisions, as the Claimant lost all of his rights to demand payment of this amount from

the Respondent due to the issuance of the Enforcement Order by the Slovenian Tax Authority (FARS).

12. Thus, the Respondent argued that it has definitively settled all its obligations towards the Claimant, including VAT.
13. The Respondent considered that the Claimant's objection to the request for payment without VAT (only NET amount) is also unfounded, as the Respondent is not the entity obligated to pay VAT to FARS for the invoices it has received from other taxpayers.
14. The club argued that there are no overdue payables in the meaning of the provision of Article 12bis, point 3, of the FIFA RSTP, as the Claimant did not put the Respondent in default in writing.
15. The Respondent further considered that the Claimant's claim for the payment of EUR 15,000 EUR does not take into account the payment made on 18 August 2023 in the amount of EUR 9,946.03 EUR.
16. In his replica, the Claimant argued that the amount due to him is net and the Club is not entitled to apply any kind of deduction.
17. The Claimant insisted that the compensation for the early termination of the contract is not taxable and the payment could and should legally be carried out only on the basis of the signed agreement.
18. Thus, the Club argued that the Club has no right to claim any right to set-off amounts it refers to be payable according to the Slovenian Tax Authority.
19. The Claimant acknowledged the payment of EUR 9,946.03 on 18 August 2023.
20. However, the Claimant understood that the amount due to him as compensation was EUR 30,000 plus VAT 22%, for a total of EUR 36,600.
21. The Claimant thus amended his claim and requested the payment of EUR 11,653.97 (i.e. EUR 36,600-24,946.03), plus the following interest:
 - EUR 596,63 calculated on the amount of EUR 36,600 from 3 November 2022 until 1 March 2023 (119 days);
 - EUR 437,26 calculated on the amount of EUR 26,600 from 2 March 2023 until 30 June 2023 (120 days);
 - EUR 144,99 calculated on the amount of EUR 21,600 from 1 July 2023 until 18 August 2023 (49 days);
 - The amount to be calculated on the remaining amount due of EUR 11,653.97 from 19 August 2023 until the date of effective payment.
22. In its *duplica*, the Respondent argued that contract between the Club and the Player was a civil law contract, not an employment contract. According to the Respondent, this is evident from the fact that the Player was registered as a self-employed person in the

Slovenian Business Register.

23. The Respondent argued that the amounts agreed upon in the Football Agreement are gross amounts, plus VAT if applicable. The Respondent argued that Player was aware of this obligation and explicitly consented to it.
24. Furthermore, the Respondent argued that the Termination Agreement concluded between the Club and the Player is in connection with the contract, and its content can only be correctly understood in conjunction with the Football Agreement. This means that the agreed amounts in the Termination Agreement are also gross amounts.
25. The Club underlined that the Player was rendering his services and was in a contractual relationship with the Club for football services until August 2022.
26. However, according to the Club, the Player never issued a separate invoice for his football services under the Football Agreement for the months of July and August 2022. This means that the agreed amount in the Termination Agreement also included the salary compensation for July and August 2022, which was in accordance with the Football Agreement always explicitly agreed in the gross amount.
27. According to the club, the Player was subject to the Slovenian tax and mandatory insurance system. This means that he was obligated to pay contributions for mandatory social insurance and enrol in the relevant social insurance programs, including pension and disability insurance.
28. The Respondent concluded that the Player is not entitled to the full amount of the termination fee, as he is obligated to pay contributions for mandatory social insurance and VAT on the termination fee.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge* or *Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note of the date when that the present matter was presented to FIFA. Taking into account the wording of art. 34 of the May 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.
2. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (May 2023), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Senegalese player and a Slovenian club.
3. 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 edition), and considering the date when the present claim was lodged, 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

4. 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

5. 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 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

6. The foregoing having been established, the Judge moved to the substance of the matter.
7. In this context, the Judge first noted that the parties concluded an employment contract, on 16 August 2022, they concluded a termination agreement. The payment terms of said agreement include EUR 5,883 (plus VAT if applicable) for the June 2022 monthly salary, due by 20 August, 2022. Additionally, EUR 30,000 (plus VAT if applicable) were specified as compensation for premature contract termination, with payment due by 2 November 2022.
8. Subsequently, the Judge noted that the player lodged a claim and requested the payment of EUR 15,000 net, corresponding to the remaining amount from the termination agreement.
9. Conversely, the Judge acknowledge the position of the Respondent, who argued that it has definitively settled all its obligations towards the Claimant, including VAT.
10. The Single Judge observed that the root cause of the dispute lies in the structuring of the employment relationship as a services agreement, where VAT is purportedly applicable for the player's football services, as opposed to income tax.
11. In consideration of FIFA and the Jurisprudence of the FT, the Single Judge emphasized the essential nature of the contract as a genuine employment agreement, regardless of its local law structuring. The determination of a labour contract is underscored by factors such as control, exclusivity, and benefits, with control over the player's work, exclusivity in the player's services, and the provision of benefits being crucial elements.
12. Irrespective of any circumstances, the Judge observed that the contract concluded between the parties explicitly stipulated the player's remuneration as follows:

[Remuneration] (+ VAT if applicable)[Remuneration] (+ VAT if applicable)
13. Consequently, the Single Judge interpreted that the player's salary was agreed upon as a net amount, obliging the club to pay the agreed sums without any deduction.
14. Thus, regarding the termination agreement, the Single Judge highlighted that the club is under obligation to pay the net amount of EUR 30,000, as specified in the employment contract.

15. The Judge noted in this regard that the club has partially fulfilled this obligation through the following payments:
 - On 1 March, 2023, the club paid EUR 10,000.
 - On 30 June, 2023, the club paid EUR 5,000.
 - On 18 August, 2023, the club paid EUR 9,946.03.
16. The Judge therefore understood that there is an outstanding amount of EUR 5,053.97 (calculated as EUR 30,000 – 10,000 – 5,000 – 9,946.03).
17. Thus, in application of the principle of *pacta sunt servanda*, the Single Judge established that the Respondent shall pay to the claimant, the net amount of EUR 5,053.97.
18. The Single Judge's also decided to award default interest for the delayed payments, in line with FT jurisprudence.
19. As a result, the Single Judge awarded default interest as follows:
 - 5% interest p.a. on EUR 30,000 from November 3, 2022, until March 1, 2023.
 - 5% interest p.a. on EUR 20,000 from March 2, 2023, until June 30, 2023.
 - 5% interest p.a. on EUR 15,000 from July 1, 2023, until August 18, 2023.
 - 5% interest p.a. on EUR 5,053.97 from August 19, 2023, until the date of effective payment.

ii. Compliance with monetary decisions

20. Finally, taking into account the applicable Regulations, the Judge referred to art. 24 par. 1 and 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.
21. In this regard, the 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.
22. Therefore, bearing in mind the above, the 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. 24 par. 2, 4, and 7 of the Regulations.

23. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form.
24. The 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. 24 par. 8 of the Regulations.

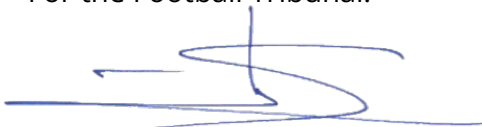
d. Costs

25. The 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 Judge decided that no procedural costs were to be imposed on the parties.
26. Likewise, and for the sake of completeness, the 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.
27. Lastly, the Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Tall Lamine Junior, is partially accepted.
2. The Respondent, ŠD NK Olimpija Ljubljana, must pay to the Claimant the following amounts:
 - **EUR 5,053.97 net as outstanding remuneration.**
 - **Interest as follows:**
 - 5% interest p.a. over the amount of EUR 30,000 from 3 November 2022 until 1 March 2023;
 - 5% interest p.a. over the amount of EUR 20,000 from 2 March 2023 until 30 June 2023;
 - 5% interest p.a. over the amount of EUR 15,000 from 1 July 2023 until 18 August 2023;
 - 5% interest p.a. over the amount of EUR 5,053.97 from 19 August 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. 24 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. 24 par. 7 and 8 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

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