

Decision of the Dispute Resolution Chamber

passed on 12 October 2023

regarding an employment-related dispute concerning
the player **Matheus Leite Nascimento**

BY:

Clifford J. Hendel (USA/France), Deputy Chairperson
Alejandro Atilio Taraborrelli (Argentina/Italy), member
Michele Colucci (Italy), member

CLAIMANT:

Matheus Leite Nascimento, Brazil
Represented by José Miguel Sampaio e Nora

RESPONDENT:

Zhejiang Professional FC, China PR

I. Facts of the case

1. On 7 April 2022, the Brazilian player Matheus Leite Nascimento (hereinafter the *Claimant* or the *Player*) and the Chinese club Zhejiang Professional (hereinafter the *Respondent* or the *Club*) concluded employment agreement (hereinafter the *Employment Agreement*), valid as from 1 March 2022 until 31 December 2022.
2. In accordance with TMS, the season 2022 ran as follows: 1 February – 31 December 2022.
3. In accordance with Clause 3 of the Employment Agreement, the Claimant and the Respondent (jointly referred to as the *Parties*) agreed upon the following bonus payment:
(...) If Party A finishes top 6 position in Chinese Super League at the end of Season 2022 and Party B participates in more than 70% of Party As' Chinese Super League matches in Season 2022, then Party A shall pay Party B EUR €100,000 net (EUR €175,000 before tax) as bonus. For purpose of this clause, "participates" shall refer to any Chinese Super League match Party B plays at least 1 minute. (...) The time for payment is the last day of next month following the end of Season 2022."
4. In accordance with the employment contract, During the season 2022, the Claimant participated in 23 out of 34 official matches for the Respondent.
5. On 23 December 2022, the Respondent was supposed to play against Tianjin Jinmen Tiger, yet the latter missed the game. In this respect, despite no played time, the Respondent was awarded a win.
6. At the end of the season 2022, the Respondent was placed in top three (3rd place) in the Chinese Super League.

II. Proceedings before FIFA

7. On 23 August 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

8. The requests for relief of the Claimant, as amended, were the following:

*"a) Consider the Club Zhejiang Professional FC guilty of the non-payment of overdue payables to the Player Matheus Leite Nascimento (Annex 2);
and*

*b) In consequence of that order the Club Zhejiang Professional FC (China) to pay immediately the Player the amount of **EUR 245.000** regarding bonus agreed for the 2022 season (Annex 2);*

and

c) In consequence also order Zhejiang Professional FC (China) to pay the Player an interest rate of 5% of the amount referred above in b) and d) from the date of due, specifically 31st December 2022, till the date of effective payment regarding to the period after the purpose of this claim.

and

d) Impose the sanctions mentioned in number 4 of the Article 12 Bis of the "FIFA Regulations on the Status and Transfer of Players (March 2023 Edition)" due to the damages said before caused by the non-payment by Zhejiang Professional FC (China) to the Player Matheus Leite Nascimento of the amounts agreed between the parties in the Employment Contract for Professional Football Player;

and

e) Order that Zhejiang Professional FC (China) bears with any and all legal costs incurred by the player Matheus Leite Nascimento."

9. The Claimant argued that due to the fact that he participated in 70.58% of the official matches and the Respondent achieved 3rd position in the Chinese Super League, he is entitled to bonus in accordance with Clause 3 of the Employment Agreement, i.e. EUR 175,000.
10. Regarding the participation in more than 70% of the matches, the Claimant argued that he *"played in 23 games of 34 available"*. Furthermore, he added that *"was called up for the game of 32nd round of the Championship against Tianjin Jinmen Tiger, and given the suspension of the Brazilian player Lucas, he was, for sure, in the line-up given that was only five foreign player available and the maximum admissible is also five foreign player"*, *"however the opponent team, Tianjin Jinmen Tiger, missed the game and, consequently, the Respondent won 3 points for this victory, then this game must considered as game played for the effects of the bonus agreed in the article 3, n.º 3 of the Employment Contract for Professional Football Player"*.
11. Finally, the Claimant asserted that *"in the final of the Chinese Super League, the Respondent representatives given the excellent behaviour of the team during 2022 sporting season also promised an extra bonus of €70.000, for each player, if the Respondent Club end the season 2022, at least, in 3rd place."*
12. In view of the above, the Claimant additionally requested the amount of EUR 70,000.

b. Position of the Respondent

13. Despite being invited to do so, the Respondent failed to reply to the claim.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 23 August 2023 and submitted for decision on 12 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.
15. 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. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (May 2023 edition), 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 Brazilian player and a Chinese club.
16. 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 Regulations on the Status and Transfer of Players (May 2023 edition) and considering that the present claim was lodged on 23 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

17. 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

18. 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

19. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that this is a claim of a Player against a Club concerning overdue payables due to allegedly triggered bonuses.
20. In this respect, the members of the Chamber acknowledged that the Claimant requested (i) EUR 175,000 based on Clause 3 of the Employment Agreement as well as (ii) EUR 70,000 that was allegedly promised by the Club for the achieved sporting results.
21. The DRC furthermore noted that the claim remained uncontested by the Respondent.
22. In this context, the Chamber acknowledged that its task was to assess if, indeed, the bonus payments were triggered.
23. The members of the Chamber firstly turned their attention to the claim for EUR 175,000 based on Clause 3 of the Employment Agreement and started with the analysis of the pertinent clause, which reads as follows:

*"(...) If Party A finishes **top 6 position in Chinese Super League at the end of Season 2022** and Party B **participates in more than 70% of Party As' Chinese Super League matches in Season 2022**, then Party A shall pay Party B **EUR €100,000 net** (EUR €175,000 before tax) as bonus. For purpose of this clause, **"participates"** shall refer to any Chinese Super League match Party B **plays at least 1 minute**. (...) The time for payment is the last day of next month following the end of Season 2022."* (emphasis added)
24. Thereafter, based on the evidence provided by the Claimant, the Chamber acknowledged that the Respondent was indeed placed in top three position in the Chinese Super League. Nonetheless, the members noted that the Claimant participated only in 23 out of 34 official matches of the Chinese Super League, which does not reach the necessary participation in 70% of the games as per Clause 3 of the Employment Agreement.
25. In this regard, the Chamber recalled the arguments of the Claimant that he reached the relevant 70% as the 32nd game, which was won by the Respondent despite not being played due to the behaviour of the opponent club, should be considered in his favour, i.e. one should consider that the Claimant participated in 24 out of 34 official matches. The DRC took note of the arguments of the Claimant that he *"was called up for the game of 32nd round of the Championship against Tianjin Jinmen Tiger, and given the suspension of the Brazilian player Lucas, he was, for sure, in the line-up given that was only five foreign player available and the maximum admissible is also five foreign player"*.

26. After duly analysing the wording of Clause 3 of the Employment Agreement, the Chamber deliberated that the Claimant did not technically participate in the 32nd game in question and, consequently, the said game should not be taken into account for the relevant calculation.
27. In view of the above, the Chamber concluded that, contrary to the Claimant's assumption, the latter did not participate in 70% of the official matches of the Chinese Super League in order to trigger the payment of the claimed bonus. Subsequently, the Chamber rejected the Claimant's request.
28. The Chamber then turned its attention to the second request of the Claimant concerning the allegedly promised bonus of EUR 70,000 for the achieved sporting result.
29. After thoroughly analysing the Employment Agreement as well as the evidence provided by the Claimant, the members of the Chamber concluded that such bonus was not contractually stipulated, nor did the Claimant provide for any evidence regarding such potential entitlement.
30. Based on the above, the DRC decided to reject also this request of the Claimant.

ii. Consequences

31. Having stated the above, the members of the Chamber rejected the claim of the Claimant.

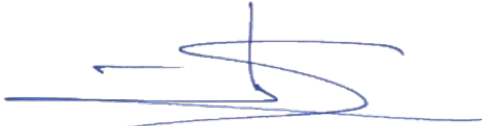
d. Costs

32. 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.
33. 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.
34. Lastly, the DRC 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, Matheus Leite Nascimento, 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