

Decision of the Players' Status Chamber

passed on 6 November 2022

regarding an employment-related dispute concerning
the coach Ricardo Jose Moutinho Cheu

BY:

Jesús ARROYO (Spain), member

CLAIMANT:

Ricardo Jose Moutinho Cheu, Portugal
Represented by Svetozar Pavlovic

RESPONDENT:

Doxa Katokopias, Cyprus
Represented by Duarte Costa

I. Facts of the case

1. On 12 August 2022, the Portuguese coach Ricardo Jose Moutinho Cheu (hereinafter the *Claimant* or the *Coach*) and the Cypriot club Doxa Katokopias (hereinafter the *Respondent* or the *Club*) concluded an employment agreement (hereinafter the *Employment Agreement*) valid as from 12 August 2022 until 31 May 2023. The position of the Claimant was a head coach of the Club's team.
2. In Clause 1.3 of the Employment Agreement, the Claimant and the Respondent (jointly referred to as the *Parties*) agreed upon the following remuneration:
 - A monthly gross salary of EUR 2,246 (EUR 2,000 net), payable in 10 instalments;
 - Accommodation, car, a family flight ticket.
3. On 13 August 2022, the Parties signed a supplementary agreement (hereinafter the *Supplementary Agreement*) to amend certain provisions of the Employment Agreement.
4. The Preamble of the Supplementary Agreement stipulated:

"The Employment Contract dated 12th August 2022 between the Club and the Coach is hereby amended and superseded as follows".
5. In accordance with Clause 1 of the Supplementary Agreement, the Parties agreed, *inter alia*, that the Respondent shall make a payment of EUR 4,000 per month (10 times) with 30 days grace period and the first payment to be made on 31 August 2022 and the last payment made on 31 May 2023.
6. In accordance with Clause 1 of the Supplementary Agreement, the Parties agreed, *inter alia*, that the Respondent shall make a payment of EUR 4,000 per month (10 times) with 30 days grace period and the first payment to be made on 31 August 2022 and the last payment made on 31 May 2023.
7. On 28 December 2022, the Respondent terminated the employment relationship with immediate effect:

"This is officially inform you about the decision of the boards of directors of our club to terminate your contract of employment dated 12.8.2022 with immediate effect."
8. On 9 February 2023, the Claimant signed a new employment agreement with the Portuguese club Vilafranquense SAD, valid until the end of the 2022/2023 season.
9. The stipulated amount due to the Coach was EUR 25,000, payable in five equal monthly instalments, starting from 5 March 2023.

II. Proceedings before FIFA

10. On 13 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

11. The requests for relief of the Claimant were the following:

- "1. The claim of the Coach is accepted and/or,*
- 2. The Respondent, Cub, is obliged to pay 30.000 EUR + 5% p.a. since non-compliance for the residual value of the Employment Contract and Supplementary Agreement;*
- 3. The Claimant, Coach, is entitled to receive 18.000 EUR as an Additional Compensation for the breach with aggravated circumstances by the club;*
- 4. The Respondent shall bear all procedural costs."*

12. The Claimant was of the opinion that the contract was terminated by the Respondent on 28 December 2022 without just cause.

13. The Claimant argued that the Supplementary Agreement granted him an additional remuneration and that, consequently, submitted the following break-down:

"out of the total remuneration due to the Coach 10 x 2.000 EUR net (Employment Contract) + 10 x 4.000 EUR net (Supplementary Agreement) = 60.000 EUR Coach has been paid only half of that amount i.e. 30.000 EUR"

b. Position of the Respondent

14. In its reply, the Respondent requested the Football Tribunal to issue a decision as follows:

- "I. The Claim filed by Mr. Ricardo Moutinho Cheu against Doxa Thoi Katokopias is rejected.*
- II. The costs of the proceedings, if any, shall be entirely born by Mr. Ricardo Moutinho Cheu;*
- III. Mr. Ricardo Moutinho Cheu shall be ordered to pay to Doxa Thoi Katokopias a total amount of CHF 5,000 as a contribution towards its legal expenses incurred in connection with these proceedings."*

15. First of all, the Respondent argued that the Supplementary Agreement superseded the remuneration agreed upon in the Employment Agreement, i.e. that only EUR 40,000 was payable to the Coach for the 2022/2023 season with the Club. In this regard, the Respondent believed the Coaches' representation of the facts is in bad faith.

16. Furthermore, the Respondent argued that it was also the Coach that wished to terminate the employment relationship, explicitly asking for the "dismissal letter" and that "both parties verbally agreed that the Coach will only be entitled to salary until he sign with the Portuguese club that was after him to sign new contract which DOXA duly paid".

17. The Respondent also alleged that next to the payment of EUR 30,000 confirmed by the Claimant, it made an additional payment of EUR 4,000, corresponding to the salary of January 2023, i.e. before the Coach signed the new contract with the Portuguese club.
18. Concerning the residual value of the contract (EUR 6,000, i.e. EUR 40,000 minus the paid amount of EUR 34,000), the Respondent argued that *“due to UEFA Clubs’ Licensing Procedure in Cyprus football Federation (CFA) the federation retained EUR 6,000 of DOXA’s account”* and that the Claimant must request this amount there.
19. Finally, the Respondent asserted that Claimant’s claim for compensation must be rejected as *“the Coach’s behavior clearly violated the fundamental principle “venire contra factum proprium”, constantly applied by FIFA’s deciding bodies and according to which, the conduct of a party who takes a position contrary to one it has previously taken may constitute an abuse of rights if the other party has relied to its detriment on the original position.”*

c. Comments of the Claimant

20. The Claimant was requested to comment on the alleged payment of EUR 4,000 allegedly performed in February and March 2023.
21. In this respect, the Claimant confirmed the receipt of said amount and amended the requested outstanding amount to *“EUR 30,000 and/or EUR 26,000”*. The rest of the request of relief remained unchanged.

III. Considerations of the Players’ Status Chamber

a. Competence and applicable legal framework

22. 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 13 September 2023 and submitted for decision on 6 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.
23. 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 Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Portuguese coach and a Cypriot club.

24. 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 that the present claim was lodged on 13 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

25. 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

26. 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

27. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that this is a case of a Coach against a Club for an alleged termination of a contract without just cause.

28. The Single Judge recalled the argumentation of the Coach that he was sent the following letter, by which his employment relationship with the Club was terminated: *"This is officially inform you about the decision of the boards of directors of our club to terminate your contract of employment dated 12.8.2022 with immediate effect."*

29. Equally, the Single Judge acknowledged the argumentation of the Club argued that it was the Coach who wished to terminate the employment contract in order to sign a new employment contract in Portugal. The Single Judge, furthermore, took note that no counterclaim was lodged by the Club.

30. In this context, the Single Judge recalled its long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a

contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.

31. In view of the foregoing, the Single Judge referred to art. 13 par. 5 of the Procedural Rules, according to which a party that asserts a fact has the burden of proving it and went on to analyse the documentation provided by the Parties in support of their allegations.
32. In this respect, the Single Judge noted that the Respondent failed to provide any evidence to its allegations and that it was the Coach who wished to terminate the contractual relationship. Considering the lack of any further evidence on file, the Single Judge had no other option but to conclude that the premature termination occurred by the Respondent and that without just cause.

ii. Consequences

33. The Single Judge continued by looking at the financial consequences arriving from the unjustified termination by the Respondent and noted that it first needs to clarify the monthly income of the Coach.
34. In line with the Respondent, the Single Judge concluded that the remuneration of the Coach corresponded to EUR 40,000 per the respective season as the wording of the contract is clear in establishing that the Supplementary Agreement supersedes the Employment Agreement.
35. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the Coach by the Club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 par. 2 of Annexe 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 remuneration and other benefits due to the Coach under the existing contract and/or the new contract and the time remaining on the existing contract.
36. 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.
37. In this regard, the Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

38. As a consequence, the Single Judge determined that the amount of compensation payable by the Club to the Coach had to be assessed in application of the parameters set out in art. 6 par. 2 of Annexe 2 of the Regulations.
39. Bearing in mind the foregoing as well as the claim of the Coach, the Single Judge proceeded with the calculation of the monies payable to the Coach under the terms of the contract until its term. Consequently, the Single Judge concluded that the residual value of the contract serves as the basis for the determination of the amount of compensation for breach of contract.
40. Thereafter, the Single Judge noted that the amount of EUR 34,000 has been acknowledged as paid by the Claimant. In this respect, the Single Judge recalled that merely the amount of EUR 6,000 remained disputed from the total value of the contract.
41. In this regard, the Single Judge took note of the argumentation of the Respondent that the said amount of EUR 6,000 was duly paid by the Club to the Cyprus Football Association (CFA). After a due analysis of the evidence on file, the Single Judge concluded that it appears that this amount has been paid by the Club for administrative purposes and, consequently, the Single Judge decided not to recognize this amount as being paid to the Coach.
42. In view of the above, the Single Judge established that merely the amount of EUR 6,000 remained outstanding from the total value of the contract and shall be considered for the purposes of the calculation of compensation.
43. In continuation, the Single Judge verified whether the Coach had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Single Judge as well as art. 6 par. 2 lit. b) of Annex 2 of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Coach's general obligation to mitigate his damages.
44. Indeed, the Coach found new employment with Vilafranquense SAD. In accordance with the pertinent employment contract, the Coach was entitled to a total payment of EUR 25,000 for the season 2022/2023.
45. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge concluded that the Coach fully mitigated his damages and that no compensation for breach of contract is payable by the Respondent in the present matter.

d. Costs

46. 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.
47. 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.
48. 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, Ricardo Jose Moutinho Cheu, is partially accepted.
2. The Respondent, Doxa Katokopias, is found to be in breach of contract without just cause.
3. No compensation for breach of contract is payable by the Respondent in the present matter.
4. Any further claims of the Claimant are rejected.
5. 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).

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