

Decision of the Players' Status Chamber

passed on 4 December 2023

regarding an employment-related dispute concerning Augusto Daniel
Portela da Silva

BY:

Javier Vijande Penas, Argentina

CLAIMANT:

Augusto Daniel Portela da Silva, Portugal

Represented by Jose Ribeiro Teixeira

RESPONDENT:

Al Nasr, UAE

I. Facts of the case

1. On 6 April 2023, the Portuguese national, Mr Augusto Daniel Portela da Silva (hereinafter: **the Claimant**) and the Emirati club, Al Nasr (hereinafter: **the Respondent**) signed a “*Full-Time Employment Contract*” (hereinafter: **the Employment Contract**).
2. Pursuant to clause 2 of the Employment Contract, the contractual relationship between the parties would be valid for two periods: as from 6 April 2023 until 31 May 2023, and as from 1 July 2023 until 31 May 2024.
3. Pursuant to clause 3 of the Employment Contract, the Claimant’s job title was “coach”, but his employment type was listed as “*Medical Staff*” for the U-21 Football Team Unit.
4. Pursuant to clause 4 of the Employment Contract, the Respondent undertook to pay the Claimant *inter alia*: (i) AED 10,500 as monthly salary; (ii) AED 8,000 as housing allowance; (iii) AED 3,000 as transportation allowance; and (iv) AED 500 as mobile phone using allowance.
5. Pursuant to clause 5 of the Employment Contract, the Claimant’s obligations towards the Respondent were defined as follows:

“5.1. Carry out the job duties and responsibilities determined by [the Respondent] according to the job description and any other additional work which may be instructed by [the Respondent] in the future and [the Claimant] shall undertake to work in high efficiency and provide the best. [The Claimant] may make change to the position of [the Respondent] or his responsibilities, by resolution taken for the interest of the work.

5.2. [The Claimant] shall indemnify [the Respondent] against any loss or damage or any expenses resulting from any violation of the provisions of this contract, or any damages caused by [the Respondent], and any loss incurred by [the Claimant] due to the negligence of [the Claimant] or his default in his duties.

[...]

5.7. [The Claimant] undertakes to hand over [the Respondent] a copy of his CV, his medical qualifications, the license necessary to practice his profession, and his scientific certificates.

[...]

5.10. Provide periodical and annual reports to the Medical Section.

5.11. Attend the matches, contests, friendly & official tournaments in which the club participates. In addition to that he shall attend all the events and sports festivals of the club at any place when he is required for the participation in the trainings, attend the matches, social and promotional events related to the club in or outside UAE. He shall attend the conferences & meetings and should abide to use the means of transfer provided by the club.

5.12. Should not violate the terms and conditions of the medical drugs and should not provide or help in providing any of them to any player in the team or any other team [...]”.

6. On 25 May 2023, the Respondent notified the Claimant of its intention to terminate the Employment Contract within the two contractual periods (*i.e.*, during June 2023).

II. Proceedings before FIFA

The first claim before the FIFA Football Tribunal

7. On 13 November 2023, the Claimant filed a first claim before the FIFA Football Tribunal, which was filed under ref. no. FPSD-12637 (hereinafter: *the First Claim*). Contextually, the Claimant challenged the termination of the Employment Contract by the Respondent and claimed to be entitled to compensation for breach of contract amounting to AED 242,000 (*i.e.*, the residual value of the Employment Contract).
8. On 14 November 2023, the FIFA general secretariat acknowledged receipt of the First Claim and requested the Claimant to complete its petition in line with art. 18 of the Procedural Rules Governing the Football Tribunal. *Inter alia*, the Claimant was requested to provide: “confirmation of the job title of Mr Augusto Daniel Portela da Silva, and clarification on his role / activities within Al Nasr, together with supporting documentation in this regard”.
9. On 20 November 2023, the Claimant filed *inter alia* a copy of his coaching licenses issued by UEFA and the AFC, as well as pictures on the field of play.
10. Also on 20 November 2023, the FIFA general secretariat referred to the documentation provided by the Claimant and reiterated its request to be provided *inter alia* with: “confirmation of the job title of Mr Augusto Daniel Portela da Silva, and clarification on his role / activities within Al Nasr, which we do not find enclosed to your documentation”.
11. On 21 November 2023, the Claimant requested FIFA clarification as to the documentation requested, in particular: “to clarify what you understand by job title”.
12. On 22 November 2023, the FIFA general secretariat replied to the query of the Claimant and requested to be provided with: “confirmation of the job title of Mr Augusto Daniel Portela

da Silva, meaning: the position in which the latter was employed by Al Nasr. Likewise, we also request you to provide clarification regarding his activities within Al Nasr". In accordance with FIFA's letter, should the Claimant fail to file the aforementioned information within the granted deadline, his petition would be deemed withdrawn and the case file closed (cf. art. 18, par. 2 of the Procedural Rules Governing the Football Tribunal).

13. On 24 November 2023, and absent any reply from the Claimant, the FIFA general secretariat acknowledged that the First Claim had not been properly completed, hence informed the Claimant that the file would be closed.

The claim at hand

14. On the same date, *i.e.*, 24 November 2023, the Claimant filed the claim at hand before FIFA (case ref. no. FPSD-12827).
15. In his new claim, the Claimant explained that he was employed by the Respondent since 1 August 2020, under the following categories: "*U-19 coach (2020/2021), SC technical director (2021/2022), assistant coach (2021/2022)*". Furthermore, he alleged being lately employed as "*coach in the Under 21 Unit (Football Team Unit)*", in line with the Employment Contract.
16. In support of the above, the Claimant filed: (i) a copy of his coaching licenses issued by UEFA and AFC; (ii) payment receipts concerning his previous contracts with the Respondent; (iii) an extract of the German website *Transfermarkt* in Portuguese only; and (iv) pictures of himself in the field of play seemingly during match (es), which however were not specified.
17. Subsequently, as to the substance, the Claimant alleged that the Respondent abruptly decided to terminate their employment relationship, without just cause. He claimed, in this respect, that the Respondent created the legitimate expectation that the Employment Contract would be performed until 2024, however used the limbo between the two contractual periods (clause 2) to unlawfully dismiss him.
18. Given the above, the Claimant alleged having suffered significant damages with the termination by the Respondent. In particular, he requested to be awarded a total of AED 242,000 as compensation for breach of contract corresponding to the residual value of the Employment Contract (*i.e.*, 11 months *times* AED 22,000 each).
19. On 27 November 2023, the Claimant filed additional documentation in connection with the claim at hand, namely: (i) a copy of the job offer made by the Respondent via email in March 2023; (ii) a copy of the termination notice sent by the Respondent in June 2023; and (iii) a copy of his previous employment agreements with the Respondent, since 2020.

20. Also on 27 November 2023, the FIFA general secretariat informed the Claimant that the matter at hand raised a preliminary procedural matter concerning the jurisdiction of the Football Tribunal, hence would be submitted to an expedited decision in line with art. 19 of the Procedural Rules Governing the Football Tribunal.

III. Considerations of the Players' Status Chamber

21. First of all, the Chairperson of the Players' Status Chamber (hereinafter: *the Chairperson*) analysed whether he was competent to deal with the case at hand.
22. In doing so, he firstly took note that the present matter was presented to FIFA on 24 November 2023 and submitted for a preliminary decision on 27 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 Chairperson determined that the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
23. Furthermore, the Chairperson confirmed that, in accordance with art. 19 par. 1 and 2 of the Procedural Rules, he is competent to decide, in an expedited manner, whether the case at stake is affected by any preliminary procedural matter (*i.e.*, if the Football Tribunal obviously does not have jurisdiction or if the claim is time-barred). Likewise, the Chairperson highlighted that, in case the claim is not affected by any preliminary procedural matters, the FIFA general secretariat would be ordered to continue the procedure (*cf.* art. 19 par. 3 of the Procedural Rules).
24. Subsequently, the Chairperson 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 par. 1 lit. c) of the FIFA Regulations on the Status and Transfer of Players (RSTP) (edition May 2023), the Players' Status Chamber would be - **in principle** - competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an alleged coach from Portugal and a club from the UAE.
25. Notwithstanding the foregoing, the Chairperson noted that an issue regarding the jurisdiction of the Football Tribunal over the present claim was identified by FIFA *ex officio*.
26. At this stage, the Chairperson recalled that on 1 January 2021 FIFA introduced a new regulatory framework governing the labour relations between coaches and clubs, and coaches and member associations. In particular, the amendment package included a proper definition of "*coach*" for the purposes of FIFA regulations (*cf.* definition item no. 28 of the RSTP – May 2023 edition).

27. In particular, the Chairperson acknowledged that said definition identifies a coach as an individual employed in a *"football-specific occupation"*. This means that a coach shall be engaged in activities inherent to football that do not exist in the same way in other sports. Consequently, individuals practising activities that are not inherent to football are excluded from FIFA jurisdiction, such as nutritionists, sports scientists, team doctors, fitness coaches, and the like.
28. With the above in mind, the Chairperson initially highlighted that:
- Clause 3 of the Employment Contract establishes that the Claimant would be employed by the Respondent as part of the medical staff, albeit it refers to the Claimant's job title as "coach";
 - Clause 5 of the Employment Contract outlines the duties and responsibilities attributed to the Claimant and does not make reference to any football-specific coaching tasks, such as *"training and coaching players, selecting players for matches and competitions, making tactical choices during matches and competitions"* (cf. definition no. 28 of the RSTP);
 - To the contrary, the same clause 5 of the Employment Contract suggests that the Claimant (i) should advance evidence of his medical qualification; (ii) would report to the medical team; and (iii) was prevented from prescribing prohibited substances to the players.
29. In parallel, the Chairperson took due consideration that the Claimant was repetitively required to confirm his job title and clarify the contractual activities performed under the Employment Contract, however failed to advance any convincing documentation capable of corroborating that he was indeed employed as a coach for the purposes of the RSTP. In this respect, the Chairperson established that (i) the possession of a coaching license *per se* is not decisive for the qualification of an individual as a coach, insofar as he is in any event required to be employed in a *"football-specific occupation"*; (ii) the previous contracts and payslips signed by the Claimant with the Respondent have no bearing in the analysis at hand, which pertains exclusively to his role under the Employment Contract; (iii) the job offer did not include any reference to the coach's duties and job title within the club, and therefore is immaterial to the analysis at hand; and (iv) there is no description as to when / where the photos filed by the Claimant were taken, hence giving them limited, if any, probatory weight.
30. Consequently, the Chairperson decided that the Claimant could not establish to comfortable satisfaction degree that he was indeed employed by the Respondent as a coach (cf. art. 13, par. 5 of the Procedural Rules). In other words, the Chairperson determined that the Claimant's occupation – as defined in the Employment Contract – is

not considered to be football-specific in accordance with the FIFA regulations and the well-established jurisprudence of the Players' Status Chamber.

31. In conclusion, the Chairperson decided that the Football Tribunal does not have jurisdiction to hear the dispute at stake since it falls outside the scope of art. 22, par. 1, lit. c) of the RSTP (May 2023 edition).
32. Lastly, the Chairperson 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 Chairperson decided that no procedural costs were to be imposed on the Claimant.

IV. Decision of the Players' Status Chamber

1. The Football Tribunal does not have jurisdiction to hear the claim of the Claimant, Augusto Daniel Portela da Silva.
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).

CONTACT INFORMATION

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