

Decision of the Players' Status Chamber

passed on 14 October 2023

regarding an employment-related dispute concerning the coach Jose Luis Sierra Pando

BY:

Javier Vijande Penas, Argentina

CLAIMANT:

Jose Luis Sierra Pando, Chile
Represented by Salvatore Civile

RESPONDENT:

Al Wehdah, Saudi Arabia
Represented by Global Sport Consulting

I. Facts of the case

The parties

1. On 13 October 2022, the following persons entered into an employment contract valid as from “*the date of Technical Staff’s arrival to Saudi Arabian and their work commencement at the club’s headquarters and ends on 30/06/2023*” (hereinafter: *the Employment Contract*):

On one side:

- the Saudi club, Al Wehdah (hereinafter: *the Respondent* or *the club*).

On the other side:

- the Chilean head coach, Mr Jose Luis Sierra Pando (hereinafter: *the Claimant* or *the Head Coach*);
 - the Spanish assistant coach, Mr Jose Luis Sanchez Moretti;
 - the Chilean fitness coach, Mr Marcelo Javier Canessa Soto;
 - the Chilean goalkeeper coach, Mr Eduardo Erick Azargado; and
 - the Spanish translator, Mr Mohammed Abu-Dayya Garcia.
2. Nonetheless, only the Head Coach and the club are parties to the dispute at hand.

The contents of the Employment Contract

3. Articles 4 to 6 of the Employment Contract read as follows:

“Article Four: Value of the Contract

- a) *The total contract value is 900.000 USD net (nine hundred thousand US Dollars net) that shall be distributed as monthly salaries with a sum amounting to 100.000 USD net (one hundred thousand USD net) to be paid at the end of each month throughout the term contract.*
- b) *The payment will be transferred to the bank account of the Head Coach who is responsible to pay each one of his technical staff.*

For sake of clarity the contractual value of 900.000 USD net represents the entire salaries of all the technical staff above-mentioned as parties in the contract.

Article Five: Bonuses

a) Head Coach's Bonus

- League matches bonus shall be determined in accordance with the club's internal regulations.
- 100.000 USD net (one hundred thousand USD net) if he finishes in one of the first fifth positions of the league.
- 150.000 USD net (one hundred and fifty thousand USD net) if he wins the King's Cup.

b) Bonus of the rest of the members of the technical staff:

- League matches bonus, position bonus and King Cup bonus shall be determined in accordance with the club's internal regulations.

Article Six: First's party's obligations

• Accommodation:

[The club] shall provide the Technical Staff during the period of the contract an appropriate apartment.

• Transportation:

[The club] shall provide the Technical Staff during the period of the contract an adequate vehicle.

• Tickets:

a) [The club] shall bear to provide two round business class tickets to the Head Coach, the Assistant Coach, the Fitness Coach and the Goalkeepers' Coach and one round economy class ticket for their families (wives and children) in the season.

b) [The club] shall bear to provide two round economy class tickets to the Translator and the Video Analyst and one round economy class ticket for their families (wives and children) in the season.

• Weekends:

The Technical Staff are entitled with one day weekly vacation determined upon the agreement with all parties and in accordance with work benefits."

The correspondences exchanged between the parties

4. On 19 June 2023, the club forwarded the Head Coach a draft of a payment schedule, which was however not signed. Accordingly, the club would pay the Head Coach: (i) SAR 1,500,000 as monthly salaries; (ii) SAR 25,000 as the deduction of November's salary; (iii) SAR 390,000 as match bonus; and (iv) SAR 40,100 as reimbursement of flight tickets.
5. On 22 August 2023, the Head Coach put the club in default for payment of the following amounts within the following 10 days:
 - USD 400,000 as the salaries from March to June 2023;
 - SAR 390,000 as match bonus; and
 - SAR 40,100 as flight tickets.
6. On 24 August 2023, the club paid USD 100,000 to the Head Coach.
7. On 21 October 2023, the Head Coach put the club in default for the second time and granted it an additional 10 days' deadline for the breach to be cured.

II. Proceedings before FIFA

8. On 13 September 2023, the Head Coach filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Head Coach

9. In his claim, the Head Coach alleged that the club has failed to comply with its financial duties under the Employment Contract. In particular, the Head Coach referred to art. 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) and requested to be awarded the following amounts:
 - a. USD 100,000 net plus 5% interest *p.a.* as from 1 May 2023;
 - b. USD 100,000 net plus 5% interest *p.a.* as from 1 June 2023;
 - c. USD 100,000 net plus 5% interest *p.a.* as from 1 July 2023;
 - d. *"interests at rate of 5% per year for the delayed payment of monthly salary of March 2023 which was due on 31 March 2023 and was only paid on 24 August 2023,*

calculated on 146 days (x 13,70 USD) for the amount of USD 2,000.20”;

- e. SAR 390,000 as match bonus; and
 - f. SAR 40,100 as flight tickets refund.
10. Specifically, regarding the match bonus, the Head Coach explained that the debt was acknowledged by the club via payment schedule. Nevertheless, he also acknowledged that such document was never signed insofar as the parties could not reach an amicable solution to the case.

b. Position of the club

11. On 30 September 2023, the club filed its reply to the claim and made *inter alia* the following remarks regarding the concepts sought by the Head Coach:
- Salaries from April to June 2023: the club acknowledges that the salaries were pending and overdue and “*apologizes for that failure due to some financial difficulties associated to the election of a new board and the appointment of a new executive administration*”;
 - Bonuses: the club argues that Head Coach’s request to receive SAR 390,000 is groundless. It claims that the payment scheduled advanced by the Head Coach was never signed, thus bears no legal validity;
 - Flight tickets: the club would only be liable to pay the tickets from Jeddah to Madrid, for that the Head Coach would be liable to pay the tickets used for his own holidays.
12. Consequently, the club concluded that its debt towards the Head Coach amounts to USD 300,000 plus SAR 10,800, as well as proposed a schedule for payment in instalments.

III. Considerations of the Players’ Status Chamber

a. Competence and applicable legal framework

13. First of all, the Single Judge of the Players’ Status Chamber (hereinafter: *the 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 24 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.

14. Furthermore, 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 FIFA RSTP (May 2023 edition), the Players' Status Chamber is competent to deal with employment-related disputes between a club and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level.
15. At this point, the Single Judge took due consideration that (i) the dispute at hand pertains to overdue payables allegedly owed by the club under the Employment Contract concluded with the entire coaching staff, including but not limited to the Head Coach; however (ii) the claim *sub judice* was lodged by the Head Coach alone and (iii) such claim unequivocally bears an international dimension insofar as it involves a Chilean coach against a Saudi Club. Consequently, the Single Judge determined that any discussion as to the Head Coach's standing to sue and/or his entitlement to any amounts under the Employment Contract pertains to the substance of the matter, hence should be entertained in the appropriate section.
16. Therefore, the Single Judge confirmed that the Football Tribunal in general and the Players' Status Chamber in particular has jurisdiction to hear the claim of the Head Coach in line with art. 22, par. 1, lit. c) of the FIFA RSTP.
17. 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 FIFA RSTP (May 2023 edition) and considering that the present claim was lodged on 13 September 2023, the cited edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Merits of the dispute

18. The 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.
19. First and foremost, the Single Judge highlighted that this is a claim for overdue payables lodged by the Head Coach against the club on the basis of a collective contract concluded between the club and the entire coaching staff (*i.e.*, the Head Coach, an assistant coach, a fitness coach, a goalkeeper coach, and a translator).

20. In this context, the Single Judge found it decisive that the credit now sought by the Head Coach includes not only his own remuneration, but the amounts owed to the entire coaching staff. It followed, in his view, that the underlying question to be answered was: can the Head Coach effectively claim all the amounts sought? Put differently: irrespective of the contractual stipulation in this regard, does the Head Coach have standing to sue to collect monies on behalf of the entire coaching staff *vis-à-vis* the contents of the Regulations?
21. Against this background, the Single Judge referred to art. 2, par. 1 of the Annexe 2 of the Regulation, according to which: “A coach must have a written contract with a club or an association, ***executed on an individual basis***” (emphasis added).
22. Furthermore, the Single Judge recalled that the *Commentary to the Regulations on the Status and Transfer of Players* sheds the following light regarding collective contracts:

*“The first standard is that the contract must be in writing. The second is not so obvious. ***The phrase “executed on an individual basis” at the end of paragraph 1 explicitly prohibits so-called ‘group contracts’.*** It is not uncommon for the PSC to decide on matters whereby a foreign head coach is accompanied by their chosen coaching team of 6 or 7 staff covering both football-specific and non-football-specific roles. To try and avoid those individuals not employed in football-specific roles not being subject to FIFA jurisdiction, the foreign head coach signs a single contract with the club which covers the payment for the whole coaching team, who effectively act as his sub-contractors (i.e. the foreign head coach receives the salary for the whole coaching team from the club, and then pays his coaching team directly). ***Such mechanisms are now outlawed, to protect the Regulations from being circumvented.***” (emphasis added; p. 458).*

23. In light of the above, the Single Judge underscored that the *mens legis* behind the provision included in Annexe 2 of the Regulations is to prevent cases exactly like the one at hand: a collective contract determining that a party (*i.e.*, Head Coach) is entitled to seek relief before the Football Tribunal on behalf of individuals that are not employed in football-specific roles, hence that fall outside the jurisdiction of FIFA (*e.g.*, fitness coaches, translators, and the like).
24. Admitting otherwise, in the Single Judge’s view, would not only be *contra legem* but also jeopardize legal certainty and pose risk to the integrity of FIFA’s dispute resolution system as a whole, for that it would imply granting concepts to individuals that cannot be parties before the Football Tribunal (cf. definition no. 26 of the Regulations in combination with art. 9, par. 1 of Procedural Rules), and therefore upon whom FIFA has no jurisdiction over, for they are not qualified as coaches under the definitions set out by the Regulations. Consequently, collective contracts are outlawed and cannot be enforced as such.
25. This alone would suffice to reject the claim in its entirety as it constitutes, like the Employment Contract, and attempt to circumvent the Regulations, which expressly forbid

collective contracts. Nonetheless, the Single Judge did not shy away from examining other elements present in the claim which further confirmed his assessment.

26. In strict observance of the Regulations, the Single Judge remarked that the Head Coach is not entitled to claim the amounts on behalf of the other members of its staff because he lacks standing to sue on behalf of his colleagues and should only be entitled to his own dues, if any. The Single Judge remarked that the issue of standing is characterised as a matter - as added above - of substantive law as opposed to procedural law, and that such standing derives from the fact of the party in question being the legal holder of the right in dispute. In other words, a party has standing to sue (or be sued) if the claim affects a substantive right of its own. The Single Judge underlined that both the case law of the Football Tribunal and the precedents of CAS have repeatedly confirmed such a consideration.
27. At this point, 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 TMS.
28. With the above in mind, the Single Judge could not fail to observe that the Employment Contract does not provide for specific remuneration for each of the members of the coaching staff, but rather stipulates a global remuneration and entitles the Head Coach to claim on behalf of the entire coaching staff. Most importantly: (i) there is no specification in the Employment Contract as to the amounts due to each member of the coaching staff in general or to the Head Coach himself in particular; and (ii) the Head Coach failed to provide any type of evidence capable of demonstrating his entitlements *vis-à-vis* the global remuneration established in the Employment Contract.
29. Consequently, the Single Judge considered that it was impossible to establish from the documentation on file the Head Coach's share of the outstanding remuneration, which is in fact the only outstanding remuneration he can indeed seek and have examined by the Single Judge.
30. In this sense, the Single Judge wished to outline that:
 - the payment schedule submitted by the Head Coach, despite not being signed, was also not conclusive to differentiate the shares of remuneration payable to each member of the coaching staff;
 - the invoice provided by the Head Coach for the reimbursement of his flight tickets was only partially translated and was not accompanied by the corresponding proof of payment. Therefore, it did not prove to a comfortable

satisfaction degree that the Head Coach indeed incurred in such expenses; and

- the acknowledgement of part of the debt by the club is irrelevant insofar *vis-à-vis* his conclusions as to the lack of standing to sue by the Head Coach on behalf of the other members of the coaching staff and the latter's failure to provide a breakdown of the amounts sought.
31. For completeness, the Single Judge was of the opinion that it was not by chance that such specification was not made in the claim of the Head Coach: by not precisely indicating which amounts are in fact due and to whom, the Head Coach sought to have claims of individuals who are not coaches per the Regulations heard by FIFA, even if they are not subject to the jurisdiction of the Football Tribunal. For the Single Judge, such attempt should not succeed, in light of the conclusions indicated before.
32. Based on all the abovementioned considerations, the Single Judge decided that the claim of the Head Coach should be rejected in its entirety.

c. Costs

33. 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.
34. 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.
35. Lastly, the DRC concluded its 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, Jose Luis Sierra Pando, 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).

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