

Decision of the Dispute Resolution Chamber

passed on 13 November 2023

regarding an employment-related dispute concerning
the player Mamadou Thiam

BY:

Calum Beattie, Scotland

CLAIMANT:

Mamadou Thiam, Senegal and France

RESPONDENT:

Arabi SC, Kuwait

I. Facts of the case

1. On 2 July 2023, the French and Senegalese player, Mamadou Thiam (hereinafter: *the Claimant* or *the player*) and the Kuwaiti club, Arabi SC (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *the contract*) valid as from 1 July 2023 until 30 June 2025.
2. Clause 2 of the contract reads as follows (quoted *verbatim*):

"1- [the club] pays to [the player] total sum of 212,270 KWD for this contract (two hundred and twelve thousands and two hundred and seventy Kuwaiti Dinars only) divided as follows:-

- 15470 KWD (fifteen thousands and four hundred and seventy Kuwaiti Dinars) as advance payment to be paid after receiving the player's international card from FIFA (ITC) and registering in the Kuwait Football Association

- The rest of the amount is divided into monthly salaries to be paid at the end of each month for a period of 24 as the following table

<i>2023/2024 Salaries payments details</i>			
<i>Description</i>	<i>The amount</i>	<i>First Payment</i>	<i>Last Payment</i>
<i>Salary</i>	<i>8,200 KWD</i>	<i>30/7/2023</i>	<i>30/6/2024</i>
<i>2024/2025 Salaries payments details</i>			
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2- [the club] provides furnished housing for [the player] inside the club.

3-- [the club] provides a private car for [the player] to attend the training and matches.

4- [the club] grants [the player] 4 flight ticket to and from its original country (economy class) once during the season as follow :

- One ticket for the player Mamadou Thiam.*
- One ticket for the wife of the player.*
- Two tickets for the children of the player.*

5- [the player] *deserves a bonus for achieve titles, same as his colleagues players.*"

II. Proceedings before FIFA

3. On 18 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

4. In his claim, the Claimant argued that the Respondent failed to comply with its financial obligations under the contract by not paying his July 2023 salary and requested the payment of the same in the amount of KWD 8,200.

5. On 20 September 2023, the FIFA General Secretariat in accordance with art. 20 of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), made a proposal to the parties. Contextually, they were requested to either accept or reject the proposal by 5 October 2023 and in the event that the Respondent rejected the proposal, it should provide its response to the claim within the same deadline.

6. On the same date, the player rejected the proposal made by the FIFA general secretariat.

7. On 4 October 2023, the Claimant wrote to FIFA and states as follows (freely translated to English):

"I would like to update the situation regarding the payment of my salaries, as of this date and as I suspected Al Arabi SC Club has not paid the salaries for the month of September.

This brings to two months the number of salaries I am owed by Al Arabi SC.

Since I signed on 01 July 2023 (I have received only one salary out of three). The amount owed to date is 16400 KD (Kuwait Dinar) approximately 50,000 EUROS, or two months salary. According to Article 14bis of the Regulations on the Status and Transfer of Players, if Al Arabi SC "finds itself in breach of the law by failing to pay at least two monthly salaries to the player on the due dates, the latter will then be deemed to have the right to terminate his contract with just cause provided that he has given written notice to the debtor club and has given him at least fifteen days to honour all of his financial obligations. Alternative provisions in contracts existing at the time of this provision coming into force may be considered". This will also oblige me to take action to obtain the full salary that would be due until the end of my contract in June 2025.

I call upon FIFA's competent bodies to propose a rapid and effective solution that could help me to get out of this situation in which I am today, without being paid."

8. On 6 October 2023, the FIFA general secretariat wrote to the player and asked him to clarify by 12 October 2023 whether he had amended his claim and, in the affirmative, to indicate the proper breakdown of the concepts and amounts claimed.
9. On 9 October 2023, the Claimant modified his claim and indicated that the club in the meantime paid July 2023 salary. In view of the foregoing, he requested payment of September 2023 salary for KWD 8,200. The player further added the following *"I would like FIFA urge Al Arabi Club to pay me within 10 days (not 45 days as I rejected last time)"*.
10. On 13 October 2023, the FIFA general secretariat acknowledged receipt of the amended claim of the player and accordingly granted the club with an additional deadline to file its position by 20 October 2023.

b. Position of the Respondent

11. In its response to the claim dated 20 October 2023, the club indicated the following:

"We would like to inform you that the player has received all his financial dues in accordance with the contractual relationship he has with the club, starting with the salary for July, August, and September (attached). Also, the salary for October has not yet arrived. We are surprised that you are demanding a salary that has not yet arrived. We also inform you that the September salary was disbursed in the amount of 6,888 KWD Kuwaiti dinars due to the activation of the club's internal regulations regarding excess weight."

c. Additional comments of the Claimant

12. Upon request by the FIFA general secretariat of 24 October 2023, the Claimant acknowledged on the same date a partial payment by the club of KWD 6,888 for the September 2023 salary. However, he indicated that the club had still not paid KWD 1,312.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

13. First of all, the Single Judge of the Dispute Resolution 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 18 September 2023 and submitted for decision on 13 November 2023. Taking into account the wording

of art. 34 of the March 2023 edition of the Procedural Rules, the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

14. 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 par. 1 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 Senegalese/French player and a Kuwaiti club.
15. Moreover, 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 18 September 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
16. For sake of clarity, the Single Judge observed that the Respondent argued that one amount was not yet due i.e., October 2023 salary. However, the Single Judge stressed that in accordance with the claim, the player requested payment of his September 2023 (and not October 2023) salary which felt due on 30 September 2023. Consequently, the Claimant's claim is admissible.

b. Burden of proof

17. 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

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 it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

19. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that it pertains to a claim of a player against a club for overdue payables in which the main dispute of the parties is to establish whether the player is entitled to the remaining payment of his September 2023 salary for KWD 1,312.
20. The Single Judge observed that while the Claimant requested the full payment of his September 2023 salary; the Respondent in turn indicated that the Claimant's salary was reduced to KWD 6,888 due to the activation of the club's internal regulations regarding excess weight.
21. In this respect, the Single Judge wished to point out that no evidence as to the internal regulations were provided by the club. Equally, he underlined that it appears that said unilateral deduction was made without a conduction of disciplinary proceeding, let alone any proof of the alleged infringement committed by the player. In view of the foregoing, the Single Judge concluded that the deductions to the salary were unlawfully made.
22. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant KWD 1,312.
23. Lastly, The Single Judge added that per the constant practice of the Dispute Resolution Chamber, the player would also be in principle entitled to default interest over the abovementioned amount as from the due date until the date of payment. However, as the player filed no request for interest, the Single Judge was prevented from awarding such concept in line with the general legal principle of *ne ultra petita*.

ii. Compliance with monetary decisions

24. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with his 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.
25. In this regard, the Single 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.
26. Therefore, bearing in mind the above, the Single 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.

27. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
28. The Single 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.

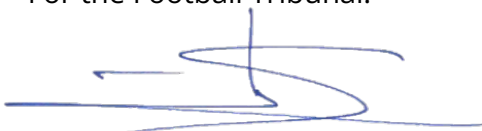
d. Costs

29. 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.
30. 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.
31. Lastly, the Single 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, Mamadou Thiam, is partially accepted.
2. The Respondent, Arabi SC, must pay to the Claimant **KWD 1,312 as outstanding remuneration**.
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

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