

Decision of the Players' Status Chamber

passed on 23 October 2023

regarding an employment-related dispute concerning
the coach Alexander Zorniger

BY:

Tomas Gonzalez Cueto (Spain)

CLAIMANT:

Alexander Zorniger, Germany

Represented by Loizos Hadjidemetriou

RESPONDENT:

Apollon Limassol, Cyprus

Represented by Alkis Papantoniou

I. Facts of the case

1. On 25 May 2021, the German coach Alexander Zorniger (hereinafter the *Claimant* or the *Coach*) and the Cypriot club Apollon Limassol (hereinafter the *Respondent* or the *Club*) concluded an employment and an image rights agreement.
2. On 10 August 2023, the employment relationship was terminated.
3. On 15 May 2023, the Claimant and the Respondent (jointly referred to as the *Parties*) signed a settlement agreement (hereinafter the *Settlement Agreement*).
4. In accordance with Clause 2 of the Settlement Agreement, the Parties agreed that the Respondent shall make a payment of **EUR 221,250 net** in 12 various instalments as follows:
 - **EUR 205,762.50** over 6 instalments paid in the bank account stipulated in clause 5, as follows:

(a) EUR 12,206.25	until 25/05/2023
(b) EUR 12,206.25	until 15/06/2023
(c) EUR 35,746.90	until 15/07/2023
(d) EUR 48,534.40	until 15/08/2023
(e) EUR 48,534.40	until 15/09/2023
(f) EUR 48,534.40	until 15/10/2023
 - **EUR 15,487.50** over 6 instalments paid in the bank account stipulated in clause 6, as follows:

(a) EUR 918.75	until 25/05/2023
(b) EUR 918.75	until 15/06/2023
(c) EUR 2,690.60	until 15/07/2023
(d) EUR 3,653.10	until 15/08/2023
(e) EUR 3,653.10	until 15/09/2023
(f) EUR 3,653.10	until 15/10/2023
5. Furthermore, Clause 3 of the Settlement Agreement stipulated the following:

“Should the Club fail to fully comply with any of the payments mentioned in clause 2 above, within the date indicated plus 7 days, the Coach reserves the right to send a notice after the 7 days lapse. If the Club does not fully settle the payment within 8 days after the notice is sent, all of the remaining payments shall become immediately due and payable and the Club shall also have to pay a one-off penalty, equal to the 20% of all amounts remaining due.”
6. In Clause 9 of the Settlement Agreement, the Parties contained the following jurisdiction choice:

“Any dispute arising out of the present agreement shall fall within the exclusive jurisdiction of the FIFA Football Tribunal and shall be decided according to its applicable regulations and all remaining amounts shall be considered as outstanding since 10/09/2022.”

7. On 23 August 2023, the Claimant sent a default notice to the Respondent, requesting the amounts which became due on 15 August 2023. In its correspondence, the former granted the Respondent eight days to comply with its financial obligations, however, to no avail.
8. On 11 September 2023, the Claimant received the amount of EUR 48,534.40.

II. Proceedings before FIFA

9. On 14 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

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

- "i. EUR 108,028.10 plus 5% legal interest since 10/09/20221.*
- ii. EUR 31,312.50 as contractual penalty."*

11. The Claimant argued that Clause 3 of the Settlement Agreement was triggered, and therewith the acceleration clause. Based on the legal principle *pacta sunt servanda*, the Claimant requested the total outstanding amount as well as a penalty clause.

b. Position of the Respondent

12. The Respondent submitted the following reply:

- "A. To determine that the penalty fee requested by the Claimant is excessive and unreasonable and to reject the relevant part of the claim.*
- B. Subsidiarily, and only in case it considers that one penalty shall be awarded, to decide which of the agreed penalties is applicable of those we mention in para. 61 of the present Response (penalty i), ii) or iii);*
- C. Subsidiarily, and only in case it considers that two penalties shall be awarded, to decide which of the agreed penalties is applicable of those we mention in para. 61 of the present Response (penalty i), ii) or iii);*
- D. Subsidiarily, and only in case it considers that all the aforementioned penalties are applicable to adjust the penalty fee in a manner in which it is reasonable and proportionate."*

13. In this respect, the Respondent was of the opinion:

- "i. that the amount due at the day the Claimant lodged the claim was equal to only EUR 3,653.10;*
- ii. that until the day of the Claim, the Club had paid the total amount of EUR 113,221.90 (96,87% of the amount due until that day has been completed);*

- iii. That the club had good relations with the Claimant with whom they achieved winning the Cypriot League;
- iv. That the delay was not intentional;
- v. That the delay was not severe and the amount due was not high."

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as the *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 14 September 2023 and submitted for decision on 23 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 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 German coach and a Cypriot club.
16. 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 14 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

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. 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

19. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that the Parties strongly dispute the payment of certain financial obligations by the Respondent as per the Settlement Agreement, namely EUR 139,340.6. Furthermore, the Claimant argued that a penalty was triggered based on a late payment of the outstanding amounts.
20. In this context, the Single Judge acknowledged that his task was to determine, based on the evidence presented by the Parties, whether the claimed amounts had in fact remained unpaid by the Respondent and, if so, whether the latter had a valid justification for not having complied with its financial obligations.
21. Firstly, the Single Judge noted that in the case at hand, he first shall analyse if the acceleration clause foreseen in the Settlement Agreement (Clause 3 of the said document) was triggered. In this respect, the Single Judge recalled the wording:

“Should the Club fail to fully comply with any of the payments mentioned in clause 2 above, within the date indicated plus 7 days, the Coach reserves the right to send a notice after the 7 days lapse. If the Club does not fully settle the payment within 8 days after the notice is sent, all of the remaining payments shall become immediately due and payable and the Club shall also have to pay a one-off penalty, equal to the 20% of all amounts remaining due.”
22. The Single Judge also recalled that on 23 August 2023, the Claimant sent a default notice to the Respondent, requesting the amounts which became due on 15 August 2023. What is more, the Single Judge also took note that in its correspondence, the Claimant granted the Respondent eight days to comply with its financial obligations, however, to no avail.
23. In view of the above, the Single Judge was of the opinion that the above-mentioned acceleration clause was triggered on 2 September 2023, along with the penalty of 20% of the outstanding amount at this point (i.e. EUR 156,562.5), which the Single Judge considered proportionate in line with the jurisprudence of the Football Tribunal.
24. Furthermore, the Single Judge recalled that on 11 September 2023, the Claimant received the amount of EUR 48,534.40, which shall be deducted from the outstanding amount.
25. The Single Judge continued that the Respondent bore the burden of proving that it indeed complied with the residual financial terms of the contract concluded between the Parties. Nonetheless, the Single Judge noted that no evidence nor reasonable justification was

presented by the Respondent for not having complied with the terms of the Settlement Agreement.

26. In view of the foregoing and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Settlement Agreement concluded between the Parties, namely EUR 108,028.1 as well as a penalty of EUR 31,312.5.

ii. Consequences

27. 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 the amounts claimed as outstanding under the contract, in total EUR 108,028.1 and EUR 31,312.5, as detailed above.
28. In addition, taking into consideration the Claimant's request, Clause 9 of the Settlement Agreement as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amount of EUR 108,028.1 as from 10 September 2022 until the date of effective payment. The Single Judge remarked however that no interest shall be awarded on the penalty, given the principle *ne bis in idem*.

iii. Compliance with monetary decisions

29. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 2 of the Regulations, which stipulate that, with its 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.
30. 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.
31. 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. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.

32. 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.
33. 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. 8 par. 8 of Annexe 2 of the Regulations.

d. Costs

34. 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, he decided that no procedural costs were to be imposed on the parties.
35. 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.
36. 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, Alexander Zorniger, is partially accepted.
2. The Respondent, Apollon Limassol, must pay to the Claimant the following amount(s):
 - **EUR 108,028.1 as outstanding remuneration** plus 5% interest *p.a.* as from 10 September 2022 until the date of effective payment;
 - **EUR 31,312.5 as penalty.**
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. 8 of Annexe 2 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. 8 par. 7 and 8 of Annexe 2 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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