

Decision of the Dispute Resolution Chamber

passed on 12 April 2024

regarding an employment-related dispute concerning
the player Hafiz Aliyu

BY:

Roy VERMEER (The Netherlands)

CLAIMANT:

Hafiz Aliyu, Nigeria

Represented by Georgi Gradev

RESPONDENT:

Etoile Sp. De Metlaoui, Tunisia

I. Facts of the case

1. On 29 September 2023, the Nigerian player Hafiz Aliyu (hereinafter, the *Claimant* or the *Player*) and the Tunisian club Etoile Sp. De Metlaoui (hereinafter, the *Respondent* or the *Club*) concluded employment contract (hereinafter, the *Contract*) valid as from 29 September 2023 until 30 June 2024.
2. In accordance with clause 3 of the Contract, the Respondent undertook to pay to the Claimant (hereinafter, jointly referred to as the *Parties*) the following salary:
 - *A monthly salary of two thousand dinars (DT 2,000) payable at the end of each month.*
 - *A performance bonus of twenty thousand dinars (DT 20,000), the final amount of which depends on the total number of official matches played by the club and the number of matches in which the player has participated. (freely translated from French)*
3. On 18 January 2024 a meeting was held between the Parties in which the Respondent informed the Claimant that the coach of the Club was not satisfied and that he decided that a solution had to be found, so the Respondent asked the Claimant whether he would agree to terminate the Contract, to which the latter refused.
4. According to the Claimant, on 3 February 2024 the Respondent verbally terminated the Contract.
5. On 14 February 2024, the Claimant sent a default notice to the Respondent stating, *inter alia*, the following:

"On January 18, 2024, the Club's management informed Mr. Aliyu that he was not in the head coach's plans and they no longer require his services. The Club also advised him to leave the city of Metlaoui, but Mr. Aliyu refused and insisted on the Contract's performance. To force his hand, the Club prohibited Mr. Aliyu from training and participating in Club activities.

On February 3, 2024, the Club told Mr. Aliyu that he was no longer their player and threatened him by telling him to leave his apartment and the city of Metlaoui and return to Nigeria. Otherwise, the Club would send people to remove him.

Finally, the Club has unlawfully withheld Mr. Aliyu's December 2023 and January 2024 salaries due and payable at the end of the respective month. So, per Clause 3.1 of the Contract, the Club owes Mr. Aliyu 4,000 Tunisian Dinars ("DT").

On these grounds, I understand that the Club has no interest in Mr. Aliyu's services and the Contract's performance. As Mr. Aliyu's career is at stake, I kindly ask you to provide me with your position until Friday, February 16, 2024. Otherwise, I will deem

your silence as the Contract's termination by your implicit conduct and I will have no choice but to refer the matter to FIFA without further notice to protect my client's rights.

In addition, I kindly ask that you pay Mr. Aliyu's outstanding salaries of DT 4,000, as detailed above, within the same deadline".

6. The Claimant remained unemployed following the aforementioned deeds.

II. Proceedings before FIFA

7. On 12 March 2024, 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

8. In his claim, the Claimant argued that after the meeting of 18 January 2024, the Respondent sidelined the Claimant, completely prohibiting him from participating in trainings and club activities, and that it also unlawfully withheld his December 2023 and January 2024 monthly salaries.
9. Furthermore, according to the Claimant "(...) *it is evident that the Respondent terminated the Contract with immediate effect through implicit conduct on February 3, 2024, when it told the Claimant to leave Metlaoui because he was no longer their player*".
10. The Claimant further argued that "*Despite my February 14, 2023 letter, the Respondent did not provide any other reason or evidence concerning the Contract's termination*" and that "(...) *the Claimant's alleged poor performance was not just cause for the Respondent for unilaterally terminate the Contract under Article 14 RSTP since the relevant circumstance occurred depends on the Respondent's subjective view to cite it as grounds for the Contract's premature termination*".
11. Lastly, the Claimant alleged that, apart from the monthly salaries claimed, he is also entitled to the agreed bonus of TND 20,000 since clause 3 of the Contract does not indicate the specific number of matches to be achieved by the Claimant in order to trigger the bonus. In this regard, the Claimant considers this provision of the Contract "*highly subjective and left up to the Respondent's complete discretion*" and, thus, that it should be considered as a fixed amount or, in other words, paid on a non-conditional basis.

12. The Claimant requested the following relief:

1. *Order the Respondent to pay the Claimant outstanding amounts of DT 4,000 net, plus interest of 5% p.a. until full payment as follows:*
 - *On DT 2,000 as of January 1, 2024; and*
 - *On DT 2,000 as of February 1, 2024.*
2. *Order the Respondent to pay the Claimant compensation for breach of contract of DT 30,000 net, plus interest of 5% p.a. as of February 3, 2024, until full payment.*

b. Position of the Respondent

13. Despite being invited to do so, the Respondent failed to reply to the claim.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. First of all, 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 12 March 2024 and submitted for decision on 12 April 2024. 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 and art. 24 par. 1 lit. a) 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 (February 2024) he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Nigerian player and a Tunisian 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 (February 2024 edition), and considering that the present claim was lodged on 12 March 2024, the February 2024 edition of said regulations (hereinafter, the *Regulations*) is applicable to the matter at hand and 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 this is claim of a player against a club concerning a termination of the employment agreement.
20. To this effect, the Single Judge first recalled that the Claimant claims that the Respondent unilaterally terminated the Contract without just cause on 3 February 2024, when the former allegedly asked the latter to leave Metlaoui because he was no longer their player.
21. The Single Judge then recalled that the claim remained uncontested by the Respondent.
22. Accordingly, the Single Judge outlined that the main question to be tackled is whether the Respondent had just cause to unilaterally terminate the Contract.
23. In doing so, the Single Judge referred to the content of art. 14 par. 1 of the Regulations, in accordance with which *“A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause”*. In this respect, the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case.
24. The Single Judge then recalled it is a longstanding and well-established jurisprudence that only a breach or misconduct which is of a certain severity justifies the termination of a contract, i.e., only when there are objective criteria which do not reasonably permit to expect a 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 into account in order for an employer to ensure the employee's fulfilment of his contractual obligations, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.

25. Furthermore, the Single Judge stressed that, in accordance with the jurisprudence of the Football Tribunal, the poor performance of a player cannot be used as a valid argument to motivate the player's dismissal, as it is a subjective factor which goes in clear detriment of the principle of contractual stability. In other words, a player's unsatisfactory performance cannot be a valid reason for an employer to cease paying due salaries or terminate an employment contract, as this is a purely unilateral and subjective evaluation by the club.
26. Bearing in mind the foregoing, the Single Judge noted that *in casu*, on 14 February 2024 the Claimant put the Respondent in default requesting it (i) its position regarding the alleged unilateral termination of the Contract based on the Player's poor sporting performance and (ii) payment of two overdue monthly instalments (i.e., December 2023 and January 2024). The Single Judge also noted that the Claimant granted a deadline of two days for the Respondent to fulfil its obligations, to no avail.
27. In this respect, the Single Judge recalled that the Respondent did not dispute either of the two requirements of the Claimant and that, in spite of being in default, it did not cure its breach nor respond to the Claimant's default notice and neither to his claim before FIFA.
28. On account of the foregoing, the Single Judge concluded that the Claimant could not reasonably expect the continuation of the employment relationship based on the overall developments of the case, even more bearing in mind that the Claimant had given advanced warning to the Respondent. Equally, the Respondent, by not responding to the default notice, generated an impression that it did not object to the Claimant's position, entailing that the Respondent behaviour bears significant weight on the termination of the Contract.
29. On account of the aforementioned, the Single Judge decided that the Respondent had unlawfully terminated the Contract with the Claimant and must be liable to the consequences that follow.

ii. Consequences

30. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
31. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the Claimant, is equivalent to TND 4,000,

corresponding to the monthly salaries of December 2023 and January 2024 (i.e., TND 2,000 each).

32. As a consequence, and in accordance with the general principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of termination.
33. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from 1 January 2024 and 1 February 2024 until the date of effective payment, respectively.
34. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the Player by the Club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 17 par. 1 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 law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
35. In application of the relevant provision, the Single Judge held that he first of all had to clarify 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.
36. 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.
37. As a consequence, the Single Judge determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
38. Bearing in mind the foregoing as well as the claim of the Player, the Single Judge proceed with the calculation of monies payable to the Player under the terms of the Contract until its term.
39. In this regard, the Single Judge recalled that the Claimant claims that he is entitled to the bonus of TNS 20,000 agreed as per clause 3 of the Contract.

40. On account of the above, the Single Judge recalled that, in accordance with the jurisprudence of the Football Tribunal, whenever a contract foresees the entitlement of a player to receive a performance bonus, the specific circumstances that need to be achieved in order for the payment of the relevant performance bonus to be triggered shall be indicated, either in the contract or in another document that is available to the player (e.g. the club's regulations). Should the relevant information as to the achievement triggering the entitlement of the player to receive the bonus not be indicated or available to the player, the club would be enjoying a position whether it could -in a potestative manner- decide or not grant the bonuses to the player, which goes in detriment of the legal principle of legal certainty. What is more, whenever the said clauses specify the amount due to the player as bonus without indicating the particular performance to be achieved, a presumption is created on the player that the said bonuses will be paid on a non-conditional basis.
41. Consequently, the Single Judge concluded that the amount of TND 30,000 (i.e., the residual value of the Contract including the agreed bonus) serves as the basis for determination of the amount of compensation for breach of contract.
42. In continuation, the Single Judge verified whether the Player 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 Chamber as well as art. 17 par. 1 lit. ii) 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 Player's general obligation to mitigate his damages.
43. In this respect, the Single Judge noted that the Player remained unemployed since the unilateral termination of the Contract.
44. The Single Judge referred to art. 17 par. 1 lit. ii) of the Regulations, according to which, in case the player did not sign a new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.
45. In this respect, the Single Judge decided to award the Player compensation for breach of contract in the amount of TND 30,000 (i.e., TND 2,000 times 5 as the residual value of the Contract, and TND 20,000 as per the agreed bonus).
46. Lastly, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the Player interest on said compensation at the rate of 5% *p.a.* as of 3 February 2024 until the date of effective payment.

iii. Compliance with monetary decisions

47. 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 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.
48. In this regard, the Single Judge highlighted that, against clubs, the consequences 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.
49. Therefore, and bearing in mind the above, the Single Judge decided that the Club must pay the full amount due (including all applicable interest) to the Player within 45 days of notification of the decision, failing which, at the request of the creditor, 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 Club in accordance with art. 24 par. 2, 4 and 7 of the Regulations.
50. The Club shall make full payment (including all applicable interest) to the bank account provided by the Player in the Bank Account Registration Form, which is attached to the present decision.
51. 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

52. 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.
53. Furthermore, 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.
54. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief may by any of the Parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Hafiz Aliyu, is partially accepted.
2. The Respondent, Etoile Sp. De Metlaoui, must pay to the Claimant the following amount(s):

TND 4,000 as outstanding remuneration plus interest *p.a.* as follows:

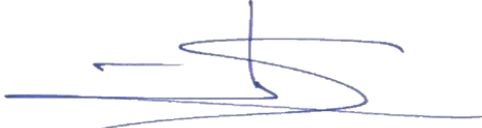
- 5% interest *p.a.* over the amount TND 2,000 of as from 1 January 2024 until the date of effective payment;
- 5% interest *p.a.* over the amount TND 2,000 of as from 1 February 2024 until the date of effective payment.

TND 30,000 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 3 February 2023 until the date of effective payment.

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).

CONTACT INFORMATION

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