

Decision of the Dispute Resolution Chamber

passed on 2 April 2024

regarding an employment-related dispute concerning
the player Michael Bosa Awoke

BY:

Andre DOS SANTOS MEGALE (Brazil)

CLAIMANT:

Michael Bosa Awoke, Nigeria

Represented by Mak International Group

RESPONDENT:

ASCK (Association Sportive des Chauffeurs de la Kozah), Togo

I. Facts of the case

1. On 5 October 2022, the Nigerian player, Michael Bosa Awoke (hereinafter: *the Claimant* or *the player*) and the Togolese club, ASCK - Association Sportive des Chauffeurs de la Kozah (hereinafter: *the Respondent* or *the club*) concluded an employment contract valid for 3 years (hereinafter: *the contract*).
2. In accordance with clause 3 of the contract, the player was entitled to XOF 1,500,000, of which XOF 500,000 was payable in the first season. The remainder of the amount due would be paid once the club's executive board was "satisfied with the player's performance in the first season".
3. In accordance with clause 14 of the contract, the player was entitled to a monthly salary of XOF 100,000.
4. The following facts are based in the statement of claim and the response of the Respondent; however, it is to be noted that no documentation in support to the following facts were provided and some dates were not clearly specified:

CLAIMANT	RESPONDENT
<ul style="list-style-type: none"> - The club decided to exclude the player from the club's professional team, forbidding him to resume training with the team at the start of the season 2023/2024. - The club's technical staff and administrative management informed the player that "<i>he does not have the level to continue playing with ASCK from the new 2023/2024 season</i>", season that started on 1 August 2023. - On 1 August 2023, the club terminated the contract without just cause. 	<ul style="list-style-type: none"> - The player was loaned for the rest of the season to another club (appears to be 2022/2023). - Between June-July, the player was absent without just cause. - After a match against the club Arsenal (club's where the player was loaned), players received a bonus and 1 week off. The player appeared a week later to receive the bonus. - The club informed by phone to the player that the training would re-start. - The player did not appear, and he indicated the club that he would not return.

5. By correspondence dated 30 October 2023, the Claimant requested payment of the balance of the signature bonus and payment of his salaries from June to October 2023.
6. The player confirmed FIFA that he remained unemployed.

II. Proceedings before FIFA

7. On 2 January 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. The Claimant lodged a claim for breach of contract. In his claim, the player argued that the club terminated the contract without just cause before its terms, given that the club has unilaterally decided, to dismiss the player for the season 2023/2024 and failed to pay his salaries.
9. In view of the foregoing the club failed to comply with FIFA regulations relating to the contractual stability and therefore, he is entitled to compensation for breach of contract.
10. The player indicated that the club only paid 8 salaries and requested the following amounts:
 - Salaries June 2023 – October 2025: XOF 2,800,000
 - Remaining of signature bonus: XOF: 1,100,000
 - Additional compensation: XOF: 600,000
11. Consequently, the player claimed he is entitled to XOF 4,500,000 plus 5 % interest as from 1 August 2023, date on which the contract was effectively terminated.

b. Position of the Respondent

12. In its reply, the Respondent indicated the following:
 - The club's obligations towards the player (monthly salary, accommodation) were met until July 2023.
 - The player was loaned to another club due to his low performance.
 - In July 2023, following the promotion to the second division, a meeting was held, for which the player was absent. In that meeting, a week off was granted to the players and staff.

Despite such absence, the player made sure to come back after a week to collect his bonus which was paid.

- The player was informed that he must resume training with the club, this was made by telephone.
- *"The technical staff were surprised to find that the was absent when the season resumed. The club's team manager contacted him by phone to ask him to resume training like the other players. He replied clearly that he would not be returning to Kara. Since then, his contacts have been unreachable. We therefore phoned the head of his training centre, who has so far failed to get back to us."*

c. Information provided by the Togolese Football Federation (FTF)

13. On 8 March 2024, the FIFA general secretariat requested the FTF to provide (i) the player's historic of transfers within the Federation; (ii) the period(s) of registration of the player with you're the club and (iii) copy of the contracts signed with the player.
14. The FTF provided the following information as to the historic of transfers within the federation (freely translated to English):

Club Country	Level	Nature	From	To
ACADEMY SHABAB FC Togo	Amateur (without contract)	Permanent	8 October 2022	1 November 2022
ASCK Togo	Amateur (without contract)	Permanent	1 November 2022	

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

15. 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 2 January 2024 and submitted for decision on 2 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.

16. 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. lit. b) of the Regulations on the Status and Transfer of Players (February 2024 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 Nigerian player and a Togolese club.
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 Regulations on the Status and Transfer of Players (February 2024 edition) and considering that the present claim was lodged on 2 January 2024, 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

18. 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

19. 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.

i. Main legal discussion and considerations

20. 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 breach of the contract and its consequences.
21. In particular the Single Judge noted that the Claimant alleges that the Respondent terminated the contract without just cause before its terms, given that the club has unilaterally decided to dismiss him for the season 2023/2024 and failed to pay his salaries. On the other hand, the club alleges that the player was loaned for a period, that it paid the

salaries until July 2023 and that when the club called the player to join back the team, he did not come back, and was it was unable to reach him.

22. The Single Judge was also observant that the statement of claim and the response of the Respondent did not present any evidence supporting the assertions made. In this context, the Single Judge outlined – while noting that hardly any supporting evidence has been provided by the parties in these proceedings – that the following events can be determined:
 - As per the information provided by the FTF the player was not loaned to a third club.
 - the player indicated that the contract was terminated on 1 August 2023.
 - the club also indicated that after July the player did not come back to the training sessions.
 - A default notice was sent on 30 October 2023, i.e., almost three months after the alleged termination of the contract.
23. In consideration of all the above the Single Judge stressed that the player's narrative concerning the alleged termination by the club as well as the club's narrative that the player disappeared and was not able to contact him are not supported by any evidence. From the lack of documentation on file, the Single Judge decided that it cannot be determined that either the club or the player unlawfully breached of contract and consequently, no compensation for breach of contract can be awarded to the player. On the contrary, it appears that both parties' lost interest in continuing with the contract since 1 August 2023, by the lack of communication since that date.
24. Consequently, the Single Judge decided that the player was only entitled to his outstanding remuneration until 1 August 2023. In this context the Single Judge observed that the Claimant claimed his salaries for June 2023 and July 2023.
25. Then, the Single Judge noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Nonetheless, no evidence was provided.
26. In view of the foregoing and bearing in mind the basic legal principle of *pact 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 contract concluded between the parties, namely XOF 200,000.
27. In addition, taking into consideration the Claimant's request as well as the constant practice of the Dispute Resolution 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 August 2023 until the date of effective payment.

ii. Compliance with monetary decisions

28. 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.
29. 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.
30. 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.
31. 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.
32. 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

33. 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.
34. 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.
35. 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, Michael Bosa Awoke, is partially accepted.
2. The Respondent, ASCK (Association Sportive des Chauffeurs de la Kozah), must pay to the Claimant the following amount(s):
 - **XOF 200,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 August 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 Governing the Football Tribunal).

CONTACT INFORMATION

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