

Decision of the Dispute Resolution Chamber

passed on 4 April 2024

regarding an employment-related dispute concerning
the player Omar Mansouri

COMPOSITION:

Livia SILVA KÄGI (Brazil/Switzerland), Deputy Chairwoman
Stella MARIS JUNCOS (Argentina), member
Jorge GUTIÉRREZ (Costa Rica), member

CLAIMANT:

Omar Mansouri, Morocco
Represented by Mohammed Moujtahid and Mohammed Ghazi

RESPONDENT:

Darnes, Libya
Represented by Sport 7 Sàrl/Ltd

I. Facts of the case

1. On an unspecified date, the Moroccan player, Omar Mansouri (hereinafter: *the Claimant* or *the player*) and the Libyan club, Darnes (hereinafter: *the Respondent* or *the club*) concluded an employment contract valid as from the date of signature until the end of the season 2023/2024 (hereinafter: *the contract*).
2. The player indicated in his claim that the signed copy of the contract was sent on 12 August 2023, a fact which remained uncontested by the club.
3. In accordance with clause 2 of the contract, the player was entitled to a total amount of USD 50,000 payable as follows: 50% as advance payment and the other 50% distributed as salary for the season 2023/2024.
4. Clause 6 of the contract reads as follows:

"The contract is not binding on Darnes Club unless the player arrives in Libya and passes the health examination".

5. In accordance with information retrieved from the Transfer Matching System (TMS), the Libyan season 2023/2024 started on 1 October 2023 and would end on 1 July 2024.
6. On 10 September 2023, a storm named "Daniel" reached Libya, causing severe flooding in multiple areas. The city of Derna, where the club is headquartered, was one of the most affected cities.
7. On 16 October 2023, the Libyan Football Federation issued a decision in which it stipulated the following (cf. Decision no. 75, year 2023):

"Preamble

Since [the Respondent] was one of the members of the General Assembly of the Libyan Football Federation participating in The Federation's official competitions, and as a result of the disaster that befell the city of Derna, which caused ... Catastrophic floods led to the loss of the lives of a number of administrative and sports personnel belonging to the club, causing serious damage to the club's facilities and stadium. Whereas a case-o force majeure has occurred, which makes it necessary to take action Legal protection of the rights of the club and players. Therefore it was decided the following:

Article (1)

The preamble is an integral part of this decision.

Article (2)

Approval to freeze [the Respondent]'s participation in all official approved competitions for all categories in the 2023/2024 sports season will last for one sports season, while maintaining the same duration The Premier League competition in which it is ranked once its activity resumes.

Article (3)

The status of professional players registered with [the Respondent] shall be settled by agreement between the two parties. in accordance with the provisions of the players' status and transfer regulations.

Article (4)

Amateur players registered with [the Respondent] are allowed to register and play temporarily in the competitions of the 2023/2024 sports season with other clubs they wish to play with according to their categories, provided that they return to their original club in the following sports season.

Article (5)

[The Respondent] team will not be replaced in the Premier League competition in which it is ranked with another team

Article (6)

This decision is effective from the date of its issuance, and all relevant authorities must implement it."

8. On 4 November 2023, the Claimant put the Respondent in default and requested: (i) the club to contact the player without delay; (ii) to provide the player with a single ticket (Casablanca-Tripoli) and an entry visa to Libyan territory; (iii) to provide proof of the player's qualification for the current season and (iv) to pay the total amount of USD 25,000; setting a time limit of 15 days in order for the club to fulfil its obligations.
9. On 18 November 2023, the legal representative of the Respondent replied to the player the following (quoted *verbatim*):

"I inform you that I have been appointed by [the Respondent] to represent its interests. A copy of the corresponding power of attorney is attached.

My client is returning to you in response to your letter of formal notice dated November 4th, 2023. As you know, the town of Darnes was severely affected by the weather last September. This unprecedented bad weather had dramatic consequences for the town's residents, and especially for the members of [the Respondent], a number of whom died during the storm.

This situation represents a case of "force majeure", which has meant that the club has no longer had the staff available to continue to deal with the club's day-to-day business, and that the first team has not been able to compete in the 2023-2024 professional championship, from which it will be absent until the end, as certified by the Libyan Football Federation.

These are the reasons why your client has had no further contact.

Consequently, my client regrets to inform you that he has been unable to honour the contract he entered into with your principal, which is terminated for the just reason of "force majeure". Your principal is thus free to sign wherever he wishes, without compensation.

Today, the club is trying to recover from the catastrophic situation it has suffered and to start up again."

10. On 25 January 2024, the Libyan Football Federation issued the following letter addressed to the FIFA general secretariat:

"In my capacity as General Secretary of Libyan Football Federation I would like to confirm to you that due to the flooding that hit the city of Derna in the eastern region which is the home of [the Respondent] which was totally demolished and some of its players and officials have passed away.

That [the Respondent] did not register or contract with any player of both national and international level on season 2023/2024."

11. The player confirmed to FIFA that he remained unemployed to date.

II. Proceedings before FIFA

12. On 12 December 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

13. In his claim, the player argued that the club breached the contract by failing to comply with his financial and administrative obligations towards the player:
 - The player considered that the club had "abandoned" him even before the natural disaster caused by storm "Daniel"; no justification was given for the non-payment of the advance payment.
 - The natural disaster occurred one month after the signature of the contract and the club failed to perform the contract during that period.
 - It was not the floods that prevented the club from fulfilling its obligations, but its lack of interest.
 - Even if the legal concept of *force majeure* was accepted, it would have to be interpreted and accepted in a very restrictive way, and the club would not be able to prove that the case in question constituted such a situation.
14. The player as the decision issued by the Libyan Football Federation, the player indicated that it did not entitle the club to terminate the contract. Moreover, the player would not be responsible of an external decision rendering the player's work impossible.
15. In view of the above, the Claimant considered that the club terminated the contract without just cause.
16. The Claimant requested the following relief:
 - To determine that the club terminated the contract without just cause.
 - To condemn the club to pay the player USD 50,000 plus 5 % interest as from the due dates: USD 22,500 as from 12 August 2023 and USD 22,500 as from the date of the claim.
 - To apply sporting sanctions.

b. Position of the Respondent

17. In its reply, the club referred to the events that occurred in September 2023, specifically the devastating storm that hit the town of Derna and the surrounding region. The club contended that this event led to a complete halt in club activities, the destruction of facilities, and the tragic loss of members and players, including the person in charge of media and FIFA Legal portal.
18. The club asserted that these circumstances constituted a *force majeure* event, rendering impossible for it to fulfil any contractual commitments. The club emphasized that despite

its best intentions, the club was completely unable to meet any commitments to the Claimant due to the chaos caused by the storms, which paralyzed communication and any potential activity. Furthermore, the club highlighted that they were unable to participate in the Libyan championship.

19. In addition, the club stressed that *"since the signing of the contract, which took place between absentees, via WhatsApp, the Respondent had no further information to pass on to the Claimant until September 2023, as this was a holiday period during which there were no training sessions or matches; the Libyan football league was on summer break, before the start of the new season and the first planned training sessions."*
20. Moreover, in the Respondent's view, the player's persistent demands for compensation demonstrate a lack of compassion for the tragic events that befell the club. The club further highlighted that the player had the opportunity to seek alternative options, such as signing up with another club, in light of the *force majeure* situation. By not actively pursuing other opportunities and instead focusing on extracting money from the club, the player's intentions can be called into question.
21. In view of the above, the Respondent provided the following conclusions:

"The Claimant Mr Omar Mansouri's Claim is declared null and void, and then rejected.

Darnes Sport Club, the Respondent, is not liable to the Claimant for any additional liability or any other sum of money.

All costs of the proceedings of the Respondent are to be paid in full by the Claimant."
22. The club presented various documents as evidence such as journal news' posts, a death certificate, WhatsApp communications showing information as to the persons who died, and how building facilities ended.

c. Rejoinder of the Claimant

23. In his rejoinder, the Claimant indicated the following:
 - With regard to the breach of contract and the player's lack of interest, he considered that the club has not provided any element justifying the breach of contract since 12 August 2023. The "holidays" referred to by the club can only prove that the decision to dispense with the player's services was taken before 10 September 2023.
 - As to the mandatory arrival of the player to Libya, the player stressed that it was the club that had to do all the due diligence in order to support the player to move to

Libya. As to the medical test, he referred to art. 18 parr. 4 of the Regulations on the Status and Transfer of Players (RSTP).

24. The player confirmed his request for relief.

d. Final comments of the Respondent

25. In its final comments, the Respondent raised the following arguments:

- As the lack of contact with the player since 12 August 2023, the Respondent considered that it was under no obligation to communicate anything during the holiday period.
- *"At no point does the Claimant demonstrate to what extent the Respondent failed in its obligations or what steps it took that were lacking during the period from August 12th until the date of the natural disaster on September 10th, 2023, since he never contacted the Respondent during that period either. This demonstrates that the Claimant has failed in its obligation to prove the facts it alleges in order to infer its right".*
- The first attempt of the Claimant to the club was on 4 November, i.e., more than a month and a half after the natural disaster. *"This fact raises serious questions as to whether, on the one hand, the Claimant was really properly informed about the Respondent's situation or, on the other hand, whether he was acting in good faith in pretending to know nothing about this disaster, even though the natural disaster was public knowledge and reported by the media worldwide, as was demonstrated in the Response to the Claim dated January 25th."*
- The Respondent could not foresee the natural disaster, and therefore the breach of the contract was not premeditated. *"In any event, the contract could not have begun because not all the conditions had been met, such as the Claimant's presence in Libya and the completion of a satisfactory medical examination."*
- *"The Respondent cannot be accused of failing to comply with the decision of the Libyan Football Federation dated October 16th, 2023, since it first never prevented the Claimant from signing with another club during the current season".*
- *"The Respondent found itself in a situation of "force majeure" following the natural disaster it suffered, and is consequently unable to continue its activities, as some members are no longer available due to death."*
- The decision of the Libyan Football Federation was clear and the Respondent would not participate in the Libyan Championship 2023/2024.

- *"The Respondent has, therefore, and even if it should, no solution to propose to the Claimant in relation to the employment contract in question, being unable to continue his activity due to "force majeure". The Respondent is therefore not responsible for the fact that the Claimant's work as a professional football player has become unfeasible."*

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

26. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 12 December 2023 and submitted for decision on 4 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.
27. Subsequently, the members of the Chamber 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 (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 Moroccan player and a Libyan club.
28. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it 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 December 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

29. The Chamber 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 Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the TMS.

c. Merits of the dispute

30. Its competence and the applicable regulations having been established; the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following considerations it 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

31. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the validity of the contract and whether the Respondent had a valid justification for not having complied with its financial obligations.
32. In this context, the Chamber first turned its attention to the validity of the contract. The Chamber noted that the Respondent disputes it, alleging that the player failed the medical examination and that he did not arrive in Libya, in accordance with clause 6 of the contract.
33. In this context, the Chamber first reminded the parties of the clear and explicit wording of art. 18 par. 4 of the Regulations, according to which the validity of an employment contract cannot be made subject to a successful medical examination and/or the grant of a work permit. Referring also to the obligation of the parties to maintain contractual stability, the Chamber underlined that a club willing to engage a specific player should perform any medical examination prior to concluding any employment contract with the player. Any contractual provision contrary to art. 18 par. 4 of the Regulations shall be considered as invalid.
34. Based on the foregoing, the Chamber rejected the Respondent's objection to the validity of the contract and determined that the latter is valid and binding on the parties.
35. Then, the Chamber turned its attention as to the failure of the execution of the contract and took note of the Respondent's argumentation that it was not able to fulfil its contractual obligations due to the fact of the storm "Daniel" which reached Libya, causing severe flooding, and this situation corresponded to a *force majeure*, justifying its default.
36. Having carefully analysed the case file, the Chamber observed the following undisputed facts:
- Since the signature of the contract, none of the parties contacted each other until the default letter sent by the player on 4 November 2023 (almost three months later after the signature of the contract).
 - On 10 September 2023 a natural disaster occurred in Libya and the city of Derna, where the club is located, was one of the most affected cities.

- The club would not participate in the season 2023/2024.
 - The club's premises were affected, and members of the team passed away.
 - As per TMS, the Libyan season 2023/2024 started on 1 October 2023.
37. In this respect, the Chamber was in agreement that the natural disaster was an extraordinary and unforeseeable event that occurred beyond the sphere of activity of club and that imposed itself on it in an irresistible manner. However, and before analysing whether the natural disaster was to be considered as a case of *force majeure* from a legal qualification, the Chamber first analysed the behaviour of the parties since the signature of the contract.
38. In this context, the Chamber noted that none of the parties showed the expected diligence in demonstrating that, in spite of the circumstances, they were interested in executing the contract or in finding a solution as to their employment relationship. From the documentation on file, it can be seen that none of the parties has contacted the other in order to start with the process in executing the contract.
39. In particular, the Chamber took note that:
- Between 12 August 2023 and 1 October 2023 (i.e., date of start of the season 2023/2023), the parties did not have any type of communication.
 - The player only contacted the club almost three months after the contract would have started and two months after the natural disaster occurred.
40. In the absence of any contact between the parties within a reasonable period of time after the signing of the contract, the Chamber concluded that despite having a valid contract, the contract was never executed by either party since the signature. None of the parties took the position on performing their obligations under the contract: the club did not contact the player since the signature of the contract, while the player also did not engage with the club until 3 months after its execution. Consequently, the Chamber decided that the contract was never performed and therefore, no outstanding remuneration and compensation shall be awarded to the player, in that both parties mutually departed from the execution of the contract.
41. In view of all the above, the Chamber fully rejected the claim of the Claimant.

d. Costs

42. 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.

43. 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.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Omar Mansouri, 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).

CONTACT INFORMATION

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