

Decision of the Players Status Chamber

passed on 17 June 2024

regarding a contractual dispute concerning the match agent Mr Marc Biolley

BY:

Mr Javier Vijande (Argentina), Chairperson

CLAIMANT:

Marc Biolley, Switzerland

Represented by Mr Juan Manuel Canosa Fernandez

RESPONDENT:

Kuwait Football Association, Kuwait

Represented by Mr Serge Vittoz and Mr Benoit Pasquier

I. Facts of the case

1. On 18 October 2022, the Kuwait Football Association (“KFA” or the “Respondent”), the company Edo Export and Import Offices Company W.L.L. (“Edo WLL”) and Matchworld Football SA which is administrated by the match agent Marc Biolley (“Matchworld” or the “Claimant”) concluded a commercial agreement regarding the organisation of the international friendly football match between the Belgium and Egyptian national teams in Kuwait (the “Contract”).
2. As mentioned in the preamble of the Agreement, Matchworld *“has sufficient experience and know-how to organize such Events and event, and expressed its desire to the First Party [KFA] to organize an international friendly match between the teams of Belgium and Egypt in Kuwait scheduled on November 18, 2022”*.
3. Moreover, Matchworld acts as a partner to Edo WLL, for example article 4 of the Contract states that all commercial rights regarding the match are owned by “[Edo WLL] and its partner (Matchworld Football SA)” or article 7 of the Contract: Edo WLL and “its partner” Matchworld are responsible for protecting all members of the delegation.
4. According to article 5 par. 1 of the Contract, the parties agreed that Edo WLL *“bear full responsibility for all the logistical costs of organizing match between the Belgium and Egypt teams in Kuwait”*.
5. According to article 5 par. 3 and 5 par. 4 of the Contract, Edo WLL granted KFA the right to receive a payment of 96,000 USD plus 20% of all revenues from the match.
6. On 18 November 2022, the friendly match was celebrated between Egypt and Belgium.
7. According to a report provided by a third party ticketing platform (*“Secutix report on access control incident”* i.e. Enclosure 5 of the Claim) was reported that *“lots of fans without ticket mixed up with fans with tickets in front of gates”* and *“(…) gates were finally open, and all fans could enter without any control.”*
8. On 26 February 2023, the Claimant sent a correspondence (dated 20 February 2023) to the Respondent pointing out that the *“KFA did not fulfil any of its obligations”*, particularly, the ones related to the proper functioning and security of the event and the participating teams and responsibility for the logistics of the match, which *“led to serious security problems and around 27,720 spectators entered the stadium without paying for a ticket”*, creating a financial loss to Matchworld (e.g. Enclosure 6 of the Claim) and asked to *“be compensated for the damages suffered”*.
9. The Respondent did not reply to such request.

II. Proceedings before FIFA

10. On 17 May 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the Claimant is detailed in continuation.

a. The claim of the Claimant

11. The Claimant argued that *“the contract was blatantly and seriously breached by KFA”*.
12. Indeed, the Respondent *“did not fulfil any of its obligations”*, particularly, the ones related to the proper functioning and security of the event and the participating teams and responsibility for the logistics of the match, which led to serious security problems creating a financial loss to the Claimant.
13. In that sense, the Claimant claims that KFA *“failed to offer efficient stadium management according to the international FIFA standard. This led to serious security problems (crowd movement, high number of people inside the stadium without ticket, lack of security control of the fans, uncontrolled fans in certain areas of the stadium, etc.). We estimate that around 27,000 spectators entered the stadium without paying a ticket, which created a huge financial loss and lost revenues for Matchworld & Marc Biolley (27,720 x 40 Kwd (average price) = 1,108,800 Kwd), and as well as the loss of VIP tickets and other losses”*.
14. The Claimant argues that the applicable law is *“the FIFA Statutes and the FIFA regulations, and will also take into account all relevant agreements, laws and collective agreements that exist at the national level, as well as sport specific characteristics”*. Likewise, *“the contractual relations between the Parties are subject to Swiss law, as it is the domicile of FIFA”*, and, indeed, considering the circumstances of the case, the conditions of article 97 of the Swiss Code of Obligations (SCO) are fulfilled, and, therefore, the breach of contract and guilt of the KFA is clear.
15. In the present case, *“the causal relationship between the defendant's breach of contract and the damage suffered by the plaintiff is evident. The plaintiff's loss of income results directly and solely from the defendant's conduct”*.
16. The Claimant requested to mediate the dispute, and, the following:
 - (i) The claim is admissible.
 - (ii) KFA should be ordered to pay a total amount of USD 4,275,222.
 - (iii) KFA is obligated to pay a compensation for legal fees and other costs incurred in this proceeding.

b. Position of the Respondent

17. The KFA considers that the claim, in addition to being meritless, falls outside of the jurisdiction of the FIFA Football Tribunal and shall therefore be declared inadmissible. The KFA considers that the procedure shall first be limited to the issue of jurisdiction. Indeed, the parties to the Contract made a clear choice of jurisdiction in favour of the Kuwaiti courts at article 14 of the Contract.
18. Moreover, FIFA does not have jurisdiction in the case at hand, for the following reasons: (i) Marc Biolley, as an alleged FIFA Match Agent, is not a party to the Contract and has therefore no right to file a claim, (ii) Matchworld cannot be a party to proceedings before the FIFA Football Tribunal and (iii) the Contract falls outside of the scope of the FIFA Match Agent Regulations.
19. In the case at hand, Marc Biolley, as a FIFA licensed match agent, is not a party to the Contract. Indeed, this is his company, Matchworld which is a party to the Contract, Marc Biolley being only referred to as the representative of Matchworld. Furthermore, the Contract does not provide for any rights and/or obligations for the match agent Marc Biolley.
20. As to Matchworld, it is not a FIFA Match Agent and is not subject to the FIFA regulations and, therefore, cannot be a party before the FIFA Football Tribunal. For this reason only, the claim shall be declared inadmissible.
21. The Respondent considers that the competence of FIFA to decide on dispute involving a FIFA match agent is limited to contractual disputes between “teams”, i.e. representative teams of clubs or national associations, with which the agent has a valid representation agreement, in application of the FIFA regulations. However, in the case at hand, the contract in dispute, the Contract, has been concluded between a Member Association and two FIFA non-stakeholders, mainly Edo WLL and, subsidiarily, its “partner” Matchworld. Therefore, the claim shall be declared inadmissible.
22. Regarding the law applicable, in the case at hand, none of the rights and obligations of the parties to the Contract stems from the application of the FIFA match agent regulations and, therefore, the choice of law made by the parties in article 14 of the Contract shall be respected. In view of all the above, the FIFA Football Tribunal, to the extent that it accepts jurisdiction, shall apply Kuwaiti law for all matters which are not covered by the FIFA Regulations.
23. Regarding the alleged breach of contract, in essence, the Respondent simply notes that it was not responsible for the ticketing and related access to the stadium, including the verification of the validity of the tickets via electronic material.
24. Indeed, the ticketing and related obligations (tickets control, access to the gates and turnstiles, etc.) were of the sole responsibility of the companies mandated to perform the practical organisation of the Match, i.e. Edo WLL and its partner Matchworld.

25. Moreover, regarding the determination of the damages under Swiss law, it is pointed out that the Respondent has not demonstrated the existence of such damages. In view of the above consideration, article 97 SCO is not applicable.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

26. First of all, the Chairperson of the PSC (hereinafter also referred to as “Chairperson”) 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 17 May 2023. Taking into account the wording of article 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (“the Procedural Rules”), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
27. Subsequently, the Chairperson referred to article 2 par. 1 of the Procedural Rules and observed that in accordance with article 22 par. 1 of the Match Agent Regulations, the Players’ Status Committee is competent to deal with the matter at stake, which concerns a contractual dispute between a Swiss match agent and an association from Kuwait.
28. Subsequently, the Chairperson analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that the Match Agent Regulations are applicable - 2003 edition (the “Regulations”) as to the substance. Further, the Chairperson confirmed that in accordance with article 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (June 2024 edition in force on the date of decision), and considering that the present claim was lodged on 17 May 2023, the March 2023 edition of said regulations is also applicable to the matter at hand as to the substance.

b. Burden of proof

29. The Chairperson recalled the basic principle of burden of proof, as stipulated in article 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 Chairperson stressed the wording of article 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

30. Its competence and the applicable regulations having been established, the Chairperson entered into the merits of the dispute. In this respect, the Chairperson started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chairperson 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 Chairperson moved to the substance of the matter, and took note of the fact that the Claimant wishes to seek compensation on the basis of the alleged breach of Contract, which is disputed by the Respondent.
32. In this context, the Chairperson acknowledged that his first task was to establish whether the Contract is validly executed. In this regard, the Chairperson noted that the Contract is dated and had been signed by the parties involved in the dispute. Therefore, the Chairperson concluded that the Contract was validly executed.
33. Further, the Chairperson acknowledged that his second task was to establish whether the Contract is in compliance with the Regulations and can be submitted before the Football Tribunal for dispute resolution.
34. First, the Chairperson recalled that article 18 par. 1 of the Regulations specifies the mandatory parts of a contract for the engagement of a match agent (the "Mandatory Provisions"):
 - a. *"expenses for travel, board and basic living costs of the contractual parties";*
 - b. *"the total net indemnification (after deduction of all charges, levies or taxes) due to the contractual parties";*
 - c. *"the conditions that shall apply if a match is (or matches are) cancelled in the case of force majeure";*
 - d. *"the conditions that shall apply if a player who was due to have been fielded under the terms of the contract does not appear in the team (including reasons of force majeure)";* and
 - e. *"the fact that the parties concerned shall be aware of these regulations and undertake to observe the provisions therein".*
35. Second, the Chairperson recalled that article 18 par. 2 of the Regulations states very clearly that *"Contracts that do not include one or more of the above provisions [i.e. Mandatory Provisions] shall be **null and void.**"* (emphasis added).
36. Third, the Chairperson examined the Contract in the light of the above and concluded that it does not contain 4 out of 5 Mandatory Provisions, i.e. the only provision from the list of Mandatory Provisions is a clause concerning *force majeure* in article 9 of the Contract.

37. Lastly, the Chairperson established that the Contract is not valid in accordance with the Regulations and are to be considered null and void in accordance with article 18 par. 2 of the said Regulations.

ii. Consequences

38. Having stated the above, the Chairperson turned his attention to the question of the consequences of such null and void Contract.

39. The Chairperson concluded that, due to the fact that the Contract is null and void in the context of the Regulations, there are no grounds to consider it further in the context of a dispute before the Football Tribunal and examine the merits of the Claimant's position and his requests.

40. As a consequence, the Chairperson decided that the Claimant's claim should be rejected.

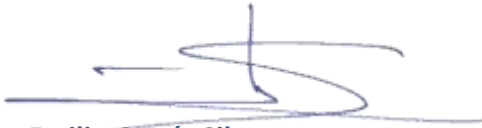
d. Costs

41. The Chairperson referred to article 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 Chairperson decided that no procedural costs were to be imposed on the parties.

IV. Decision of the Players Status Chamber

1. The claim of the Claimant, Marc Biolley, is rejected.
2. This decision is rendered without costs.

For the Football Tribunal:

A handwritten signature in blue ink, consisting of a stylized 'E' and 'S' with a horizontal line underneath.

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).

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