

Decision of the Single Judge of the Players' Status Chamber

passed on 12 October 2021

regarding an employment-related dispute concerning the Coach A

BY:

Mr Loïc Alves (France)

CLAIMANT:

Coach A, Country A

Represented by

RESPONDENT:

Club B, Country B

Represented by

I. Facts of the case

1. On 2 January 2019, Coach A (hereinafter: *the Claimant*), and the club from Country B, Club B (hereinafter: *the Respondent*) signed an employment contract valid as from as from 1 January 2019 until 30 June 2023.
2. According to the contract, the Respondent undertook to pay the Claimant the following monies:
 - Currency B 125,000 for the remaining part of the season 2018/2019;
 - Currency B 250,000 for each of the seasons 2019/2020, 2020/2021, 2021/2022, 2022/2023, “payable in twelve monthly rates plus two lump sum payments amounting each to Currency B 50,000 gross (Currency B 100,000 gross in total) and payables on 15 February and 30 May”.
3. Art. 1 of the contract, titled “Function/Position” established: “By the present contract the Parties aim to regulate the conditions of the Employee's position as assistant coach of the first team of Club B as well as Head of Performance Department.”
4. Art. 3.2.2. of the contract reads as follows: “The Employee supports the head coach according to the latter's instructions in the technical formation and preparation as well as in the coaching and training of Club B's first team. He is bound to implement general directives and guidelines set by the board of directors and the head coach regarding discipline in Club B's first team. The Employee is also responsible for the physical preparation of the 1st team and shall draw up the relevant training plans after consultation with the head coach.”
5. Art. 3.2.3. of the contract defines: “Club B can adapt the general and sporting duties of the Employee.”
6. Art. 3.2.4. of the contract states: “The Employee agrees to take especially, but not only, part in the following events and meet the following appointments:
 - a) All training sessions of the first team - general training as well as the specially arranged training sessions and the first team's training camps;
 - b) All game discussions and other gatherings of the players of the first team;
 - c) Journeys of the first team, domestic and abroad, for which Club B determines the means of transport to be used;
 - d) Further events according to para. 3.6.1 of the present contract where the attendance of the Employee as a representative of Club B is asked for by the board of directors.”
7. Art. 3.3. of the contract establishes: “The Employee agrees to use his abilities, his talent and his sporting prowess without reservation and exclusively in favour of Club B. He shall devote his entire working attention to Club B. During the duration of the contract the Employee shall not engage in any other business activity, neither remunerated nor unpaid, he shall not run a business of his own or exercise any other business activity next to his activities for Club B without prior written consent of Club B.”

8. Art. 3.7. of the contract specifies: *“The abovementioned enumeration of duties of the Employee is not conclusive. The Employee shall undertake all duties in relation with the sporting guidance of Club B's first team that are entrusted with him by the head coach, the Sporting Director and/or the board of directors.”*
9. Art. 14 par. 4 of the contract states: *“Any changes and amendments to this contract, including a waiver of the requirement of the written form, are bound to satisfy the requirement of the written form and are to be signed by both parties. This requirement also applies for any amendment or addendum to this clause of requirement form.”*
10. Art. 14 par. 7 of the contract establishes: *“All disputes out of and in connection with the present contract will be submitted to the competent FIFA committee according to the FIFA Statutes and related regulations. In the event that FIFA shall not be competent to hear any particular dispute arising out of or in connection with this contract, such dispute will be exclusively submitted to the Court of Arbitration for Sport in Lausanne [...]”*.
11. On 12 January 2021, the Respondent sent a letter to the Claimant titled *“Release from duties”*. According to this letter, the Respondent terminated the employment relationship with a undetermined period of notice but immediately released the Claimant from his duties.
12. On 12 January 2021, the Claimant replied to the Respondent, protesting against the release of duties and pointing out that such release with a period of notice of 2,5 years is not lawful. In this respect, he requested to be reinstated.
13. On 20 May 2021, the Respondent informed the Claimant that the release of duties is revoked and requested the Claimant to report to work on 31 May 2021 by the club's youth facilities.
14. On 24 May 2021, the Claimant replied to the Respondent, insisting that the Respondent in a previous meeting told him that his services were not needed anymore and now requested him to resume work. In this respect, the Claimant requested another meeting on 25 May 2021.
15. On 25 May 2021, the Respondent sent an email to the Claimant, referring to a meeting, and declaring its willingness to terminate the contract with a prosed termination agreement.
16. On 1 June 2021, the Claimant sent a letter to the Respondent, stating that he reported to work in the club's youth facilities. He held that this a *“substantial demotion”* and that there is no coaching role available since the youth teams have their coaches already. The Claimant requested to be provided with a detailed job description.
17. On 3 June 2021, the Respondent replied and pointed out that the adaption of this employment was based on art. 3.2.3. of the contract and that there is no breach by the Respondent.

18. On 4 June 2021, the Claimant sent a letter to the Respondent rejecting the club's argument about art. 3.2.3. of the contract and requested again to be provided with the detailed tasks of his work.
19. On 9 June 2021, the Claimant reiterated his request.
20. On 11 June 2021, the Respondent replied and stated that the employer fulfilled its obligations at all times and that the Claimant was informed about his task.
21. On 14 June 2021, the Claimant contacted the Respondent again and requested a detailed description of his duties within 3 days, since his demotion from the first team to the youth facilities is a breach of contract.
22. On 15 June 2021, the Respondent hired an assistant coach for the first team and it informed in a media statement that the coaching staff of the first team was complete.
23. On 17 June 2021, the Claimant received an email from the person in charge of the youth facilities, informing him that he will receive a weekly schedule for the following week regularly. Such schedule stated that he has to be in "standby" for certain trainings.
24. On 18 June 2021, the Claimant reiterated his previous request and stated that he was not provided with contractual benefits such as car, phone, flight tickets and computer.
25. On 22 June 2021, the Claimant contacted the Respondent again stating that the situation is "unsustainable" since the Respondent does not even react to his requests anymore and requested the club to reinstate him in the first team within the next two days.
26. On 24 June 2021, the Respondent replied and rejected the Claimant's requests and pointed out that it does not wish to terminate the contract with him.
27. On 25 June 2021, the Claimant terminated his contract with the Respondent with immediate effect due to "severe violations" committed by the club.
28. On 25 June 2021, the Claimant lodged a claim against the Respondent in front of FIFA.
29. On 29 June 2021, the Respondent lodged a claim against the Claimant in front of the civil court in City B.
30. The Claimant remained unemployed up to date.

II. Proceedings before FIFA

31. On 25 June 2021, 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

32. The Claimant lodged a claim against the Respondent in front of FIFA and requested the following monies:

- Currency B 29,166.66 as outstanding salary for June 2021;
- Currency B 9,000 as outstanding bonuses;
- Currency B 700,000 as compensation for breach of contract corresponding to the residual value of the contract;

The Claimant requested interest of 5% *p.a.* as of 25 June 2021.

33. In his claim, the Claimant held having had just cause to terminate the contract on 25 June 2021 due to the Respondent violations.

34. The Claimant maintained that the club released him from his duties in January 2021 and later revoked said decision by demoting him to the youth facilities. According to the Claimant, such revocation of the Respondent had the objective to force the Claimant's departure, as his new tasks were never properly communicated and he was assisting training of youth teams on an irregularly basis.

35. Moreover, the Claimant argued that the club hired a new assistant coach for the first team and stated that the coaching staff was complete, which meant that his demotion was permanent.

36. Furthermore, the Claimant stated that the Respondent failed to reply to his numerous requests, especially to reinstate him in the first team.

37. According to the Claimant, he was prevented from joining the first team's training as from 2 January 2021 and there was no reason given for his demotion.

38. On account of the above, the Claimant pointed out that the Respondent lost interest in his services and wanted to force him to agree to a settlement agreement favourable to the club.

39. Additionally, the Claimant held that the contract refers to the "*first team*" on several occasions when describing his tasks and therefore, he concluded, that demoting him to the youth facilities is unlawful and breach of contract.

40. In this regard, the Claimant held that according to art. 14 par. 4 of the contract, changes and amendments to the contract, like the Claimant's demotion, have to be agreed upon by both parties, which not happened in the matter at hand.

41. On account of the above, the Claimant held being entitled to his salary of June 2021 as well as bonuses occurred during his release of duties but before the contract was terminated.
42. Furthermore, the Claimant requests compensation for breach of contract in the amount of the residual value of the contract.

b. Position of the Respondent

43. In its reply, the Respondent contested FIFA's competence to decide the matter at hand.
44. The Respondent held that it submitted a claim to the civil court in City B and that said court "*takes precedence over that of FIFA*".
45. Moreover, the Claimant argued that the Claimant shall not be considered a coach in the sense of the Regulations as he was employed as "*Head of the performance department*".
46. In this respect, the Respondent held that the Claimant was exclusively responsible for the physical fitness trainings of the players and did not make any sportive or tactical decisions.
47. Further, the Respondent brought forward that the Claimant was registered as a fitness coach with the Football Association of Country B.
48. The Respondent failed to reply to the substance within the time-limit granted and requested to be provided with a new time-limit if necessary to reply to the substance.
49. After the investigation phase was closed, the Respondent submitted unsolicited correspondence.

III. Considerations of the Single Judge of the Players' Status Chamber

a. Competence and applicable legal framework

50. First of all, the Single Judge of the Players' Status 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 25 June 2021 and submitted for decision on 12 October 2021. Taking into account the wording of art. 34 of the October 2021 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.

51. 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 (August 2021), the Single Judge is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a coach and a club.
52. However, in this respect, the Single Judge of the PSC noted that the Respondent rejected the competence of FIFA, as the latter considered that the claim lodged in front of a civil court in Country B *“takes precedence over that of FIFA”* and since the Claimant shall not be considered as a coach in the sense of the FIFA Regulations (b).
53. On account of the above, the Single Judge examined the documents on file regarding the claim lodged in front of the civil court in City B, Country B and noted that the present claim in front of FIFA was lodged on 25 June 2021, whereby the claim in City B was lodged on 29 June 2021. In this regard, the Single Judge rejected the Respondent’s argument.
54. Subsequently, the Single Judge turned his attention to the second argument of the Respondent, alleging that the Claimant shall not be considered as a coach in the sense of the FIFA regulations. Therefore, the Single Judge examined the Regulations on the Status and Transfer of Player, which in point 28 of the definitions, read as follows:
- “Coach: an individual employed in a football-specific occupation by a professional club or association whose:*
- i. employment duties consist of one or more of the following: training and coaching players, selecting players for matches and competitions, making tactical choices during matches and competitions; and/or*
 - ii. employment requires the holding of a coaching licence in accordance with a domestic or continental licensing regulation.”*
55. Furthermore, the Single Judge turned his attention to the contract at the basis of the dispute, as he pointed out that the Claimant’s job description is decisive for the conclusion if the Claimant shall be considered as a coach in the sense of the FIFA Regulations or not.
56. In doing so, the Single Judge noted that the contract states, *inter alia*, the following (cf. I.3 to I.8 above):
- *“the Employee's position as assistant coach of the first team of Club B as well as Head of Performance Department.”*
 - *“The Employee supports the head coach according to the latter's instructions in the technical formation and preparation as well as in the coaching and training of Club B's first team. [...] The Employee is also responsible for the physical preparation of the 1st team and shall draw up the relevant training plans after consultation with the head coach.”*

57. Taking into account the wording of the contract, the Single Judge was not solely responsible for the fitness of the team, as it appears that the Claimant was involved in trainings on a daily basis as well as in the team meetings, and therefore he had tactical influence.
58. The Single Judge held that the fact that the Claimant was registered by the FA as a fitness coach does not outweigh the obligations assigned to the Claimant in his contract with the Respondent.
59. On account of the above, it appears that the Claimant was acting as assistant coach as well, and therefore he shall be considered as a coach in the sense of the FIFA regulations, and not only as physical coach. Therefore, the Respondent's argument has to be rejected and the Single Judge declared himself competent to deal with the matter at hand.
60. Having established the foregoing, 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 Player (August 2021 edition) and considering that the present claim was lodged on 25 June 2021, the February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

61. 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

62. 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

63. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the Claimant's argumentation that he had just cause to terminate the contract on 25 June 2021, after he was demoted to the youth academy.
64. Subsequently, the Single Judge noted that the Respondent failed to submit comments as to the substance in its reply, while requesting to be provided with a time-limit to do so at a later stage. The Single Judge noted that the Respondent submitted comments after the closure of the investigation phase.
65. In this respect, in line with art. 21 of the Procedural Rules as well as the Chamber's constant jurisprudence in this regard, the Single Judge decided not to take into account the comments of the Respondent submitted after the closure of the investigation phase and established that, in accordance with art. 22 and 23 of the Procedural Rules, he shall take a decision upon the basis of those documents on file that were provided prior to the closure of the investigation-phase, *in casu*, upon the statements and documents presented by the Claimant.
66. In this context, the Single Judge acknowledged that it his task was to determine whether the Claimant terminated the contract on 25 June 2021 with or without just cause and to decide on the consequences thereof.
67. On account of the above, the Single Judge started to examine the exhaustive exchange of the parties on file prior to the termination.
68. The Single Judge pointed out that it appears that the Respondent had lost its interest in the Claimant's services on 25 June 2021. According to the documentation on file, it is clear that the Respondent released the Claimant of his duties on 12 January 2021, only to revoke said decision on 20 May 2021, and to assign tasks in its youth academy.
69. In this respect, the Single Judge held that the contract is specific in the Claimant's tasks and that his services as of June 2021 were different to the tasks described in the contract. Especially after 15 June 2021, when the Respondent publicly declared that the coaching staff of the first team was complete, there was factually no chance to be reinstated in the coaching staff of the first team for Claimant.
70. As a result, the Single Judge maintained that the Claimant therefore terminated contact with just cause 25 June 2021 and that the Respondent is to be held liable for the consequences of such termination. As a result, the Claimant is entitled to compensation for breach of contract.

ii. Consequences

71. 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.
72. The Single Judge observed that the outstanding remuneration at the time of termination, taking into account that he rendered his services until 25 June 2021, amounted to Currency B 20,833.33, corresponding to the salary for June 2021. For the calculation of the monthly salary, the Single Judge took into account the amount of Currency B 250,000 divided through twelve months, but not the lump sum payments.
73. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination, *i.e.* Currency B 20,833.33.
74. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from 25 June 2021 until the date of effective payment.
75. The Single Judge further rejected the Claimant's request for bonuses, as he did not submit any evidence in this regard.
76. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the Claimant by the Respondent 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 Claimant 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.
77. In application of the relevant provision, the Single Judge held that it first of all had to clarify as to 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. 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.

78. 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.
79. Bearing in mind the foregoing as well as the claim of the Claimant, the Single Judge proceeded with the calculation of the monies payable to the Claimant under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Single Judge concluded that the amount of Currency B 700,000 (i.e. the residual value of the contract; 2x Currency B 250,000 as yearly salaries and 4x the lump sum payments of Currency B 50,000) serves as the basis for the determination of the amount of compensation for breach of contract.
80. In continuation, the Single Judge verified as to whether the Claimant 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. 6 of Annexe 8 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 coach's general obligation to mitigate his damages.
81. However, it turned out that the coach was not able to mitigate his damages, as after the unilateral termination of the contract, he remained unemployed up to date.
82. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the Respondent must pay the amount of Currency B 700,000 to the Claimant, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
83. Lastly, 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 player interest on said compensation at the rate of 5% *p.a.* as of the date of claim, *i.e.* 25 June 2021, until the date of effective payment.

iii. Compliance with monetary decisions

84. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 8 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.

85. 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.
86. 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 8 of the Regulations.
87. 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.
88. 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 8 of the Regulations.

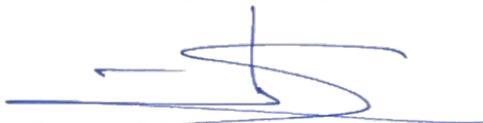
d. Costs

89. 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 Chamber decided that no procedural costs were to be imposed on the parties.
90. 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.
91. Lastly, the Single Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Single Judge of the Players Status Chamber

1. The claim of the Claimant, A, is admissible.
2. The claim of the Claimant is partially accepted.
3. The Respondent, Club B, has to pay to the Claimant, the following amount(s):
 - Currency B 20,833.33 as outstanding remuneration plus 5% interest p.a. as from 25 June 2020 until the date of effective payment;
 - Currency B 700,000 as compensation for breach of contract plus 5% interest p.a. as from 25 June 2021 until the date of effective payment.
4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players (August 2021 edition), 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.
7. The consequences **shall only be enforced at the request of the Claimant** in accordance art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
8. 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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