FIFA FOOTBALL TRIBUNAL

Decision of the Players' Status Chamber

passed on 11 January 2022

regarding an employment-related dispute concerning the coach Rene Hiddink

BY:

Castellar Guimaraes Neto (Brazil)

CLAIMANT:

Coach Rene Hiddink, Netherlands
Represented by David Winnie

RESPONDENT:

Football Association of Maldives, Maldives

FIFA FOOTBALL TRIBUNAL

I. Facts of the case

1. On 16 January 2021, the Dutch coach Rene Hiddink (hereinafter the *Claimant*) and the Football Association of Maldives (hereinafter the *Respondent*) concluded an employment agreement (hereinafter the *Employment Agreement*) valid as from 26 January 2021 until 25 January 2024.

2. In Clause 3 of the Employment Agreement, the Claimant and the Respondent (hereinafter the *Parties*) agreed upon the financial terms as follows:

> *"To pay the salary of US $5500 and bonus where applicable (see Clause 5) to the Head Coach in accordance with Clause 5 of this agreement;* (…)*"*

3. Clause 5.1 of the Employment Agreement stipulated the following:

> *"5.1 The salary and bonuses* (…) *shall be:*
> *a. Salary of US$ 5500 per month* (…)
> *b. Match Winning Bonus (International Tournament Matches) - US$ 2000* (…)
> *c. Match Draw Bonus International Tournament Matches) - US$ 1000* (…).
>
> *5.3 As accommodation a 2 bedroom apartment in Male' or Hulumale', Maldives shall be provided.*
>
> *5.4 A total sum of MVR 4000 (Four Thousand Maldivian Rufiya) will be provided to cover for the monthly utility expenses* (…).
>
> *5.5 A monthly pocket money of US$ 500* (…) *will be paid* (…) *on or before 10th of every month.*
>
> *5.6 The monthly salary shall be transferred by bank transfer to the specified account under the name of the Head Coach* (…) *on or before 10th each month."*

4. Clause 7 of the Employment Agreement set out a provision in relation to termination:

> *"Both Parties may terminate this agreement upon 1 (one) month notice in writing if:*
>
> *7.1 The other is in breach of any material obligation contained in this agreement, which is not remedied (if the same is capable of being remedies) within 30 (thirty) days of written notice from the other party;*
>
> *7.2 A voluntary arrangement is approved, a bankruptcy or an administration order is made (…) in respect of the other party;*

5. As from Sub-clause 7.4 of the Employment Agreement, the latter set out specific circumstances in which (in addition the above) the Respondent could terminate the Employment Agreement:

> *"7.4* [The Respondent] *may terminate this agreement upon 1 (one) month notice in writing or payment in lieu if:*

7.5 The breach of any of the provision of this agreement by the (…) *Head Coach;*

7.6 If the Head Coach (…) *is suspended for a period of 1 (one) month or more by a national or international sports authority;*

7.7 Head Coach (…) *is detained by the concerned authorities of the Maldives for a period of 2 (two) weeks [or] more* (…)*;*

7.8 [The Respondent] *for any reason is not satisfied with the performance of the Head Coach* (…) *and where such satisfaction is not remedied within a reasonable period of time after such un-satisfaction is communicated to the Head Coach* (…)*;*

6. Furthermore, the Sub-clause 7.9 of the Employment Agreement stipulated:

"7.9 Any termination of this agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force of the continuance in force of the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination."

7. Clause 9 of the Employment Agreement contained a *force majeure* clause, providing for an exemption of liability in relation to any failure to perform under the Employment Agreement *"due to causes beyond the party's reasonable control, including, but not limited to* (…) *fire, explosion, cyclone, floods; War, revolution, acts of public enemies, blockage or embargo; Any law order, proclamation, ordinance, demand or requirements of any government, including restrictive trade practices or regulations; Strike, shutdowns or labour disputes."*

8. Clause 15 of the Employment Agreement ruled on the governing law as follows: *"This agreement shall be governed and constructed in accordance with the of the Republic of Maldives and FIFA Rules & Regulations."*

9. On 12 May 2021, a meeting took place between the Parties. At this occasion, the Claimant was allegedly informed that *"football in the Maldives was to be halted in the Maldives indefinitely, as a result of the pandemic"* and, consequently, the Respondent has to *"undertake restructuring of its operations"* and that *"there was not enough money to continue employing* [the Claimant]*"*.

10. Therefore, the Respondent has allegedly informed the Claimant that Employment Agreement is terminated, whereas the formal termination shall arrive in the due course.

11. On 17 May 2021, the Claimant sent a letter to the Respondent, pointing out that there was no lawful reason for the termination of the Employment Agreement and in the absence of a settlement, the Claimant will lodge a claim before FIFA.

12. On 23 May 2021, the Claimant received a termination notice (hereinafter the *Termination Notice*), stating that the Employment Agreement will be terminated as of 23 June 2021 due to the COVID-19 pandemic, referring to Clause 9 of the Employment Agreement.

13. On 1 June 2021, the Claimant contested the termination by the Respondent, informing the latter that "*the principle of pacta sunt servanda applies and it remains the case that lack of financial means to satisfy a contractual obligation of payment does not excuse the failure to make the required payment. (…) and* [that the Claimant] *will be seeking damages based on earnings for the entirety of our client's 3 year term of contract.*"

14. Between 4 July 2021 and 18 June 2021, the Claimant send further correspondence to the Respondent, requesting the payment of the salaries until 23 July 2021 as well as coordinating further details regarding the Claimant's departure.

15. The Claimant informed FIFA Administration that he remained unemployed.

II. Proceedings before FIFA

16. On 3 September 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

17. Therein, the Claimant requested the amount of USD 187,375, corresponding to the residual value of the Employment Agreement and 5% interest *p.a. "accrue from the date of the Award until payment".*

18. In his claim, the Claimant alleged that Termination Notice does not mention *force majeure* as the reason for the premature termination, but instead merely refers to *"the fact that* [the Respondent] *have not received the green light from Health Authorities to proceed as planned [for the "ongoing 2020/2021 football season]"*.

19. In any event, the Claimant denied the existence of *force majeure*. He based his reasons on the following:

> *"(i) the parties entered into the Agreement in full knowledge of, and indeed during, the Covid-19 pandemic;*
> *(ii) a cessation of football activity as a result of the pandemic was in the circumstances reasonably foreseeable (and indeed was already in effect in respect of some other FIFA Member Associations);*
> *(iii) where no specific contractual provision for the pandemic was made in the parties' Agreement; and*
> *(iv) given that FIFA has not declared the Covid-19 pandemic to have been a force majeure event "'in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure"*

20. Furthermore, the Claimant purported that the Respondent, at no time, provided for any proof for the alleged financial difficulties.

21. In view of the above, the Claimant asserted that the Respondent terminated the Employment Agreement without just cause and that he should be entitled to the following "*loss & damage":*

    - USD 1,375 corresponding to the salary of the last week in June 2021;
    - USD 170,500 corresponding to the salaries between July 2021 and January 2024 (USD 5,500x31 months);
    - USD 15,500 corresponding to the monthly pocket money between July 2021 and January 2024 (USD 500x31 months);
    - TOTAL: USD 187,375.

b. Position of the Respondent

22. The Respondent rejected the claim of the Claimant as it deemed that it had just cause to terminate the Employment Agreement.

23. The Respondent purported that the termination was "*serving the 'common welfare' of football in the jurisdiction where the Respondent is assigned with, rendering to cover the grievous and significant financial and economic losses cause by the unprecedent pandemic, imposing redundancy."*

24. In its submission, the Respondent further alleged that during the meeting of 12 May 2021, *"both parties reached a mutual understanding without any dissent to proceed with the termination by settling any and all outstanding financial gains towards the Claimant until the date of termination in full and final."*

25. In this respect, the Respondent alleged that "a *mutual agreement between the Claimant and the Respondent was reached via parol contract, admissible under the Maldivian legal jurisprudence."*

26. The Respondent further referred to the correspondence between 4 June 2021 and 18 June 2021 and noted that *"none of these emails that where exchanges between the afore stated parties, the Claimant nor the representative of the Claimant raised any issues by statement or indication regarding the termination and its effect"* and that the latter merely *"requested for the settlement of outstanding Salary as remuneration until the date of termination (23rd June 2021) from the date informed (23rd May 2021)", i.e.* requesting only one month of salaries (emphasis added).

27. In view of the above, the Respondent was of the opinion that the claim contradicts the principle of good faith.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

28. First of all, the Single Judge of the Players' Status Committee (hereinafter also referred to as 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 3 September 2021 and submitted for decision on 11 January 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.

29. 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. f) of the Regulations on the Status and Transfer of Players (August 2021 edition), he is competent to deal with the matter at stake, which concerns a dispute with an international dimension between a Dutch coach and Football Association of Maldives.

30. Finally, 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 3 September 2021, the August 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

31. 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, he 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

32. 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

33. 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 termination of the Employment Agreement.

34. First of all, the Single Judge recalled the Respondent's allegations that during the meeting of 12 May 2021, *"both parties reached a mutual understanding without any dissent to proceed with the termination by settling any and all outstanding financial gains towards the Claimant until the date of termination in full and final."*

35. While referring to art. 13 par. 5 of the Procedural Rules and the principle of the burden of proof, the Single Judge understood that the Respondent did not meet his burden of proof in order to demonstrate that the parties mutually terminated the employment relationship. In fact, no documentation whatsoever was made available by the Respondent to support its argument.

36. As a consequence, the Single Judge decided that the parties did not mutually terminate the employment relationship and continued his deliberations if the Respondent had, in any event, just cause to terminate the Employment Agreement.

37. In this respect, the Single Judge recalled that, in line with the well-stablished jurisprudence of the Dispute Resolution Chamber, a termination of a contract is only an *ultima ratio measure*.

38. In order to establish if the Respondent had just cause to terminate the contract, the Single Judged turned his attention to the allegation of the "*grievous and significant financial and economic losses cause by the unprecedent pandemic, imposing redundancy"* led to the termination of the employment relationship.

39. The Single Judge also took note of the Respondent's argument – disputed by the Claimant – regarding the COVID-19 pandemic and Clause 9 of the Employment Agreement, which providing for an exemption of liability in relation to any failure to perform *"due to causes beyond the party's reasonable control, including, but not limited to* (…) *fire, explosion, cyclone, floods; War, revolution, acts of public enemies, blockage or embargo; Any law order, proclamation, ordinance, demand or requirements of any government, including restrictive trade practices or regulations; Strike, shutdowns or labour disputes."*

40. In this context, the Single Judge highlighted that FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, it was also outlined that on 11 June 2020, FIFA has issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarifications on the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters.

41. Analysing the concept of a situation of force majeure, the Single Judge also stressed that, based on the contents of the FIFA COVID-19 Guidelines and the FIFA COVID19 FAQ, FIFA did not declare that the COVID-19 outbreak was a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure. In other words, in any given dispute, it is for a party invoking force majeure to establish the existence of said event under the applicable law/rules as well as the consequences that derive in connection thereto. The analysis of whether a situation of force majeure existed has to be considered on a case-by-case basis, taking into account all the relevant circumstances.

42. Following these general observations, the Single Judge stressed that, in the case at stake, COVID-19 pandemic cannot be used as an unforeseen circumstance, as the Parties concluded the Employment Agreement in the middle of the worldwide pandemic.

43. Furthermore, the Single Judge pointed out that, in any event, the Respondent was not able to demonstrate, through substantial evidence, that the situation faced was to be legally considered a situation of force majeure.

44. Based on the foregoing, the Single Judge concluded that Respondent had not provided a valid justification for the premature termination of the employment contract and must therefore be held liable for its breach without just cause.

ii. Consequences

45. 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.

46. Firstly, the Single Judge observed that it remained undisputed between the Parties that there were no outstanding salaries as to 23 June 2021.

47. 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.

48. In application of the relevant provision, the Single Judge held that he 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.

49. In this regard, the Single Judge recalled Clause 7 of the Employment Agreement. After analysing the content of the aforementioned clause, the Single Judge concluded that the provision does not apply in the matter at hand, and therefore could not be taken into account for establishing the amount of compensation payable to the Claimant.

50. 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. 6 par. 2 of Annexe 2 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

51. Furthermore, taking into account that the Claimant did not sign a new employment agreement, the Single Judge determined that the amount of compensation shall be equal to the residual value of the contract that was prematurely terminated, as established in art. 6 par. 2 lit. a) of Annexe 2 of the Regulations.

52. 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.

53. Consequently, the Single Judge concluded that the amount of USD 187,375.00 (i.e. salary of the last week of June 2021, salaries between July 2021 and January 2024 and monthly pocket money between July 2021 and January 2024) was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

54. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest on said compensation at the rate of 5% p.a. as of the date of the decision until the day of the effective payment, i.e. in line with Claimant's request for relief.

iii. Compliance with monetary decisions

55. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 2 of the Regulations, which stipulate that, with his 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.

56. In this regard, the Single Judge highlighted that, against associations, the consequence of the failure to pay the relevant amounts in due time shall consist of a restriction on receiving a percentage of development funding, up until the due amounts are paid.

57. Therefore, bearing in mind the above, the Single Judge decided that the association must pay the full amount due (including all applicable interest) to the coach within 45 days of notification of the decision, failing which, at the request of the creditor, a restriction on receiving a percentage of development funding shall become immediately effective on the association in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.

58. The association shall make full payment (including all applicable interest) to the bank account provided by the coach in the Bank Account Registration Form, which is attached to the present decision.

59. The Single Judge recalled that the above-mentioned ban will be lifted immediately upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

d. Costs

60. 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.

61. 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.

62. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Rene Hiddink, is accepted.

2. The Respondent, Football Association of Maldives, has to pay to the Claimant, the following amount:

   - USD 187,375.00 as compensation for breach of contract without just cause plus 5% interest p.a. as from 11 January 2022 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. 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 imposed a restriction on receiving a percentage of development funding, up until the due amounts are paid.

6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 8 par. 7 and 8 of Annexe 2 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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