

Decision of the Players Status Chamber

passed on 31 March 2023

regarding an employment-related dispute concerning Judan Ali

COMPOSITION:

Javier Vijande Penas (Argentina), Chairperson
Castellar Guimarães Neto (Brazil), member
Luis Kannonikoff (Paraguay), member

CLAIMANT/COUNTER-RESPONDENT:

Judan Ali, England
Represented by David Winnie

RESPONDENT/COUNTER-CLAIMANT:

Football Association of Maldives, Maldives
Represented by Juan de Dios Crespo Pérez

I. Facts of the case

1. On 22 December 2019, Judan Ali (hereinafter: the *Claimant/Counter-Respondent*) and the Football Association of Maldives (hereinafter: the *Respondent/Counter-Claimant*) concluded an employment contract (hereinafter: *the contract*) valid as from 22 December 2019 until 21 December 2029.
2. Clause 4 of the contract, indicated the responsibilities of the Claimant/Counter-Respondent as a ***Technical Director*** as follows:

“TECHNICAL DIRECTOR RESPONSIBILITY AND OBLIGATIONS

- a. *Recruit, develop and directly manage the performance of coaches, coaching staff and technical matters of the organization*
- b. *Directly manage education and development opportunities to the organization's coaches*
- c. *Act as the chief spokesperson for the organization on technical development matters, including external liaisons with governing bodies*
- d. *Align organizations programs to the governing body to provide a clearly defined player pathway that offers all streams of soccer*
- e. *Establish partnerships with universities, colleges and other organizations to drive the progression of the organization's top soccer talent to a higher level*
- f. *Work with local schools to develop soccer and promote the Organization Technical Program Development*
- g. *Build on the Organization's existing development program base to create a full annual development program Establish structured, program-wide skills testing and other program quality management initiatives*
- h. *Provide monthly technical reports to Human Recourses Department*
- i. *Oversee player skills testing and the collection of other technical data needed for evaluation of technical programs*
- j. *Contribute as part of the Organization's staff management team to meeting and reporting requirements of the Board and its Sub-committees Competencies & Skills Required*
- k. *Completion of Stages 1 to 3 of the Community Coach Stream as set out by the Football Association of Maldives, the commitment to obtain the Provincial C License certification, and further coaching development opportunities such as National Certification.*
- l. *Knowledge of and support for the Football Association of Maldives's Long-Term Player Development model (Towards Future banner)*
- m. *Knowledge of elite player development systems and how they differ and integrate with community sport programs*
- n. *Experience with coaching both male and female soccer and the design of technical programs*
- o. *Strong communication skills and an ability to convey technical planning to stakeholders, including parents and players*
- p. *Team player with an ability to operate as part of an integrated multi-functional management team*

- q. Ability to multi-task, prioritize a variety of tasks and work independently with minimum supervision to meet time sensitive deadlines
 - r. Excellent organizational skills and professional efficiency
 - s. Proficient skills and experience in Microsoft Office Programs (Word, Excel, Power Point and Outlook)”
3. Pursuant to clause 5 of the contract, the Respondent/Counter-Claimant undertook to pay to the Claimant/Counter-Respondent a monthly salary of USD 8,000.

4. Clause 7 (a) of the contract set out the following provision in relation to termination:

“Both Parties may terminate this agreement upon 1 (one) month notice in writing if: The other is in breach of any material obligation contained in this agreement, which is not remedied (if the same is capable of being remedied) within 30 (thirty) days of written notice from the other party; or

A voluntary arrangement is approved, a bankruptcy or an administration order is made or a receiver of administration received is appointed over any of the party's assets or an undertaking or a resolution or petition to wind up the other party is passed or presented (other than for the purposes of amalgamation of reconstructions) or any analogous procedure in the country of incorporation of either party or if any circumstances arises which entitle the FIFA Court of arbitration for sport (Swiss) or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order in respect of the other party.”

5. Clause 7 (b) of the contract detail specific circumstances in which (in addition the above) the Respondent/Counter-Claimant could terminate the contract:

“FAM may terminate this agreement upon 1 (one) Month notice in writing, or payment in lieu If:
- *The breach of any of the provision of this agreement by the TECHNICAL DIRECTOR*
- *If the TECHNICAL DIRECTOR is suspended for a period of 2 (two) weeks or more by a national or international sports authority; or*
- *If the TECHNICAL DIRECTOR is detained by the concerned authorities if the Maldives for a period of 2 (two) weeks more or where there is verdict of a court holding to detain the TECHNICAL DIRECTOR for a period of 2 (two) weeks or more”*

6. Furthermore, clause 7 (d) of the contract stipulated the following:

“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 or 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 contract 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 which are not instigated for the purpose of avoiding obligations herein. Any other circumstances beyond the control of the party affected*”
8. Clause 15 of the contract 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 19 January 2020, the parties agreed to amend the terms of the contract (hereinafter: *amendment letter*), providing *inter alia* that: (i) the Claimant/Counter-Respondent’s salary would be increased to USD 9,000 per month, from February 2020 onwards; and that (ii) the Claimant/Counter-Respondent would be paid an additional USD 1,000 per month by way of personal allowance.
10. On 3 May 2020, the Claimant/Counter-Respondent received a WhatsApp message from the Respondent/Counter-Claimant informing him that it intended to reduce his salary by 50%, for reasons connected to the Covid-19 pandemic.
11. On 6 May 2020, the Claimant/Counter-Respondent stated that he was not prepared to accept a 50% reduction in his salary but that he would be prepared to accept a deferral of 50% of his salary from June 2020 “*until such time as football in the Maldives resumes, or until 1 September 2020 (whichever comes first)*”
12. On 24 June 2020, the Claimant/Counter-Respondent allegedly raised his concerns with the Respondent/Counter-Claimant regarding the salary reduction as well as “*concerns relating to the Respondent/Counter-Claimant’s activities which were preventing him from performing his role as Technical Director in the manner that he was ready and able to perform.*”
13. On 19 July 2020, during a telephone call the Claimant/Counter-Respondent informed the Respondent/Counter-Claimant “*that he would be prepared, in light of the Covid-19 pandemic, to agree to a temporary reduction of his monthly salary to £5,000 per month.*” The proposal was apparently rejected by the Respondent/Counter-Claimant.
14. On 27 July 2020, the Claimant/Counter-Respondent was allegedly telephonically informed that his salary will be unilaterally reduced in half to USD 4,500, accordingly he had a maximum period of four days within which to confirm his acceptance of the proposed reduction in his salary, failing which the Respondent/Counter-Claimant would instigate a conversation for the purposes of termination of the employment relationship.

15. On 1 August 2020, the Respondent/Counter-Claimant sent a termination notice to the Claimant/Counter-Respondent, stipulating:
- a. *“Since April 2020, the Football Association of Maldives have been in continuous communication with you regarding FAM’s plans for redundancy and administrative restructuring due to the losses this Association are facing with regard to the ongoing global pandemic of COVID19.*
 - b. *As we have informed you on several occasions about the fact that many of our sponsors and donors having withdrawn their financial support and aid as a result of this pandemic. Though we as an institution understand the reasons as to why our sponsors and donors are withdrawing their assistance, these recent economic conditions have caused a significant downturn in our income, necessitating us to take appropriate measures to reorganize.*
 - c. *Hence, after we allowed you to repatriate yourself and provided you airfare to return back to UK, to your home, was also because we understood the difficulty everyone was facing amidst this pandemic. It was in good faith we initiated the conversation with you regarding restructuring your salary and benefits and tried to find an amicable solution, but unfortunately to no avail.*
 - d. *It saddens me to highlight that your attitude and conduct as an employee during these correspondences have been impolite and ill-mannered. Even after we explained the details of the difficulties we are facing, yet you haven’t held back with your demands. You know this is an institution with very limited resources, however you have dismissed all our efforts and requests in coming to agreeable terms regarding the reduction of your salary as a result of this pandemic.*
 - e. *Therefore, as per Agreement (Employment Agreement) Clause 15, as well as Maldives Employment Act 2/2008 Article. 23, in reference to Agreement (Employment Agreement) Clause 7 (a) (I), consider this as the Notice for Termination of Employment. Your employment with Football Association of Maldives will end effective 31st August 2020.”*
16. The Claimant/Counter-Respondent informed the FIFA Administration that he remains unemployed.

II. Proceedings before FIFA

17. On 29 July 2022, the Claimant/Counter-Respondent filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.
18. On 12 August 2022, FIFA informed the Claimant/Counter-Respondent that it is not competent to deal with his matter as the latter was employed by the Respondent/Counter-Claimant as a technical director and that art. 9 par. 1 of the Procedural Rules, establishes that only member associations; clubs affiliated to a member association; players; coaches; football agents licensed by FIFA or match agents licensed by FIFA are admitted as parties before a chamber.
19. On 18 August 2022 the Claimant/Counter-Respondent sent a letter to FIFA requesting that the matter is properly adjudicated on by the Football Tribunal.

20. On 29 August 2022, the claim was sent to the Respondent/Counter-Claimant for its position to the claim.
21. On 28 September 2022, the Respondent/Counter-Claimant together with its reply lodged a counterclaim against the Claimant/Counter-Respondent.
22. On 27 October 2022, the Claimant/Counter-Respondent replied to the counterclaim.
23. On 2 December 2022, the submission-phase of the present matter was closed.
24. On 3 March 2023, the parties were informed the the case at hand will be submitted to the Single Judge of the Players' Status Chamber, Tomas González Cueto (Spain), for a formal decision on 14 March 2023.
25. In this context, the Claimant-Respondent *via* his letter, dated 9 March 2023, inter alia, requested that another Single Judge be appointed to this case *"as both the Respondent's appointed representatives and the Chamber are from the same country (Spain)."*
26. On 14 March 2023, the parties were informed the case at hand will be adjudicated upon by the Bureau of the Players Status Chamber on 31 March 2023. In particular, Mr Javier Vijande Penas (Argentina), Chairperson; Mr Tomas Gonzales Cueto (Spain), and Mr Luis Kannonikoff (Paraguay). The parties were furthermore confirmed that the foregoing was based on the decision of the Single Judge of the Players' Status Chamber, Mr Tomás González Cueto, and not on the specific grounds provided by the Claimant as per their last correspondence insofar as that nationality does not per se constitute a legitimate doubt as to a member's impartiality in line with art. 5 par. 2 and 3 of the Procedural Rules Governing the Football Tribunal.
27. On 21 March 2023, the Claimant, *via* his correspondence dated 21 March 2023 requested that a different member be appointed to the Bureau of the Players Status Chamber other than Mr. Tomás González Cueto, reiterating his position as per his letter dated, 9 March 2023.
28. On 22 March 2023, the parties were informed the case at hand will be submitted to be adjudicated upon by the Bureau of the Players Status Chamber on 31 March 2023. In particular, Mr. Javier Vijande Penas (Argentina), Chairperson; Mr. Castellar Guimarães Neto (Brazil) and Mr. Luis Kannonikoff (Paraguay).

a. Position of the Claimant/Counter-Respondent

29. In its claim, the Claimant/Counter-Respondent alleged that the premature termination of the contract was wrongful and without just cause and that the alleged reasons for termination was entirely groundless.

30. Furthermore, the Claimant/Counter-Respondent purported that the Respondent/Counter-Claimant, at no time, afforded him a period of 30 days to remedy any alleged *"material breach"*.
31. The Claimant/Counter-Respondent asserted that the Respondent/Counter-Claimant terminated the contract without just cause and that he should be entitled to the following *"loss & damage"*:
 - i. Unpaid Personal Allowance pre-termination:

May 2020 – August 2020 = 4 months @ USD 1,000 pm
 - ii. Residual Value of the contract for the period 1 September 2020 until 21 December 2029
 - Salary: USD 1,008,000 (1 September 2020 until 21 December 2029) at USD 59,000 per month
 - Personal Allowance (1 September 2020 until 21 December 2029) at USD 1,000 per month
32. The requests for relief of the Claimant, were that the Respondent pay him the total amount of USD 1,124,000.
33. Furthermore, the Claimant/Counter-Respondent requested 5% interest *p.a. "accrue from the date of the Award until payment"*.
34. Additionally, the Claimant/Counter-Respondent requested that the Respondent/Counter-Claimant bears all cost in the proceedings and any other relief.

b. Reply and Counterclaim of the Respondent/Counter-Claimant

35. In reply to the claim, the Respondent/Counter-Claimant filed a statement of defense and counterclaim and argued that due to the lack of cooperation from the Claimant/Counter-Respondent, negotiations were halted and the Respondent/Counter-Claimant *"was forced to take necessary steps to circumvent the economic and financial crisis both the Association and the Country were facing within the COVID-19 pandemic."*
36. The Respondent/Counter-Claimant indicated that the Claimant/Counter-Respondent displayed insubordinate behaviour in that (i) he misrepresented himself as the spokesperson of Respondent; and (ii) he failed to meet the agreed timeline of the very first task he was assigned as the Technical Director of Respondent. Additionally, that he made fraudulent representations in respect of his CV.
37. The Respondent/Counter-Claimant further mentioned the following:

- *"The Claimant/Counter-Respondent's contract was terminated on the 1st of August 2020 after unsuccessful efforts were made to vary the contract to reflect the actual financial situation of the FAM at the time.*
- *The reasons for terminating the contract were stated as follows; The unsuccessful attempts to vary the contract to reflect the financial difficulty the FAM was grappling with. This was a force majeure justification, even if not expressly stated.*
- *The mention of his ill-mannered behavior was extraneous and secondary. The FAM having consistently displayed good faith, first with a salary increase they were not legally required to carry out, supporting him with flight tickets back to the Maldives and even giving him the benefit of the doubt on his delayed submission of the 10-year plan, which he was contractually more than two weeks late in submitting. It is fair to say that for an organization that had been supportive even with limited resources, more understanding was expected from him, and his impoliteness in consideration of the FAM was quite disheartening.*
- *The 30-day notice the Claimant/Counter-Respondents refer to as the reason why the termination was invalid in the context of a force majeure termination was redundant at this moment. Conversations about varying the initial employment offer had been held and ended in a stalemate. Then the FAM could not reasonably fulfill the contract's previous terms, which is why the contract was terminated.*
- *Beyond this, the 30-day notice requirement stated in Section 7a.(i.) of the contract speaks directly to issues that can be remedied.*
- *He got the role fraudulently. The offer was made to him based on the existence of specific qualifications, which he falsely stated he had. This will be further elaborated on under the wrongful termination section."*

38. In conclusion, the Respondent/Counter-Claimant requested the following relief:

- *To dismiss the claim lodged by the Claimant/Counter-Respondent as groundless*
- *To determine that the Claimant/Counter-Respondent's untrue, fraudulent and dishonest claims on his CV, which helped him get the job, render the contract voidable*
- *To determine that the Claimant/Counter-Respondent must reimburse him all the payments made by the FAM, amounting to \$48,000*
- *To reserve for the Respondent/Counter-Claimant the right to make further reliefs, pleadings, amplify his claim for damages during the whole duration of the proceedings, supplement and modify the claim set forth herein, and submit additional briefs, documents, exhibits and any other evidence at their discretion in the course of the proceedings herein*
- *Award any and all costs, expenses and fees arising in connection with the present arbitration proceedings, including but not limited to the attorney's fees of the Respondent/Counter-Claimant against the Claimant/Counter-Respondent*

Alternatively,

- *To determine that the termination of the Employment Contract was valid and enforceable, based on the force majeure clause. Thereby freeing the FAM from paying any compensation.*
- *Award any and all costs, expenses and fees arising in connection with the present arbitration proceedings, including but not limited to the attorney's fees of the First Respondent against the Appellant.*

c. Reply to the counterclaim by the Claimant/Counter-Respondent

39. The Claimant/Counter-Respondent denied all allegations of the Respondent/Counter-Claimant and reiterated his relief sought as detailed in his claim.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

1. First of all, the Players Status Chamber (hereinafter also referred to as *the Chamber*) 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 29 July 2022 and submitted for decision on 31 March 2023. Taking into account the wording of art. 34 of the October 2022 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.
2. Subsequently, 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 lit. c) of the Regulations on the Status and Transfer of Players October 2022 edition (hereinafter: *the Regulations*), the Chamber is – in principle – competent to deal with the matter at stake, which concerns an employment-related dispute between a coach and an association.
3. The Chamber firstly noted that FIFA, *inter alia*, informed the Claimant that it was not competent to decide over the present matter, insofar that the Claimant was hired by the Respondent as a technical director and not a coach.
4. In this context the Chamber referred to item 28 of the definitions section of the Regulations in combination with art. 22 par. 1 lit c) of the Regulations. In particular, the Chamber noted that “Coach” is defined as “*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.”*
5. Accordingly, the Chamber highlighted that the said definition identifies a coach as an individual employed in a “*football-specific occupation*”. This means that a coach shall be engaged in activities inherent to football that do not exist in the same way in other sports. Consequently, individuals practising activities that are not inherent to football are excluded from FIFA’s jurisdiction, such as nutritionists, sports scientists, fitness coaches, scouts and the like.

6. Equally, the Chamber referred to the provisions of art. 9 par. 1 of the Procedural Rules which establishes that only the following natural or legal persons, may be a party before a chamber:
 - a. *member associations;*
 - b. *clubs affiliated to a member association;*
 - c. *players;*
 - d. *coaches;*
 - e. *football agents licensed by FIFA; or*
 - f. *match agents licensed by FIFA."*
7. Taking into consideration the above and having analysed the evidence and documentation brought forward by the Claimant/Counter-Respondent in support of his allegations, the Chamber confirmed that the Claimant/Counter-Respondent was indeed employed by the Respondent/Couner-Claimant as a technical director.
8. In addition, the Chamber outlines the fact that the Claimant/Counter-Respondent holds a coaching licence/s is not relevant to this analysis taking into consideration that the said "*football-specific occupation*" is a mandatory requirement for an individual to be included in the definition of a coach. In any event, the Chamber noted that the Claimant/Counter-Respondent does not possess any license in respect of his role with the Respondent/Counter-Claimant.
9. In this regard, the Chamber highlighted that in terms of clause 4 of the contract, the tasks of the Claimant/Counter-Respondent, *inter alia*, entailed the following, (a) *Recruit, develop and directly manage the performance of coaches, coaching staff and technical matters of the organization;* (b) *directly manage education and development opportunities to the organization's coaches;* (c) *act as the chief spokesperson for the organization on technical development matters, including external liaisons with governing bodies;* (d) *align organizations programs to the governing body to provide a clearly defined player pathway that offers all streams of soccer;* (e) *establish partnerships with universities, colleges and other organizations to drive the progression of the organization's top soccer talent to a higher level;* (f) *work with local schools to develop soccer and promote the Organization Technical Program Development;* (g) *Build on the Organization's existing development program base to create a full annual development program establish structured, program-wide skills testing and other program quality management initiatives;* (h) *Provide monthly technical reports to Human Recourses Department;* (i) *Oversee player skills testing and the collection of other technical data needed for evaluation of technical programs.*
10. Accordingly, the Chamber was of the opinion that the Claimant/Counter-Respondent's duties under the contract did not fall within the meaning of that of a coach as defined by the Regulations.

11. In view of the above, the Chamber established that the Football Tribunal does not have jurisdiction to decide over the present matter, which include both the claim of the Claimant-Counter-Respondent and the counterclaim of the Respondent/Counter-Claimant as it does not fulfil the requirements of art. 22 par. 1 lit c) of the Regulations in combination with item 28 of the definitions section of the same Regulations.

b. Costs

12. 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.
13. 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.
14. Lastly, the Chamber concluded its deliberations by rejecting any other requests for relief made by any of the parties.

Decision of the Players Status Chamber

1. The Football Tribunal does not have jurisdiction to hear the claim of the Claimant/Counter-Respondent, Judan Ali.
2. The Football Tribunal does not have jurisdiction to hear the Counterclaim of the Respondent/Counter-Claimant, Football Association of Maldives.
3. 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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