

Decision of the Players' Status Chamber

passed on 10 July 2024

regarding an employment-related dispute concerning the coach A

BY:

Luis KANONNIKOFF (Paraguay), Single Judge

CLAIMANT:

Coach A, Country A

Represented by

RESPONDENT:

Club B, Country B

I. Facts of the case

1. On 23 June 2023, the Country A coach, Coach A (hereinafter: *the Claimant* or *coach*), and the Country B, Club B (hereinafter: *the Respondent* or *the club*) signed an employment contract (hereinafter: *the contract*) valid as from 1 July 2023 until 30 June 2024. The Claimant was employed as “head coach” per the contract.
2. In accordance with the contract, the Respondent undertook to pay to the Claimant *inter alia* a monthly net remuneration of USD 54,000.
3. Pursuant to art. 11 of the contract, “*Compensation and termination: By mutual consent, the parties have expressly and irrevocably agreed that in the event of a breach of this contract, the party in breach or terminating the contract shall be required to pay the other party an amount equivalent to two (2) months’ salary as compensation.*”
4. On 1 October 2023, the club informed the coach that his services are no longer needed due to “*unsatisfactory performance.*”
5. Thereafter, on 16 October 2023, the club sent a letter to the coach confirming the termination as of 15 October 2023 and stating that it will pay the coach the following monies:
 - Pro rata salary until 16 October 2024;
 - Two monthly salaries as compensation (in accordance with art. 11 of the contract);
 - USD 1,250 EUR as additional amount as return flight ticket.
6. By correspondence dated 22 November 2024, the Claimant requested payment from the Respondent in the amount of USD 667,660 net, setting a time limit expiring on 29 November 2024 in order to remit payment. Said amount corresponded to (i) USD 351,000 net as compensation for the unilateral termination of the contract equal to the residual value of the contract as of 17 October 2023 until its expiry, (ii) USD 324,000 net as a contractual penalty equivalent to two monthly salaries for each alleged violation, and (iii) USD 2,660 corresponding to a match bonus.

II. Proceedings before FIFA

7. On 15 March 2024, 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

8. According to the Claimant, the club had no just cause to terminate the contract, as it was due to the purported unsatisfactory performance of the team.

9. The coach highlighted that he was orally informed on 1 October 2023 by his translator that he could no longer provide coaching services for the club, which, in his view, was a breach of contract because such termination could only have been executed via declaration in writing. After that date, the coach was unlawfully deprived of the possibility to provide his coaching services to the club and was told not to contact the team, despite his availability and willingness to continue providing his services.
10. The coach acknowledged the club presented him with a proposal to mutually terminate the contract, but the coach did not accept. Thereafter, on 16 October 2023, the club sent the coach a letter terminating the contract unilaterally.
11. Furthermore, the Claimant argued that the compensation clause in art. 11 of the contract shall be declared null and void, as it is not proportional. The Claimant sustained that a compensation equal to two monthly salaries was not proportionate when the contract itself would have been valid for an additional nine months.
12. The coach also acknowledged receipt of payment equal to two monthly salaries from the club as compensation based on art. 11 of the contract, as well as half of his monthly salary for October 2023.
13. The Claimant's requests for relief were the following:

"The Coach claims for payment of the sum of:

- 1) USD 351,000.00 along with the statutory interest in the rate of 5% p.a. from 17 October 2023 until the date of payment, as a compensation for termination of the Contract without just cause;*
- 2) USD 324,000.00 along with the statutory interest in the rate of 5% p.a. from 17 October 2023 until the date of payment, as a compensation for breaches of the Contract;*

Please apply the consequences for failure to pay relevant amounts in due time under article 24 FIFA RSTP."

b. Position of the Respondent

14. In its reply, the Respondent rejected the claim, arguing that the coaching staff had failed to reach the sporting goals for the season, which led to the termination on 1 October 2023 (and not 16 October 2023, as expressed by the coach).
15. Per the club's reasoning, the obligations set forth in the contract specifically required the coach to, *inter alia*, secure a top six finish in the league standings, implement a cohesive playing style across the team, develop offensive strategies to maximize goal-scoring

opportunities and aim for a top 5 attack ranking, and implement defensive strategies to ensure a robust defense, with a goal of achieving a top 5 ranking in defense. However, under the coach's leadership, the club faced an unprecedented decline in performance.

16. According to the club, after it terminated the contract, the parties negotiated a settlement agreement which eventually could not be finalized. The club further highlighted that the coach requested payment of four monthly salaries during those negotiations.
17. Additionally, the club argued that art. 11 of the contract was a valid and proportionate liquidated damages clause considering the damages and nature of the termination, and was in line with the principles of fairness and reciprocity observed by FIFA. The coach had the right to fair compensation, which was balanced against the club's right to terminate the contract for just cause based on substantial failures.
18. As such, the Respondent maintained that, considering the termination was justified based on substantial evidence of a failure to meet contractual performance targets and mismanagement impacting the club's finances and competitive integrity, any compensation should be significantly adjusted to reflect those factors, respecting the principles of proportionality and the actual damages the club incurred due to the coach's actions during his tenure.
19. The club therefore requested a review of the compensation claims in light of its arguments and seeks a decision that takes into account the severe financial and competitive impacts of the coach's tenure, potentially reducing the compensation to an amount that reflects the real damages and contractual breaches involved.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

20. 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 15 March 2024 and submitted for decision on 10 July 2024. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
21. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (June 2024 edition), he is

competent to deal with the matter at stake, which concerns an employment-related dispute between a club and a coach of an international dimension.

22. Subsequently, 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 Players (June 2024), and considering that the present claim was lodged on 15 March 2024, the February 2024 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

23. 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

24. 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

25. The Single Judge began by taking note of the fact that this case concerns a claim by a coach against a club for compensation due to the club's unilateral termination of the employment contract without just cause.
26. The Single Judge also took note of the club's argument – disputed by the coach –, according to which it had just cause to unilaterally terminate the contract due to the coach's unsatisfactory performance and failure to meet sporting goals.
27. At this point and before analysing the legality of the aforementioned argument, the Single Judge was eager to emphasise that, in accordance with the well-established jurisprudence of the Players' Status Chamber, only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, a contract may be terminated prematurely only when there are objective criteria which do not reasonably permit to

expect the continuation of the employment relationship between the parties. Hence, if there are more lenient measures which can be taken in order to ensure the fulfilment of the contractual duties by the counterparty, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.

28. Furthermore, the Single Judge recalled, in line with the long-standing jurisprudence of the Players' Status Chamber, that a coach's unsatisfactory performance cannot be a valid reason for an employer to cease paying due salaries or terminate an employment contract, as this is a purely unilateral and subjective evaluation by the club.
29. Bearing in mind the foregoing and analysing the particular circumstances of the present case, the Single Judge concluded that such a determination, even if expressed as a clause or condition in a contract, is of a clearly potestative nature as it leaves the decision of terminating the employment contract at the sole discretion of the club, provided that the same club assesses the coach's performance as unsatisfactory at any time.
30. On account of the aforementioned, the Single Judge decided that the club had unlawfully terminated the employment contract with the coach as of 1 October 2023 and should be held liable for such breach.

ii. Consequences

31. Having stated the above, the members of the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
32. As a preliminary observation, the Single Judge noted that this case concerns compensation for breach of contract only.
33. In this respect, the Single Judge recalled the club's argument that the compensation clause foreseen in art. 11 of the contract was valid as it was agreed upon by the parties and complied with the relevant requirements for holding such a compensation clause as valid. The club further averred that, considering it had already paid the coach two months' worth of salaries, no further amounts were due to the coach.
34. In this regard, the Single Judge once again took note of the wording of art. 11 of the contract, which established that "*Compensation and termination: By mutual consent, the parties have expressly and irrevocably agreed that in the event of a breach of this contract, the party in breach or terminating the contract shall be required to pay the other party an amount equivalent to two (2) months' salary as compensation.*"
35. After analysing the content of the aforementioned clause, the Single Judge concluded that it did not fulfil the criteria of reciprocity and proportionality, in line with the longstanding

jurisprudence of the Football Tribunal, and therefore could not be taken into account for establishing the amount of compensation payable to the Claimant. In particular, the Single Judge noted that, even if the clause in question could be considered reciprocal in nature by its wording, it could not reasonably be considered as proportionate under the circumstances. In that sense, the Single Judge noted that art. 11 of the contract only provided for the coach to be compensated with two months of salary payments, whereas at the time of termination, the coach still had almost nine months remaining on his contract.

36. As a consequence, the Single Judge determined that the amount of compensation payable by the Claimant to the Respondent had to be assessed in application of the other parameters set out in art. 6 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.
37. In this respect, the Single Judge noted that the coach remained unemployed since the unilateral termination of the contract.
38. The Single Judge referred to art. 6 par. 2 lit. a) of Annexe 2 of the Regulations, according to which, in case the coach did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.
39. In this respect, the Single Judge decided to award the coach compensation for breach of contract in the amount of USD 486,000, *i.e.*, 9 times USD 54,000, as the residual value of the contract from October 2023 until June 2024. However, since the club already paid the coach's salary for half of October 2023 (USD 27,000) and two monthly salaries pursuant to the compensation clause in the contract (USD 108,000), the Single Judge decided to take the foregoing into account and finally award the coach USD 351,000.
40. The Single Judge also concluded that no additional compensatory amounts would be awarded due to a lack of factual or contractual basis.
41. Lastly, taking into consideration the coach's specific request as well as the constant practice of the Single Judge in this regard, the latter decided to award the coach interest on said compensation at the rate of 5% p.a. as of 17 October 2023 until the date of effective payment.

iii. Compliance with monetary decisions

42. 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 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.

43. 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.
44. Therefore, bearing in mind the above, the Single Judge decided that the club 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 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 club in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
45. The club 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.
46. 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 2 of the Regulations.

d. Costs

47. 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.
48. Furthermore, 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.
49. 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, Coach A, is partially accepted.
2. The Respondent, Club B, must pay to the Claimant the following amount(s):
 - **USD 351,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 17 October 2023 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, 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.
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

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777