

# Decision of the Players' Status Chamber

passed on 5 April 2022

regarding an employment-related dispute concerning the coach Anatolii Korotia

**BY:**

**Jesus Arroyo (Spain)**

**CLAIMANT:**

**Anatolii Korotia, Ukraine**

**RESPONDENT:**

**FC Shaktyor Soligorsk, Belarus**

## I. Facts of the case

1. On 23 September 2020, the Ukrainian coach Anatolii Korotia (hereinafter: *the coach*) and the Belarussian club FC Shakhtyor Soligorsk (hereinafter: *the club*) concluded an employment agreement, valid between 23 September 2020 and 22 September 2021, based on which the coach was entitled to a monthly salary of Belarussian Rouble (BYN) 10,822.20 '*indicated with account taken of taxes and fees provided for by the legislation of the Republic of Belarus*'.
2. On 24 September 2020, the coach and the club concluded an additional agreement (hereinafter: *the additional agreement*), based on which the validity of the contract was extended until 31 December 2021 and based on which the coach would be entitled to two times '*the costs of air tickets*' for the route Zaporozhye – Minsk – Zaporozhye, as well as BYN 6,240 by 14 October 2020.
3. On 30 November 2021, the coach and the club concluded a second additional agreement (hereinafter: *the second additional agreement*), based on which the validity of the contract was extended until 23 September 2022, as well as an annex to said second additional agreement, where a part of the salary of the coach, on the initiative of the club, was moved to. Overall, the second additional agreement provided for a salary of BYN 6,138, whereas the annex was until today not submitted to the coach.
4. On 8 December 2021, while the coach was on leave in the period between 1 December 2021 and 10 January 2022, the club appointed a new head coach.
5. On 15 December 2021, the club organised a meeting for the staff, where the coach was given a training plan for 2022, which indicated that the trainings would restart on 10 January 2022.
6. On 31 December 2021, the coach' temporary residence permit in Belarus expired, however it was the responsibility of the club to renew said permit. Notwithstanding the foregoing, on 7 January 2022, the coach flew – after having purchased a flight ticket himself - from Zaporozhye (Ukraine) to Minsk (Belarus).
7. On 12 January 2022, the club proposed the coach to terminate the contract and the coach requested, that he wished to reach an amicable settlement, taking into account the financial obligations under the contract and the interest of both parties.
8. After having been denied entrance to the club's premises on 13 and 14 January 2022, the coach received on 14 January 2022 an email from the club, by means of which he was dismissed from work on 10 January 2022, since he was allegedly absent with no good reason in the period between 3 and 6 January 2022.
9. On 17 January 2022, the coach objected to the dismissal and requested for documentation where the dismissal was based upon, however, on 31 January 2022, the club refused to

provide the requested documentation and denied the coach request to receive compensation for breach of contract. Also, the club alleged in said letter that it had received an internal memo from the head coach, based on which it could be concluded that the coach was absent in the period between 3 and 6 January 2022.

10. After the unilateral termination of the contract, the coach remained unemployed.

## **II. Proceedings before FIFA**

11. On 24 February 2022, the coach filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### **a. Position of the coach**

12. In his claim, the coach explains that he deems that the contract was terminated without just cause, and that thus, he is entitled to compensation for breach of contract.
13. The coach explains that the team leave only ended on 9 January 2022, and that the documentation provided by the club, based on which it allegedly turned out that the coach was illegally absent in the period between 3 and 6 January 2022, are falsified. The coach additionally explains that the club did not even try to contact him on said days, in order to verify his alleged absence.
14. What is more, the coach explains that the termination of the contract of the coach did not follow the procedure as laid down in the Labour Code of the Republic of Belarus, as he was not asked an explanation on his alleged absence.
15. Also, the coach argues that from a salary certificate dated 14 January 2022, it follows that he continued to work in the club until at least 14 January 2022.
16. The requests for relief of the coach, as amended, were the following:
  - BYN 94,874 as residual value of the contract in the period between January and August 2022, corresponding to 8 monthly salaries of BYN 10,822.20 each;
  - BYN 32,466 as additional compensation, corresponding to 3 monthly salaries of BYN 10,822.20 each;
  - 5% interest *p.a.* as from the respective due dates.

### **b. Position of the club**

17. In reply to the claim of the coach, the club argued that the coach was on holidays in the period between 1 and 29 December 2021 and that on 7 December 2021, it hired a new head coach, Mr Bionchik.

18. According to the club, the coach was absent in the period between 3 and 6 January 2022, as reported by its new head coach and it requested him to provide an explanation as to this absence, however that the coach allegedly refused to provide said explanation. The club further explains that the players only returned on 10 January 2022, but that the coach and to report already for duty on 3 January 2022.
19. The club explains that based on the unauthorized absence from work in the period between 3 and 6 January 2022, it validly terminated the contract with the coach on 14 January 2022, based on art. 42 of the Labour Code of the Republic of Belarus.

### 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 24 February 2022 and submitted for decision on 5 April 2022. 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.
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 (March 2022 edition), he is competent to deal with the matter at stake, which concerns an employment-related dispute between a club / an association 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 (March 2022 edition), and considering that the present claim was lodged on 24 February 2022, 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

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 it 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. Its 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 it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

#### **i. Main legal discussion and considerations**

25. 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 whether the coach was indeed absent without valid reason in the period between 3 and 6 January 2022, and whether as result of this alleged absence, the club could validly terminate the contract with the coach on 14 January 2022.

26. In this context, the Single Judge acknowledged that it its task was to determine whether or not the club, under the circumstances described in the file, could validly terminate the contract with the coach due to his alleged absence.

27. Having established the above, the Single Judge went on to analyse the allegation of the club – disputed by the coach – that the temporary absence of the latter for 4 days, i.e. between 3 and 6 January 2022, without authorisation or justification, consisted of a breach of contract on his part.

28. In view of the foregoing, the Single Judge referred to art. 13 par. 5 of the Procedural Rules (October 2021 edition), according to which a party that asserts a fact has the burden of proving it, and went on to analyse the documentation provided by the parties in support of their allegations. In this respect, the Single Judge noted that it turns out that based on the information on file, it cannot be concluded that the club and the coach made bullet proof arrangements on whether the coach would need to return to work after the winter break.

29. In this respect, the Single Judge noted that the declaration, signed by the coach and in which it is allegedly confirmed that the coach had holidays between 1 and 29 December 2021, does not proof with certainty that the coach had to report back already on 3 January 2022 for executing the employment contract. Moreover, the Single Judge also took not that the club did not submit decisive evidence on the basis of which it could be concluded that it requested the coach to provide an explanation as to alleged unjustified absence.

30. In this scenario, the Single Judge recalled its long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not

reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.

31. With the above in mind and after having carefully analysed the parties' submissions, the Single Judge concluded that a short absence of only a few days, between 3 and 6 January 2022, under the circumstances of the present case, namely a situation in which both parties did not make crystal clear arrangements on when the duties as per the contract would have to be resumed, cannot be deemed as a substantial breach of an employment contract, capable of triggering the consequences of an unlawful termination.
32. Based on the foregoing, the Single Judge established that the club had terminated the contract with the coach on 14 January 2022 without just cause and is thus obliged to pay outstanding remuneration, if any, and compensation for breach of contract to the coach.

## ii. Consequences

33. Having stated the above, the Single Judge turned their attention to the question of the consequences of such unjustified breach of contract committed by the club.
34. The Single Judge first of all observed that at the time of termination, 14 January 2022, there did not appear to be any outstanding remuneration. As a result, the Single Judge decided that no outstanding remuneration shall be awarded to the coach.
35. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the coach by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 par. 2 of Annexe 2 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 remuneration and other benefits due to the coach under the existing contract and/or the new contract and the time remaining on the existing contract.
36. 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.
37. 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.

38. As a consequence, the Single Judge determined that the amount of compensation payable by the club to the coach had to be assessed in application of the parameters set out in art. 6 par. 2 of Annexe 2 of the Regulations.
39. Bearing in mind the foregoing as well as the claim of the coach, the Single Judge proceeded with the calculation of the monies payable to the coach under the terms of the contract until its term. Consequently, the Single Judge concluded that the amount of BYN 94,874 (i.e. 8 monthly salaries of BYN 10,822.20 each) serves as the basis for the determination of the amount of compensation for breach of contract.
40. In continuation, the Single Judge verified whether the coach 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 Single Judge as well as art. 6 par. 2 lit. b) of Annex 2 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.
41. In this respect, the Single Judge noted that the coach remained unemployed since the unilateral termination of the contract.
42. The Single Judge referred to art. 6 par. 2 lit. a) of Annex 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.
43. In this respect, the Single Judge decided to award the coach compensation for breach of contract in the amount of BYN 94,874, i.e. 8 times BYN 10,822.20 each, as the residual value of the contract.
44. Lastly, taking into consideration the coach's 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 24 February 2022 until the date of effective payment.

### **iii. Compliance with monetary decisions**

45. 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.

46. 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.
47. 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 coach, 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.
48. 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.
49. 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**

50. 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.
51. 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.
52. Lastly, the Single Judge concluded its 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, Anatolii Korotia, is partially accepted.
2. The Respondent, FC Shakhtyor Soligorsk, has to pay to the Claimant, the following amount:
  - BYN 94,874 as compensation for breach of contract without just cause, plus 5% interest *p.a.* as from 24 February 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 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 the ban shall be of 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

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**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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