

Decision of the Players' Status Chamber

passed on 11 June 2024

regarding an employment-related dispute concerning
the coach Poya Asbaghi

BY:

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CLAIMANT:

Poya Asbaghi, Sweden

Represented by SILA International Lawyers

RESPONDENT:

Crvena Zvezda, Serbia

Represented by Davor Radić

I. Facts of the case

1. On 8 September 2022, the Swedish coach, Poya Asbaghi (hereinafter: *the Claimant* or *the Coach*) and the Serbian club, Crvena Zvezda (hereinafter: *the Respondent* or *the Club*) concluded an employment contract valid as from the date of signature until 30 June 2023 (hereinafter: *the Contract*).

2. Clause 2 par. 3 of the Contract reads as follows:

“In addition to the basic employment rights, the Contracting Parties have agreed as follows:

- *Basic monthly income in the amount of the minimum salary, published according to the latest data in the Official Gazette of the Republic of Serbia, for the month for which it is paid, in words...dinars,*
- *According to the Rules of the Club or the decisions of the competent authority in the Club, the coach has the right to a bonus or income on other grounds within a certain period – cycle:*

The right to a bonus and income on other grounds will be defined in a separate annex to the Professional Employment Agreement [...]

The salary of the Coach under this Agreement on all grounds, is determined in dinars, the currency that is recognized in payment operations by the competent state institutions”.

3. On 8 September 2022, the Player and the Club (jointly called *the parties*) concluded the annex to the Contract (hereinafter: *the Annex*).

4. Clause 5 of the Annex reads as follows:

“The CLUB undertakes, for the duration of this Annex to the contract, to:

- *Provide adequate conditions for the performance of work from Article 3 of this contract;*
- *Provide a telephone for use;*
- *Reimbursement of the monthly costs of Rent-a-Car vehicles of lower compact class;*
- *Provide a monthly monetary compensation in the amount of EUR 8.000 net in dinar equivalent, at the middle exchange rate of the NBS on the day of payment, in accordance with Article 84a of the Law on Income Tax of the RS, which refers to the*

income of sports experts, starting from September 8th 2022, ending with June 2023. The amount of compensation includes the amount of salary defined in Article 3 of the Basic Contract on Professional Work.

For achieved sports results, ASSISTANT COACH TO THE HEAD OF THE EXPERT STAFF is entitled to bonuses and awards in the amount of 75% of the full amount of the premium, all according to the Rulebook, on rewarding professional football players, sports experts and experts in sports in the championship and the CUP of Serbia and according to the Rulebook on awarding professional football players, sports experts and experts in sports in European competitions organized by UEFA.

In any case the ASSISTANT COACH TO THE HEAD OF THE EXPERT STAFF is entitled to receive the following minimum amounts of bonuses:

- 22.500 EUR net for the victory into the national league.*
- 7.500 EUR net for the victory in a national cup.*
- 75.000 EUR net in case the Club will qualify for the Champions' league group stage.*
- 4.950 EUR net for each win during European competitions starting from group stage and more.*

If the bonuses for the rest of the team will be more than mentioned amounts, the coach should get bigger amounts in proportion in of 75% from the total."

5. Clause 6 of the Annex reads as follows:

"The monthly fee stipulated in Article 5 of this Annex is paid no later than the 25th of the month for the previous month.

Prizes for achieved sports results or premiums in the Serbian Championship or won double crown provided for in Article 5 of this Annex shall be paid no later than 20/09 of the current year for the previous competition season.

Awards for achieved sports results or premiums in the Champions League and Europa League provided for in Article 5 of this Annex shall be paid no later than 20/12 of the current year for that competition season."

6. Clause 7 of the Annex reads as follows:

"The contracting parties agree that all amounts specified in this annex, whether fixed payments and/or bonuses represent the net amount which will be paid to the

ASSISTANT COACH TO THE HEAD OF THE EXPERT STAFF in the local official currency (dinar of the Republic of Serbia) according to the middle exchange rate of the National Bank of Serbia on the day of payment. Based on this amount in local currency, the Club will calculate and pay taxes on wages and contributions In accordance with Article 84a of the Law on Income Tax in Serbia, and the ASSISTANT COACH TO THE HEAD OF THE EXPERT STAFF will pay annual personal income tax in accordance with the decision of the competent tax administration of the Republic of Serbia.

*ASSISTANT COACH TO THE HEAD OF THE EXPERT STAFF agrees that the Club will **pay** taxes and contributions on the minimum wage from the basic contract on professional work while for the amount representing the difference from Article 5, paragraph 1, point 3 and the amount of the minimum earnings, taxes will be paid in accordance with the provisions of Article 84a of the Law on Income Tax of the RS."*

7. On 22 December 2023, the Claimant put the Respondent in default and requested payment of EUR 114,900 net corresponding to the unpaid bonuses: EUR 22,500 for winning the 2022/2023 national championship; EUR 7,500 for winning the 2022/2023 national cup; EUR 4,950 x 2 = EUR 9,900 for winning two matches in the group stage of the 2022/2023 UEFA Europa League; EUR 75,000 for qualifying for the group stage of the 2023/2024 UEFA Champions' League. The Claimant set a 10 days' time limit in order to remedy the default.

II. Proceedings before FIFA

8. On 14 February 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

9. The Claimant requested that the outstanding remuneration of EUR 114,900 be paid in full. In his claim, the Coach indicated that the Club achieved the following results during the term of the Coach's employment:
 - The Club won the national league in the 2022/2023 season.
 - The Club won the national cup in the 2022/2023 season.
 - The Club qualified for the Champions' League group stage. The 2023/2024 season was directly influenced by the victory in the 2022/2023 national championship.
 - Additionally, two matches were won in the UEFA Europa League 2022/2023 group stage (on 6 October and 27 October 2022, respectively)

10. Consequently, the Coach argued that the conditions stipulated in clause 5 of the Annex were fulfilled and therefore, he is entitled to a total bonus of EUR 114,900 net in RSD equivalent:
- EUR 22,500 net for winning the 2022/2023 national championship;
 - EUR 7,500 net for winning the 2022/2023 national cup;
 - EUR 75,000 net for qualifying for the group stage of the 2023/2024 UEFA Champions' League;
 - EUR 4,950 net x 2 = EUR 9,900 net for winning two matches in the group stage of the 2022/2023 UEFA Europa League.
11. To support the above, the Coach provided documents referring to the mentioned results.
12. The Claimant requested the following relief:

"1. The claim of the Claimant, Mr Poya Asbaghi, Sweden, is accepted.

2. The Respondent, Football Club Crvena Zvezda, Serbia, has to pay the Claimant, Mr Poya Asbaghi, Sweden, the amount of EUR 114,900 net in RSD equivalent as outstanding bonuses, plus interest as follows:

• 5% p.a. on the amount of EUR 30,000 net in RSD equivalent as from 21 September 2023 until the date of effective payment;

• 5% p.a. on the amount of EUR 84,900 net in RSD equivalent as from 21 December 2023 until the date of effective payment.

3. The Respondent, Football Club Crvena Zvezda, is sanctioned in accordance with Article 7 paras. 2, 4 of the Annexe 2 of the FIFA RSTP with a sanction determined at the discretion of the FIFA PSC."

b. Position of the Respondent

13. In its reply, the Respondent requested to reject the claim.
14. The Respondent did not dispute that the following amounts were due: (i) EUR 22,500 the bonuses' payment for winning the 2022/2023 national championship; (ii) EUR 7,500 for winning the 2022/2023 national cup; and (iii) EUR 9,900 for winning two matches in the group stage of the 2022/2023 UEFA Europa League. However, the Respondent mentioned that it could not pay the aforementioned amounts to the Coach's bank account in United

Arab Emirates, as agreed in clause 7. 2 of the Annex and clause 3 of the Contract and in accordance with the art. 34 of the Law on foreign currency transaction of the Republic of Serbia.

15. With regard to the bonus of EUR 75,000 for qualifying for the group stage of the 2023/2024 UEFA Champions' League, the Respondent argued that this claim was unfounded. In particular, the Club argued that:

"the Club did not "qualify" in the group stage of the UEFA Champions league because Club did not play any qualification. So, the will of the parties was that Club will pay this bonus to the Coach only in the case if Club through qualification come to group stage of UEFA Champions league but not in the case if Club will be member of group stage UEFA Champions league directly without playing any qualification.

In this matter this last was happened. The Club become member of group stage of UEFA Champion League without playing any qualification which means that Club did not "qualify". Because of the coefficient of Serbia and because of the fact that Club become champion in Serbia we achieved direct placement into group stage of UEFA Champion League without playing any qualification."

16. In consideration of the aforementioned details, the Respondent asserted that the parties only consented to the implementation of this bonus in the event of the Respondent's qualification, which ultimately did not occur. It was not established that the parties had reached an agreement regarding the payment of a UEFA Champions League bonus in the event that the Club secured direct qualification for the group stage of the UEFA Champions League without the necessity of participating in any qualifying matches.
17. Moreover, the Respondent mentioned that *"from the claim of the Coach it is not dispute that Club become member of the group stage of UEFA Champions League without playing qualification for that. As it is also undisputed and in connection to the UEFA regulations for the Champions League, any football club starts plays from 1 round until 4 round qualifications for the group stage of the UEFA Champions League. That playing depends of the coefficient of the Club and country"*
18. In the light of the foregoing, the Claimant is not entitled to EUR 75,000.
19. The Respondent requested the following relief:

"1. The Claim of the Claimant, Coach Mr. Poya Asbaghi shall be rejected in full.

2. All costs of these proceedings shall be charged to the Claimant."

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 she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 14 February 2024 and submitted for decision on 11 June 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 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 (June 2024 edition), the Players' Status Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Swedish Coach and a Serbian club.
22. Finally, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (June 2024 edition), and considering that the present claim was lodged on 14 February 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 she may consider evidence not filed by the parties, including without limitation the evidence generated by or within the TMS (Transfer Matching System).

c. Merits of the dispute

24. The 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 she will refer only to the facts, arguments, and documentary evidence, which she 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 the lawfulness of the non-payment of certain financial obligations under the contract and the Annex, namely EUR 114,900 net, corresponding to some performance bonuses.
26. In this context, the Single Judge noted that neither party contested the non-payment of the amounts claimed by the Claimant. Therefore, she acknowledged that her task was to determine, based on the arguments presented by the parties, whether the Claimant was entitled to such bonuses and whether the Respondent had a valid justification for not having complied with its financial obligations.
27. The Single Judge took note that the Respondent acknowledged that it owed the amounts of (i) EUR 22,500 net for winning the 2022/2023 national championship; (ii) EUR 7,500 net for winning the 2022/2023 national cup; and (iii) EUR 9,900 net for winning two matches in the group stage of the 2022/2023 UEFA Europa League; however it mentioned that, due to the restrictions on payments in Serbia, and in accordance with Serbia's regulations and Clause 7.2 of the Annex and Clause 3 of the Contract, these payments can only be made in Serbian Dinars and into a Serbian bank account.
28. In this regard, the Single Judge recalled the wording of clause 7 of the Annex:

"The monthly fee stipulated in Article 5 of this Annex is paid no later than the 25th of the month for the previous month.

Prizes for achieved sports results or premiums in the Serbian Championship or won double crown provided for in Article 5 of this Annex shall be paid no later than 20/09 of the current year for the previous competition season.

Awards for achieved sports results or premiums in the Champions League and Europa League provided for in Article 5 of this Annex shall be paid no later than 20/12 of the current year for that competition season. (Emphasis added)

29. In consideration of the aforementioned details, the Single Judge determined that the national bonuses were to be paid no later than September 20th of the current year, while the international bonuses (i.e., for the Champions League and Europa League) were to be paid no later than December 20th of the current year. Consequently, the Single Judge concluded that such bonuses were to be paid after the termination of the Contract on 30 June 2023.

30. Furthermore, the Single Judge recalled that the Respondent indicated that it was not possible to remit payments to a foreign bank account. However, the Single Judge noted that, when signing the Contract and its Annex, there was already a possibility that the amounts in question could become due and payable after the Contract would have ended. Therefore, it was not foreseen that the Coach would be obliged to have a bank account in Serbia after his contract ended. In addition, neither the Serbian laws cited by the Respondent nor the Contract itself establish that it is not possible to make payments to a foreign account. Finally, as per the Procedural Rules, a party is obliged to present the Bank Account Registration Form in its own name, a requirement which was met here. However, The Single Judge pointed that there is no requirement to have a Bank Account Registration Form containing the details of a bank account from the Respondent's country. Therefore, Single Judge concluded that the Claimant is entitled to EUR 39,900 net.
31. In parallel, the Single Judge observed that (i) the Contract and its Annex stipulated the amounts due to the Claimant in EUR currency, (ii) the Contract and Annex also mentioned that the amounts were to be paid in RSD currency using the exchange rate on the date of payment, and (iii) the Respondent did not provide information or evidence regarding the applicable exchange rates. In view of these circumstances, and especially considering that the Contract also established EUR as the base currency, the Single Judge concluded to use the EUR currency.
32. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay the Claimant the amounts claimed as outstanding under the Contract, in total EUR 39,900 net, as detailed above.
33. In addition, taking into account the Claimant's request as well as the constant practice of the Players' Status 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 the following dates:
 1. On the amount of EUR 30,000 net, 5% *p.a.* as from 21 September 2023 until the date of effective payment;
 2. On the amount of EUR 9,900 net, 5% *p.a.* as from 21 December 2023 until the date of effective payment.
34. Then, the Single Judge moved on to the analysis of the payment of EUR 75,000 net in reference to the bonus in case the Club qualifies for the Champions' league group stage which is disputed by the parties. In this respect, we observed that the club confirmed that its team was in the group stage of the Champions League, but claimed that such result is not linked with the Club's qualification, as it became member of group stage of UEFA Champion League without playing; rather, it was because of (i) Serbia's coefficient and (ii) the fact that Club became champion in Serbia.
35. With the above in mind, the Single Judge turned her attention to the documentation on file and, specifically, to the wording of clause 5 of the Annex. By doing so, the Single Judge

noted that such provision is clear and unequivocal and, hence, does not leave room for interpretation. Accordingly, the Single Judge determined that, as the Club concluded the Serbian League in a first-place position, the Club was thereby able to qualify directly to the group phase of the Champions League, thereby avoiding having to play a potential preliminary qualifying tournament as well as any risk of not qualifying at all. The Single Judge thus concluded that the conditions of clause 5 of the Annex were met, and the Club was thus qualified to the group stage of the 2023/2024 UEFA Champions League.

36. Therefore, the Single Judge determined that the Coach is entitled to the aforementioned bonus. Furthermore, the Single Judge asserted that if the parties wish to be precise regarding the manner of qualifications and the triggers for bonuses, this must be explicitly stated in the Contract and/or Annex.
37. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay the Claimant the amounts claimed as outstanding under the Contract, in total EUR 75,000 net, as detailed above.
38. In addition, taking into account the Claimant's request as well as the constant practice of the Players' Status Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% *p.a.* on the amount of EUR 75,000 net, 5% *p.a.* as from 21 December 2023 until the date of effective payment.

ii. Art. 7 of the Annexe 2 of the Regulations

39. In continuation, the Single Judge referred to art. 7 par. 2 of Annexe 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 7 par. 4 of Annexe 2 of the Regulations.
40. To this end, the Single Judge confirmed that the Coach put the club in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
41. Accordingly, the Single Judge confirmed that the club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 7 of Annexe 2 of the Regulations was met in the case at hand.
42. The Single Judge further established that by virtue of art. 7 par. 4 of Annexe 2 of the Regulations she has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the first offense by the club within the last two years, the Single Judge decided to impose a warning on the club in accordance with art. 7 par. 4 lit. a) of Annexe 2 of the Regulations.

43. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 7 par. 6 of Annexe 2 of the Regulation.

iii. Compliance with monetary decisions

44. 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.
45. 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.
46. 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 2 of the Regulations.
47. 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.
48. 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

49. 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.
50. 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.

51. 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, Poya Asbaghi, is accepted.
2. The Respondent, Crvena Zvezda, must pay to the Claimant the following amount(s):
 - **EUR 30,000 as outstanding remuneration** plus 5% interest *p.a.* as from 21 September 2023 until the date of effective payment;
 - **EUR 84,900 as outstanding remuneration** plus 5% interest *p.a.* as from 21 December 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.
8. A **warning** is imposed on the Respondent (cf. Art. 7 par. 4 Annexe 2 of the Regulations on the Status and Transfer of Players).

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 Governing the Football Tribunal).

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