

Decision of the Players Status Chamber

passed on 22 March 2022

regarding a contractual dispute concerning the match agent Moez Brahmi

BY:

Ms Julie Jørgensen (Denmark), Single Judge of the PSC

CLAIMANT:

Moez Brahmi, Tunisia

Represented by Eleven International SRPL

RESPONDENT:

Sierra Leone Football Association, Sierra Leone

I. Facts of the case

1. On 26 September 2021, the Tunisian match agent, Moez Brahmi (hereinafter: *the Claimant*), and the association, Sierra Leone Football Association (hereinafter: *the Respondent*), signed two tripartite contracts with Fédération Comorienne de Football (hereinafter: *FCF*) concerning the organisation of two friendly matches between the Respondent and the FCF:
 - a. friendly match on 5 October 2021 in Tunisia (hereinafter: *Contract 1*); and
 - b. friendly match on 8 October 2021 in Tunisia (hereinafter: *Contract 2*).
2. In accordance with both Contract 1 and Contract 2, the parties agreed to a penalty clause in the amount of EUR 25,000 each if “(...) one of the teams or the agent cancel the match in the last 30 (thirty) days (...)” (hereinafter: *Penalty Clause*).
3. On 26 September 2021, the Claimant provided the fully executed copies of Contract 1 and Contract 2 to the Respondent, instructed it to request authorisation from Fédération Tunisienne de Football (hereinafter: *FTF*) and provided a draft letter for the Respondent to send to FTF.
4. On 28 September 2021, the Claimant requested authorisation from the Confederation of African Football (hereinafter: *CAF*) (with the FIFA general secretariat (hereinafter: *the FIFA Secretariat*) in copy) for the two friendly matches between the Respondent and the FCF in relation to Contract 1 and Contract 2.
5. On the same day, i.e. 28 September 2021, the FIFA Secretariat reminded the Claimant and the Respondent that the Respondent had already applied for two Tier-1 matches in Morocco scheduled for 6 and 9 October 2021 and that scheduling further matches would be contrary to FIFA regulations. In their message, the FIFA Secretariat asked the Respondent to clarify which friendly matches it wishes to proceed with.
6. On 30 September 2021, the Claimant informed the FIFA Secretariat that it had executed Contract 1 and Contract 2 with the Respondent and the FCF and enquired with the FIFA Secretariat about the alternative options concerning the scheduling of five friendly matches of the Respondent.
7. On 30 September 2021, the FIFA Secretariat informed the Respondent that it had “(...) received too many applications for Tier-1 matches concerning the Sierra Leone Men’s National Team (...)” and that the Respondent’s international friendly match applications are in breach of the Regulations on the Status and Transfer of Players (hereinafter: *RSTP*) Annexe 1, art. 1, par. 5. In the sense of the RSTP, no more than two matches could be scheduled as from Wednesday, 6 October 2021 with a minimum of two full calendar days left between two matches. The FIFA Secretariat asked the Respondent to clarify if the reported matches in

Tunisia and Morocco involve two different teams and that it needs to communicate with it directly and not through the Claimant.

8. On 4 October 2021, the Respondent informed the FIFA Secretariat (with the Claimant in copy) that it will be playing “ (...) *three (3) friendlies in Morocco from the 6th to the 12th October 2021 (...)*” and that it has “(...) *no match in Tunisia in the said period.*” (hereinafter: *Cancellation Notice*).
9. By correspondence dated 4 November 2021, the Claimant put the Respondent in default of payment of EUR 50,000 as the cumulative amount for the Penalty Clauses from Contract 1 and Contract 2 setting a time limit expiring on 9 November 2021 in order to remedy the default.

II. Proceedings before FIFA

10. On 2 December 2021, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the Claimant is detailed in continuation.
11. According to the Claimant, it is undisputable that he had entered into Contract 1 and Contract 2 with the Respondent and FCF and acted in accordance with them.
12. In that sense, the Claimant argued that the Respondent breached the Penalty Clauses of Contract 1 and Contract 2 with the Cancellation Notice, i.e. one day before the match from Contract 1 and four days before the match from Contract 2 and therefore “(...) *clearly and unequivocally cancelled the matches scheduled for October 8 and 5 October 2021 (...)*” and that “(...) *the only reason for the cancellation was that the Federation had wrongly decided to play three other matches in Morocco during the period in question.*”
13. According to the Claimant, he had received no reply from the Respondent after his default notice, i.e. the Respondent did not contest the breach of Contract 1 or Contract 2.
14. The requests for relief of the Claimant, were the following:
 - a. EUR 50,000 as penalties, i.e.
 - i. EUR 25,000 based on Penalty Clause from Contract 1;
 - ii. EUR 25,000 based on Penalty Clause from Contract 2; and
 - b. 5% interest p.a. as from 4 October 2021.
15. The Respondent did not provide a position in response to the Claimant’s claim.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

16. First of all, the Single Judge of the PSC (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 2 December 2021 and submitted for decision on 10 March 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.
17. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 22 par. 1 of the Match Agent Regulations, the Players' Status Committee is competent to deal with the matter at stake, which concerns a contractual dispute between a Tunisian match agent and an association from Sierra Leone.
18. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that the Match Agents Regulations are applicable (2003 edition) (hereinafter: *the Regulations*) as to the substance. Further, the Single Judge confirmed that in accordance with art. 26 par. 1 and 2 of the RSTP (March 2022 edition in force on the date of decision), and considering that the present claim was lodged on 2 December 2021, the August 2021 edition of said regulations is also applicable to the matter at hand as to the substance.

b. Burden of proof

19. 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 Transfer Matching System (TMS).

c. Merits of the dispute

20. 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

21. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the Claimant wishes to seek compensation on the basis of the agreed Penalty Clauses, which has remained undisputed by the Respondent.
22. In this context, the Single Judge acknowledged that her first task was to establish whether Contract 1 and Contract 2 are validly executed contracts between the Claimant, the Respondent and the FCF as parties to these tripartite agreements.
23. First, in consideration of Contract 1 and Contract 2, the Single Judge noted that they had been signed by all three parties, i.e. the Claimant, the Respondent and the FCF.
24. Second, the Single Judge noted that Contract 1 and Contract 2 are undated. Although the Claimant claimed that the Contract 1 is signed on 25 September 2021 and Contract 2 on 26 September 2021, both contracts should be considered as executed on 26 September 2021 when the FCF had delivered its signed copies of those tripartite agreements as an essential party to them.
25. Therefore, the Single Judge concluded that Contract 1 and Contract 2 are validly executed contracts between the parties, i.e. the Claimant, the Respondent and the FCF.
26. Further, the Single Judge acknowledged that her second task was to establish whether Contract 1 and Contract 2 are in compliance with the Regulations and can be submitted before the Football Tribunal for dispute resolution.
27. First, the Single Judge recalled that art. 18 par. 1 of the Regulations specifies the mandatory parts of a contract for the engagement of a match agent (hereinafter: *Mandatory Provisions*):
 - a. *"expenses for travel, board and basic living costs of the contractual parties"*;
 - b. *"the total net indemnification (after deduction of all charges, levies or taxes) due to the contractual parties"*;
 - c. *"the conditions that shall apply if a match is (or matches are) cancelled in the case of force majeure"*;
 - d. *"the conditions that shall apply if a player who was due to have been fielded under the terms of the contract does not appear in the team (including reasons of force majeure)"*; and
 - e. *"the fact that the parties concerned shall be aware of these regulations and under-take to observe the provisions therein"*.

28. Second, the Single Judge recalled that art. 18 par. 2 of the Regulations states very clearly that *"Contracts that do not include one or more of the above provisions [i.e. Mandatory Provisions] shall be null and void."* (emphasis added).
29. Third, the Single Judge examined the Contract 1 and Contract 2 in the light of the above and concluded that neither of them contains 4 out of 5 Mandatory Provisions, i.e. the only provision from the list of Mandatory Provisions is a clause concerning *force majeure* in art. 3 of Contract 1 and art. 9 of Contract 2.
30. Lastly, the Single Judge established that Contract 1 and Contract 2 are not valid contracts in accordance with the Regulations and are to be considered null and void in accordance with art. 18 par. 2 of the said Regulations.

ii. Consequences

31. Having stated the above, the Single Judge turned her attention to the question of the consequences of such null and void contracts, i.e. Contract 1 and Contract 2.
32. The Single Judge concluded that, due to the fact that both Contract 1 and Contract 2 are null and void in the context of the Regulations, there are no grounds to consider them further in the context of a dispute before the Football Tribunal and examine the merits of the Claimant's position and his requests.
33. As a consequence, the Single Judge decided that the Claimant's claim should be rejected.

d. Costs

34. 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.

IV. Decision of the Players Status Chamber

1. The claim of the Claimant, Moez Brahmi, is rejected.
2. 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 | AgentsDepartment@fifa.org | T: +41 (0)43 222 7777