

Decision of the Players' Status Chamber

passed on 08 March 2022

regarding an employment-related dispute concerning the coach Chiheb Ellili

BY:

Javier Vijande Penas, Argentina

CLAIMANT:

Chiheb Ellili, Tunisia

Represented by Ali Abbes & Mohamed Rokbani

RESPONDENT:

Al Faisaly, Jordan

I. Facts of the case

1. On 8 February 2020, the Tunisian coach, Mr Chiheb Ellili (hereinafter: *the coach* or *the Claimant*) and the Jordanian club, Al Faisaly (hereinafter: *the club* or *the Respondent*) signed a termination agreement in connection to the employment relationship previously maintained between them (hereinafter: *the termination agreement*).
2. In accordance with the termination agreement, the club undertook to pay the coach USD 24,000 corresponding to “*outstanding salaries and the penalty clause*”.
3. On 1 October 2021, the coach put the club in default and granted it with a 10 days’ deadline in order to proceed the payment of the entire amount due under the termination agreement, plus interest.

II. Proceedings before FIFA

4. On 24 January 2022, the coach lodged a claim before FIFA. In his claim, the coach referred to art. 7 of Annexe 8 (current Annexe 2) of the FIFA Regulations on the Status and Transfer of Players (RSTP) and claimed to be entitled to USD 24,000 plus 5% interest *p.a.* as from 8 February 2020. The coach also requested sporting sanctions to be imposed on the club.
5. In its reply, the club wrote as follows, quoted *verbatim*: “[...] *We would like you to know that we tried many times to contact him and resolve the issue between the parties, but we regret to inform you that he never answers, which led us to pay interests, in spite of our many tries in contracting him. So we are waiting to express our dissatisfaction with this, and we hope from your Excellence FIFA that we have always been proud and grateful, to review the complaint against us knowing that we are ready again to negotiate coach “CHIHAB ELLAILI”.*”

III. Considerations of the Players’ Status Chamber

a. Competence and applicable legal framework

6. 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 January 2022 and submitted for decision on 8 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.
7. 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 (March 2022 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 Tunisian coach and a Jordanian club.

8. 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), and considering that the present claim was lodged on 24 January 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

9. 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

10. 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

11. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that this is a claim for overdue payables in connection with the termination agreement signed between the coach and the club on 8 February 2020.
12. In this context, the Single Judge observed that it remained undisputed between the parties that the amounts claimed by the coach are due and were not paid by the club. Equally, the Single Judge was mindful that club did only argue that the payment was not made because the coach refused to receive his entitlements and/or to negotiate the debt.
13. To this extent and conversely to the club's allegations in this respect, the Single Judge highlighted that the club did not advance any evidence to demonstrate that the coach could not be reached nor that the payment could not be performed. In other words, the Single Judge was firm to determine that the club did not discharge its burden of proof in line with

art. 13, par. 5 of the Procedural Rules. Consequently, the Single Judge decided that the club's argumentation should be set aside.

14. It followed from the above, in the Single Judge's view, that the coach should be awarded the outstanding remuneration sought in accordance with the general legal principle of *pacta sunt servanda*.
15. Finally, taking into consideration the coach's request as well as the constant practice of the Players' Status Chamber in this regard, the Single Judge decided to award the coach interest at the rate of 5% *p.a.* on the outstanding amounts as from 9 February 2020 until the date of effective payment.

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

16. Having established the above, the Single Judge referred to art. 7, par. 2 of the Annexe 2 of the Regulations, which stipulates that any club or association 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 the Annexe 2 of the Regulations.
17. 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 for more than 30 days, and granted the club with 10 days to cure such breach of contract.
18. 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 the Annexe 2 of the Regulations was met in the case at hand.
19. The Single Judge further established that by virtue of art. 7, par. 4 of the 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 was 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 the Annexe 2 of the Regulations.
20. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 7, of the Annexe 2 of the Regulations.

iii. Compliance with monetary decisions

21. 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.

22. 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.
23. 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.
24. 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.
25. 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

26. 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.
27. 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.
28. Lastly, the Single Judge rejected any other requests for relief made by any of the parties.

IV. Decision of the Players Status Chamber

1. The claim of the Claimant, Chiheb Ellili, is partially accepted.
2. The Respondent, Al Faisaly, has to pay to the Claimant, the following amount(s):
 - USD 24,000 as outstanding remuneration plus 5% interest p.a. as from 9 February 2020 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. A warning is imposed on the Respondent.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players (August 2021 edition), 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.
7. The consequences **shall only be enforced at the request of the Claimant** in accordance art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
8. 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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