

# Decision of the Players' Status Chamber

passed on 19 April 2022

regarding an employment-related dispute concerning the coach **Martinus Hendrikus Wilhelmus Koopman**

**BY:**

**Farah Mohammed, New Zealand**

**CLAIMANT:**

**Martinus Hendrikus Wilhelmus Koopman, Netherlands**  
Represented by David Winnie (Blaser Mills Law)

**RESPONDENT:**

**Football Association of Maldives, Maldives**

## I. Facts of the case

1. On 16 January 2022, the Dutch coach, Mr Martinus Hendrikus Wilhelmus Koopman (hereinafter: *the coach* or *the Claimant*), and the Football Association of Maldives (hereinafter: *the Respondent*) concluded an employment contract valid as from 26 January 2021 and 25 January 2024 (hereinafter: *the employment contract*).

2. Clause 4 of the employment contract established the Claimant's responsibilities and obligations, *inter alia*:

*"[...] 4.5. Perform recruiting activities and responsibilities to meet the objectives of [the Respondent] and team, including the evaluation, contact, and establishing relationships with prospective players and coaches.*

*[...] 4.9. To support, abide and enforce all academic guidelines and policies of the FAM Technical Department of Football program to ensure academic progress of the players".*

3. In accordance with clause 5 of the employment contract, the Respondent undertook to pay the Claimant, *inter alia*, the following amounts:

a. USD 6,500 as monthly salary "on or before 1-th of each month (all charges incurred for the wire transfer of the said amount shall be deducted from the amount disbursed as salary to [the coach])";

b. USD 500 as a "monthly pocket money [...] paid in local currency at the prevailing bank rates on or before 10th of every month".

4. Additionally, clause 7 of the employment contract read as follows:

*"7. TERMINATIONS*

*Both parties may terminate this agreement upon 1 (one) month notice in writing.*

*7.1 The other in breach of any material obligation contained in this agreement, which is not remedied (if the same is capable of being remedied) within 30 (thirty) days of written notice from the other party; or*

*7.2 A voluntary arrangement is approved, a bankruptcy or an administration order is made or a receiver of administration received is appointed over any of the party's assets or an undertaking or a resolution or petition to wind up the other party is passed or presented (other than for the purposes of amalgamation of reconstructions) or any analogous procedure in the country of incorporation of either party or if any circumstances arises which the FIFA Court of arbitration for sport (Swiss) or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order in respect of the other party.*

7.3 Should any third party get in touch with any employee of [the Respondent] regarding or relating to you in your role of HEAD COACH, SENIOR MEN'S NATIONAL TEAM, contract between [the Respondent] and HEAD COACH, SENIOR MEN'S NATIONAL TEAM will be terminated.

7.4 [The Respondent] may terminate this agreement upon 1 (one) month notice in writing, or payment in lieu if:

7.5 The breach of any of the provision of this agreement by the HEAD COACH, SENIOR MEN'S NATIONAL TEAM.

7.6 If the HEAD COACH, SENIOR MEN'S NATIONAL TEAM is suspended for a period of 1 (One) week or more by a national or international sports authority; or

7.7 HEAD COACH, SENIOR MEN'S NATIONAL TEAM is detained by the concerned authorities if the Maldives for a period of 2 (two) weeks more or where there is verdict of a court holding to detain the HEAD COACH, SENIOR MEN'S NATIONAL TEAM for a period of 1 (One) week or more.

7.8 [The Respondent] for any reason, is not satisfied with the performance of HEAD COACH, SENIOR MEN'S NATIONAL TEAM and where such un-satisfaction is not remedied within a reasonable period of time after such un-satisfaction is communicated to the HEAD COACH, SENIOR MEN'S NATIONAL TEAM.

7.9 Any termination of this agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination".

5. On 4, 11 and 15 June 2021, the Respondent's national team – under the direction of the Claimant – played official matches valid for the AFC Qualifiers of the FIFA World Cup Qatar 2022®, respectively against the national teams of Syria, China PR, and the Philippines.
6. On 16 June 2021, the Respondent's President, Mr Jaleel, congratulated its team and staff for the qualification to the final round of the 2023 AFC Asian Cup.
7. On the same date, i.e. 16 June 2021, the Claimant also exchanged messages via the electronic application WhatsApp with the Respondent's representatives. On 19 June 2021, the Claimant and Mr Jaleel exchanged messages via WhatsApp regarding the future steps of training of the national team.
8. On an unspecified date (and allegedly by the Respondent's request), the Claimant submitted a technical report containing his analysis of latest fixtures and team's performance.

9. On 1 August 2021, the Respondent notified the Claimant the termination of the employment contract based on the decision of its Executive Committee, *in verbis*:

*"We are writing to inform you of the decision of the Executive Committee meeting held on 8 July 2021 of the Football Association of Maldives to terminate the Contractual Service Agreement [FAMIHR/CNT/2021/1001] that exists between you and this Association, subject to a notice period of 1 (one) month in reference Clause 7.4 of the aforementioned Agreement.*

*The decision of the EXCO was reached based on the evaluation and examination of the current status of the Senior Men's National Team and the progress reports and assessments of the Technical Department of the Association. As such in reference to Clause 7.8 of the Contractual Service Agreement the EXCO. Has decided to serve you the Letter of Termination pursuant to Clause 7.4 of the said Agreement.*

*This notice period shall commence on 01-08-2021.*

*All overdue payments including your salary, bonus payments and others as specified in the contract signed between both parties will be honoured and fulfilled by 7<sup>th</sup> August 2021.*

*We are aware and understand the fact that you are away from Maldives right now, but the news of the notice of Termination of Employment does not hinder you to travel back to Maldives to undertake all activities related to your departure from the country and will be glad to assist you in this manner.*

*It is with regret, of course, that we have had to make this decision and we whole heartedly appreciate the invaluable work you have undertaken for the Senior Men's National team during your tenure and thank you for your services".*

10. On 16 August 2021 and on 14 October 2021, the Claimant and a player from the Respondent's team exchanged messages via WhatsApp regarding the performance of the national team and the Claimant's dismissal.
11. On 17 August 2021, the Respondent paid USD 21,500 to the Claimant, under the reference of "salary for May, June & June 2021" (USD 19,500), "food allowance" (USD 1,000), and "match win bonus" (USD 1,000).

## **II. Proceedings before FIFA**

12. On 30 November 2021, 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**

13. In accordance with the Claimant, he complied with all the obligations set out in the employment contract, but the Respondent unilaterally decided to terminate their relationship without previous notice. In particular, the Claimant clarified that, after playing the AFC Qualifiers, he took a contractual leave with his family (from 4 July 2021 until 5 August 2021) and was subsequently notified that his contract had been terminated.
14. The Claimant held that the termination was flawed and without just cause. Moreover, he pointed out that Respondent had never "*communicated its dissatisfaction*" with his work – and was even more "*erroneous*" if considered his achievements, importance, and recognized merits during the term of the employment relationship.
15. In view of the foregoing, the Claimant reiterated that the employment contract was prematurely terminated by the Respondent without just cause, hence that he is entitled to compensation for breach of contract in line with art. 6 of the Annex 8 (current Annex 2) of the FIFA Regulations on the Status and Transfer of Players (RSTP), amounting to USD 210,000, as follows:
  - a. USD 195,000 corresponding to the remaining salaries (*i.e.* 30 months, from August 2021 until January 2024, being USD 6,500 each); plus
  - b. USD 15,000 corresponding to the remaining "*pocket money*" (*i.e.* 30 months, from August 2021 until January 2024, being USD 500 each).
16. Finally, the Claimant requested 5% interest *p.a.* as from "*the date of the Award*".

#### **b. Position of the Respondent**

17. In its reply, the Respondent referred to clause 7 of the employment contract and maintained that both parties had voluntarily agreed to the terms of a possible termination, which should be fully respected.
18. In addition, the Respondent (namely its Executive Committee) considered that the Claimant "*misused the staff of FAM and forced them to perform tasks beyond their job description. For instance, the Claimant has used the fitness coach for the roles of the assistant coach and the assistant coach as the fitness coach. Under the directions of the claimant, Maldives football was experiencing a sudden decline in quality and diversity. Therefore, to safeguard Maldivian football FAM was not in a position to afford any delays*".
19. In this context, the Respondent also claimed that the Claimant was aware of "*the status of the National Team*" and the Executive Committee's concerns in relation to his work. Likewise, the Respondent stated that the Claimant had been informed about the withdrawn of sponsors and donors due to the poor results achieved under his direction.

20. Furthermore, the Respondent held that the employment contract with the Claimant was only renewed due to the COVID-19 outbreak, specifically as "*a fair change to perform*". However, the Respondent alleged that the Claimant's reports had massive failures, in violation of clauses 4.5 and 4.9 of the employment contract. Therefore, the Respondent decided to terminate the employment contract, prioritizing its "*best interest*".
21. Subsequently, the Respondent pointed out that the termination was not contested by the Claimant, who was fully informed about the hand-over and acknowledge receive of all of the overdue amounts. Likewise, the Respondent recalled that it acted in line with clause 7.1 and 7.4 of the employment contract, as well as the Claimant lacks good faith.
22. Finally, the Respondent maintained that the termination of the employment contract was made with just cause and sporting cause. This, it requested the Claimant's claim to be entirely rejected.

### III. Considerations of the Players' Status Chamber

#### a. Competence and applicable legal framework

23. 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 30 November 2021 and submitted for decision on 19 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.
24. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 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 Dutch coach and the Football Association of Maldives.
25. Subsequently, 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 (March 2022 edition), and considering that the present claim was lodged on 30 November 2021, 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**

26. 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**

27. Her 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**

28. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that the case at stake pertains to a claim for breach of contract lodged by the coach against the Football Association of Maldives. Specifically, the Single Judge identified that the Respondent terminated the employment contract on 1 August 2021, and that the parties strongly dispute whether it had just cause to do so, as well as the consequences that follow.
29. In this context, the Single Judge wished to recall that, in accordance with the well-established jurisprudence of the Football Tribunal, only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit the expectation that the continuation of the employment relationship between the parties can continue, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure 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 ever be an *ultima ratio* measure.
30. With the above in mind, the Single Judge turned her attention to the documentation on file and noted that the Respondent argued that the coach gave cause to the termination of the employment contract based on: (i) his unsatisfactory performance in accordance with the position of its Executive Committee; and (ii) the submission of poor reports, in violation of the obligations set out in clauses 4.5 and 4.9 of the employment contract.

31. In light of the above, the Single Judge first of all found it essential to highlight that the jurisprudence of the Football Tribunal is solid to establish that a player's or a coach's poor performance cannot be a valid reason for an employer to cease paying due salaries or to terminate an employment contract, as this is a purely unilateral and subjective evaluation by a club and/or a member association. Likewise, potestative clauses, *i.e.* clauses that contain obligations which fulfilment are conditional upon an event that one party entirely controls, can in general not be applied, since they limit the rights of the other contractual party in an excessive manner and lead to an unjustified disadvantage of the latter towards the other.
32. Therefore, the Single Judge was firm to determine that the argumentation of the Respondent in this regard – besides of not having been substantiated with documentary evidence – could not be upheld. Along the same lines, the Single Judge deemed that clause 7.8 of the employment contract could not be taken into consideration in order to justify a termination due to its potestative nature, insofar as it refers only to the coach's performance.
33. In continuation, the Single Judge went on analysing the Respondent's allegations as to the Claimant's breach of contract (*i.e.* the alleged "massive failures" in the reports). In this respect, the Single Judge noted that the Respondent had never: *(i)* directed any specific request to coach as to the pertinent documentation; *(ii)* requested any additional information to the coach; nor *(iii)* put him in default by any means of any communication.
34. The Single Judge was then satisfied with the conclusion that the Respondent could not meet its burden of proof (*cf.* art. 13, par. 5 of the Procedural Rules) to demonstrate that the Claimant was in breach of the employment contract, let alone that he gave cause to the termination. As such, she concluded that the Respondent's argumentation should be rejected.
35. Therefore, the Single Judge decided that the employment contract was terminated without just cause and the Respondent shall be liable to the consequences that follow.

## ii. Consequences

36. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
37. The Chamber firstly observed that there was no outstanding remuneration at the time of termination.
38. Subsequently, the Single Judge turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 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 law of the country concerned, the specificity of sport and further objective criteria, including in particular, the



remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

39. In application of the relevant provision, the Single Judge held that she 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.
40. At this point, the Single Judge acknowledged that the Respondent referred to clause 7 of the employment contract and argued that it is to be considered as a valid compensation clause as it was voluntarily agreed upon between the parties. Furthermore, the Single Judge was also observant of the Respondent's position according to which the Claimant is only entitled to receive one extra month of remuneration – which was allegedly paid.
41. Accordingly, the Single Judge once again turned to the wording of the cited clause 7 of the employment contract – and especially to clause 7.4. In this respect, she was satisfied with the conclusion that it does not fulfil the criteria of reciprocity and proportionality in line with the Football Tribunal's longstanding jurisprudence because it also has a potestative nature and grants the Respondent an unjustified disadvantage over the Claimant.
42. Consequently, the Single Judge decided that clause 7 should be considered null and void, hence should not be taken into account for establishing the amount of compensation payable to the Claimant. 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 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.
43. 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 from the date of its unilateral termination until its end date. Consequently, the Single Judge concluded that the amount of USD 210,000 (i.e. three monthly salaries and pocket moneys) serves as the basis for the determination of the amount of compensation for breach of contract.
44. In continuation, the Single Judge verified as to 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. In this respect, the Single Judge underlined that the coach remained unemployed after the termination, hence was not able to mitigate his damages.
45. For the sake of completeness, the Single Judge also stressed that no additional compensation should be granted in the case at hand taking into consideration that the employment contract

was terminated by the club and did not take place due to overdue payables as required by the Regulations.

46. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of USD 210,000 to the coach, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
47. Lastly, taking into consideration the coach's request as well as the constant practice of the Football Tribunal in this regard, the Single Judge decided to award the coach interest on said compensation at the rate of 5% *p.a.* as of the date of the decision until the date of effective payment.

### iii. Compliance with monetary decisions

48. 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.
49. In this regard, the Single Judge highlighted that, against associations, the consequence of the failure to pay the relevant amounts in due time shall consist of a restriction on receiving a percentage of development funding, up until the due amounts are paid.
50. 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 creditor, a restriction on receiving a percentage of development funding shall become immediately effective on the association in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
51. 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.
52. The Single Judge recalled that the above-mentioned ban will be lifted immediately upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

### d. Costs

53. 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.

54. 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.
55. 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, Martinus Hendrikus Wilhelmus Koopman, is partially accepted.
2. The Respondent, Football Association of Maldives, has to pay to the Claimant, the following amount(s):
  - USD 210,000 as compensation for breach of contract plus 5% interest *p.a.* as from 19 April 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 restricted on receiving a percentage of developing funding, up until the due amounts are paid.
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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