

Decision of the Single Judge of the Players' Status Committee

passed on 6 April 2021

regarding an employment-related dispute concerning the coach Denis Kavan

BY:

Castellar Guimarães Neto (Brazil), Single Judge of the PSC

CLAIMANT:

Denis Kavan, Czech Republic
Represented by Mr. Peter Lukasek

RESPONDENT:

CS Gaz Metan Medias, Romania
Represented by Ms. Anca Alina Iordanescu

I. FACTS OF THE CASE

1. On 8 June 2020, the Czech goalkeeper coach, Mr. Denis Kavan (hereinafter: *the coach* or *the Claimant*), and the Romanian club, CS Gaz Metan Medias (hereinafter: *the club* or *the Respondent*) signed an employment contract valid as from 15 June 2020 until 30 June 2021 (hereinafter: *the contract*).
2. In accordance with clause IV of the contract, the club undertook to pay the coach a monthly salary of EUR 2,500 net.
3. Additionally, clauses IV (b) and (c) of the contract also established the following:

"b) Bonuses. For the sports performances achieved by the Team during the execution of the present contract, the coach will benefit of result-bonuses, in accordance with the Club's rewards regulations as follows:

 - 300 Euro net for each point won in an official match. Half of the bonus is to be paid on the 20th of the month, and the other half is paid if the team reaches the Play-off of the 2020-2021 Championship;
 - 15.000 Euro net for joining the Play-off of the 2020-2021 Championship.

c) Other rights:
During the execution of the sports activity contract the club will provide the Coach with accommodation at the Club's hotel or in an apartment within the amount of 300 Euro net monthly".
4. Finally, clause XII of the contract read as follows: *"The Parties shall, in good faith, make every effort to amicably resolve any dispute, controversy or misunderstanding arising from or in connection with this contract. Disputes concerning the conclusion, execution, modification, suspension or termination of this contract, shall be resolved by the jurisdictional bodies of FRF, or by the competent territorial and subject-matter jurisdictions, when the above jurisdictional committees do not have jurisdiction to resolve the dispute. Specifically, any disputes arising from the execution of this contract shall be resolved by the National Dispute Resolution Chamber within FRF, its decisions may be appealed to the Appeals Commission within FRF".*
5. On 7 October 2020, the club sent the coach a written notice stating, *inter alia*, that: *"in view of the discussions between [the coach] and the representatives of the club related to the termination by agreement of the Sports Activity Contract no 553/08.06.2020 [...] the parties agree that [the coach] will not appear at any training session, official or friendly games or any other activity of the club, until the termination of the contract".*
6. On 9 October 2020, the coach and his colleague, Mr. Dragos Dorian Picu (hereinafter: *Mr. Picu*), allegedly tried to access the club's stadium for a training session of the senior team

and were stopped by the security guard on duty who informed that they *"were no longer allowed in the yard"*.

7. On the same date, 9 October 2020, the coach sent the club a first notice stating, *inter alia*, that the coach (i) received the club's communication according to which it was no longer interested in the coach's services; (ii) had his access to the club's facilities restricted in absolute manner; and, consequently (iii) was not allowed to fulfil his contractual duties without a *prima facie* contractual reason. The coach also requested *"immediate and full reinstatement"* to his position in the club's senior team and warned the club that *"any continuance of abusive treatment will constitute breach of Contract"*.
8. In the same letter, the coach wrote the following: *"Without prejudice to the arguments herein, and taking into account your club's lack of interest in services of [the coach] that was very clearly documented, we are willing to negotiate mutual termination of the Contract on the following terms: (i) [the coach] shall agree with mutual termination of the Contract provided that your club pays 80% of the remaining value of the Contract (remaining value of the Contract is 2.500,00 EUR/NET/monthly until June 2021 inclusive) along with any outstanding and overdue payments and reimbursements, all within 7 days after signing of the agreement on mutual termination"*.
9. On 10 and 12 October 2020, the coach and Mr. Picu once again purportedly tried to access the club's stadium and allegedly faced the same prohibition by the guards on duty.
10. On 12 October 2020, the club provided its answer to the coach's first notice and informed the following: *"we are willing to negotiate and to agree with mutual termination of the Contract, compensating [the coach] with the amount of 12.500 euro/net, payable within 3 business days after signing of the agreement on mutual termination. Also, for clarification purposes, [the coach] was not forbidden to enter the stadium but instructed to use the offices entrance, aspect that appears also in the video recording made by [the coach] together with Mr. Picu. Moreover, as you confirmed, your client have received the written communication of 7 October whose content is self-explanatory"*.
11. Also on 12 October 2020, the coach replied to the club's correspondence, denying its proposal and making a counterproposal to the club's administration in the total of EUR 19,300 net, plus a contractual penalty in case of delay. At the end of the e-mail, the coach wrote the following: *"I am at your disposal if you decide to accept the terms. If not, please allow [the coach] to fulfil his contractual obligations pursuant to the contract until the expiration of the term"*.
12. On 13 October 2020, the coach tried to enter the club's stadium via *"employee entrance"* but was one more time denied access.
13. On 14 October 2020, the coach sent the club a second notice informing, *inter alia*: *"following your 'advice' the coach used the 'employee' entrance on 13 October 2020 and although he got into the facility, he was shortly after escorted out of the stadium by one of*

the bodyguards acting under the instructions of the club". The coach requested to be immediately reinstated to his position in the club and pointed out the following: "in order to avoid any other conflicting situation and because [the coach] is afraid of abusive and physical actions that might be taken against him by the bodyguards, he will no longer be trying to enter the facilities of the club, until of provide clear information he will be allowed to do so and you assure that he will be not disturbed in following his duties to the Contract".

14. On 21 October 2020, the coach sent the club a third and final notice of breach of contract, stating, *inter alia*, the following: "as an act of final warning, we hereby request immediate and full reinstatement of [the coach] to the position of your club's senior team coach and at the same time warn you that denying such access of [the coach] into the club's facilities one more time, will be considered as unilateral termination of Contract without just cause by your club and [the coach] shall be entitled to damages in the value of remaining value of the Contract".
15. On 22 October 2020, the coach allegedly went to the club's stadium and was forbidden by the guard on duty to access the facilities.
16. On 27 October 2020, the coach notified the club the termination of the contract with just cause. Accordingly, the coach requested payment of (i) EUR 4,300 net as outstanding remuneration; and (ii) EUR 20,000 net as compensation for breach of contract.

II. PROCEEDINGS BEFORE FIFA

17. On 3 December 2020, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. The claim of the coach

18. In his claim, the coach stressed that he had just cause to terminate the contract with the club and, hence, claimed payment of outstanding remuneration and compensation for breach of contract, as follows:
 - a. Outstanding remuneration in the amount of EUR 4,300 net, plus 5% interest *p.a.* as from 27 November 2020 until the date of effective payment, broken down as follows:
 - i. EUR 2,500 net as salary for the month of September 2020;
 - ii. EUR 1,050 net as bonuses for 7 points won – 3 points on 28 August 2020, 3 points on 12 September 2020; and 1 point on 4 October 2020; and
 - iii. EUR 750 net as reimbursement of accommodation expenses for the months of August (50%), September (100%) and October 2020 (100%).

- b. Compensation for breach of contract with just cause by the coach in the amount of EUR 22,500, plus 5% interest *p.a.* as from 27 November 2020 until the date of effective payment.
19. To this extent, the coach argued that the club *"effectively barred the Claimant from the first team and from exercising his rights as a football coach without any prima facie basis for such exclusion and breaching his fundamental rights of a football coach"*. Consequently, the coach stated that the club's conduct *"amounted to unilateral termination of his Employment contract due to the Respondent's severe and material breach"*.
20. In support of the above, the coach referred to the notice sent by the club on 7 October 2020 and held that, even though he had not accepted to be dismissed, the club lost its interest in maintaining a contractual relationship with the coach and simply barred him from any team activities. Moreover, the coach also pointed out that the club *"instructed its employees (guards) not to allow access of the Claimant into the Respondent premises (stadium) in order for Claimant to exercise his rights and duties of a football coach"* and *"without giving any reasons"*.
21. Subsequently, the coach recalled the three default notices sent to the club, remarking that the club did not even reply to part of his correspondences, as well as it did not adopt remedy the situation.
22. Based on the foregoing, the coach turned his attention to compensation sought from the club. In this respect, the coach recalled the content of clause IV of the contract and argued that its residual value was EUR 22,500, corresponding to his salaries from October 2020 until June 2021.
23. Finally, as to the outstanding remuneration, the coach stated that he did not receive his salary of September 2020, nor the relevant bonuses corresponding to the 7 points won while his contract was still active. Additionally, the coach also requested the reimbursement of his accommodation expenses.

b. Position of the club

24. In its reply to the claim, the club initially objected to *"FIFA's jurisdiction to settle this dispute, by considering: firstly, the relevant provisions of the FIFA Regulations and their interpretation; secondly, the direct reference to arbitration contained in the Contract and finally, the legal situation and the provisions of the Romanian statutes and regulations"*.
25. In support of its allegations, the club submitted that: (i) *"the jurisdiction of the independent arbitration derived from a clear reference in the employment contract, respectively from the final thesis of art. XII – Dispute resolution – of the Agreement"*; and (ii) *"there is an independent arbitration tribunal established in Romania, respectively the National Dispute Resolution Chamber"* which supposedly *"guarantees fair proceedings and respects the principle of equal representation of players and clubs and meets the minimum procedural"*

standards for independent arbitration tribunals as laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, in the FIFA Circular n. 1010 as well as in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations".

26. As to the substance, the club stated the following: "*there is no unilateral act of will of the club that would have led to the termination of the sports activity agreement between the parties. The Agreement was merely suspended not terminated*". The club also mentioned that "*the parties only discussed the possibility of amicably terminating the contractual relations by agreement of the parties*".
27. Furthermore, the club referred to a text message supposedly sent by a coach's intermediary to the club proposing an agreement in which the coach would pay for the termination of the contract.
28. Lastly, the club recalled the content of art. 26 of the Romanian Regulations on the Status and Transfer of Players in order to inform that "*by notification of October 7, the Club did not terminate the contract concluded with the claimant*" and that "*the contractual norm does not contain the rights of the coach but his obligation to participate in the activities of the club if requested to do so*".
29. In light of the above, the club requested the coach's claim to be deemed inadmissible due to the lack of competence of the FIFA's judicial bodies. Alternatively, the club claimed that the coach's claim should be dismissed.

III. CONSIDERATIONS OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

a. Competence and admissibility

30. First of all, the Single Judge of the Players' Status Committee (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 3 December 2020 and submitted for decision on 6 April 2021. Taking into account the wording of art. 21 of the January 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
31. Subsequently, the Single Judge referred to art. 3 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 (edition February 2021), he is in principle competent to deal with the matter at stake, which concerns an employment-related dispute between a Czech coach and a Romanian club.

32. However, the Single Judge acknowledged that the Respondent contested his competence on the basis of clause XII of the contract, highlighting that the parties to the contract had agreed to submit any dispute to the "*independent arbitration tribunal established in Romania*".
33. In this respect, and regardless of the fact that the relevant contract contains a reference to dispute resolution at national level, the Single Judge was firm to consider that such provision cannot be considered as a clear and exclusive jurisdiction clause as it is rather vague and does not explicitly refer to one specific national dispute resolution chamber or any similar arbitration body in the sense of art. 22 lit. c) of the Regulations on the Status and Transfer of Players.
34. In view of the foregoing, the Single Judge concluded that his jurisdiction could not be set aside on these grounds, as the jurisdiction of the Romanian National Dispute Resolution Chamber does not derive from a neither clear nor exclusive reference in the contract.
35. Therefore, and considering that no clear and exclusive jurisdiction clause was included in the contract, the Single Judge established that the Respondent's objection to the competence of FIFA to deal with the present matter has to be rejected and confirmed that he is competent to hear the dispute at stake.

b. Applicable legal framework

36. The Single Judge further 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 Player (edition February 2021), and considering that the present claim was lodged on 3 December 2020, the October 2020 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

c. Burden of proof

37. In continuation, the Single Judge recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 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. 12 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties.
38. Accordingly, the Single Judge also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

d. Merits of the dispute

39. 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

40. The foregoing having been established, the Single Judge moved to the substance of the matter and observed that the issue at the center of the dispute is whether the coach had just cause to terminate the contract, and the consequences thereto.
41. The Single Judge acknowledged, thus, that he had to examine whether the reasons put forward by the coach could possibly justify the termination of the contract in the present matter.
42. In this context, the Single Judge emphasised that 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 to ensure employee party's fulfilment of its 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.
43. Bearing in mind the foregoing, the Single Judge took note of the fact that the club, by means of its letter of notice dated of 7 October 2020, expressly formalized that it had the intention to terminate the coach's contract. In addition, the Single Judge observed that the parties exchanged correspondences regarding the possible terms of an agreement for the amicably settlement of their contractual relationship, however no solution was reached.
44. Notwithstanding the above, the Single Judge was of the opinion that the documentation brought forward by the coach could sufficiently demonstrate that the club unilaterally prevented him from carrying out his activities, by repeatedly forbidding his entry on the club's premises. In this regard, the Single Judge considered that the coach filed enough evidence to prove that the club instructed its employees on duty to prevent the coach's access to the club's facilities and trainings, without any factual, legal and/or contractual reasoning. In particular, the Single Judge highlighted the footage found on record to this extent.
45. The Single Judge further mentioned that, apart from the termination notice, the coach had also sent the club three formal notices in order to remedy its default, however, to no avail. Moreover, the Single Judge wished to highlight that it became undisputed between the

parties that the club also failed to pay the coach part of his remuneration (i.e. salaries, bonuses and housing allowance), once again violating its contractual duties.

46. Based on the aforementioned considerations and as per the solid Players' Status Committee's jurisprudence, such persistent and substantial non-compliance of the contractual obligations by the club can justify the unilateral termination of the contract as well as it can hold the club liable for breach of contract.
47. Therefore, the Single Judge concluded that the coach had just cause to terminate his contract with the club.

ii. Consequences

48. Having stated the above, the Single Judge turned his attention to the question of the consequences of the termination of the contract by the coach with just cause. In this regard, the Single Judge sought to establish whether any salaries had remained outstanding at the time of the termination.
49. With due consideration of the above, the Single Judge noted that the coach asserted that at the time of the premature termination by the coach, his salary of September 2020 was outstanding, as well as his bonuses for performance – which were sufficiently proved by the coach and remained uncontested by the club.
50. Furthermore, regarding the reimbursement of the housing allowance, the Single Judge highlighted that: (i) the contract expressly stipulated the monthly amount due to the coach; (ii) the club, even though having the opportunity to do so, did not dispute the amount claimed. Thus, the Single Judge decided to award the reimbursement of the expenses as requested by the coach.
51. Consequently and in accordance with the general principle of *pacta sunt servanda*, the Single Judge stressed that the club must fulfil its obligations towards the coach and is to be held liable for the payment of outstanding remuneration in the total amount of EUR 4,300.
52. With regard to the claimed interest, the Single Judge, applying the constant practice of the Players' Status Committee decided to award the coach 5% interest *p.a.* on the amount of EUR 4,300 as from 27 November 2020 until the date of effective payment.
53. Bearing the previous considerations in mind, the Single Judge went on to deal with the consequences of the early termination of the contract with just cause by the coach. Therefore, the Single Judge decided that the coach is entitled to receive compensation for breach of contract from the club, in addition the aforementioned outstanding remuneration and its respective interest.
54. In this context, the Single Judge outlined that he first had to clarify whether the contract contained any clause by means of which the parties had previously agreed on compensation

payable by the contractual parties in the event of breach. 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.

55. Bearing in mind the foregoing, and in order to evaluate the compensation to be paid by the club, the Single Judge took into account the remuneration due to the coach in accordance with the contract as well as the time remaining on the same contract, along with the professional situation of the coach after the early termination occurred.
56. For the sake of clarity, the Single Judge emphasized that in line with the coach's claim and the evidence on file, there were still nine months remaining to the expiry of the contract at the time of termination (*i.e.* from October 2019 until June 2021).
57. Consequently, taking into account the financial terms of the contract the Single Judge concluded that the remaining value of the contract from the early termination until the regular expiry of the contract amounts to EUR 22,500 and that such an amount shall serve as the basis for the final determination of the amount of compensation due for breach of contract.
58. In continuation, the Single Judge observed that following the early termination of the contract at the basis of the present dispute, the coach had not found new employment. Consequently, the Single Judge established that the coach could not mitigate the damages suffered.
59. In view of all of the above, the Single Judge decided that the club must pay the amount of EUR 22,500 to the coach as compensation for breach of contract, which is considered by the Single Judge to be a reasonable and justified amount of compensation.
60. With regard to the claimed interest, the Single Judge, applying the constant practice of the Players' Status Committee decided to award the coach 5% interest *p.a.* on the said amount as from the date of the claim (*i.e.* 3 December 2020).

e. Costs

61. Lastly, the Single Judge referred to article 18 par. 1 lit. i) of the Procedural Rules, according to which no costs shall be levied by the parties for claims lodged between 10 June 2020 and 31 December 2020 (both inclusive). Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
62. Likewise and for the sake of completeness, the Single Judge recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

IV. DECISION OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

1. The claim of the Claimant, Denis Kavan, is partially accepted.
2. The Respondent, CS Gaz Metan Medias, has to pay to the Claimant, the following amounts:
 - EUR 4,300 as outstanding remuneration plus 5% interest p.a.as from 27 November 2020 until the date of effective payment; and
 - EUR 22,500 as compensation for breach of contract plus 5% interest p.a.as from 3 December 2020 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.
5. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).
6. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 30 days**, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:
 1. In the event that the payable amount as per in this decision is still not paid by the end of the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.
7. This decision is rendered without costs.

For the Single Judge of the Players' Status Committee:



Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 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 20 of the Procedural Rules).

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