

Decision of the Players Status Committee

passed on 6 April 2021

regarding an employment-related dispute concerning the coach Fernando Andrés Santiago Varela

BY:

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

CLAIMANT:

Fernando Andrés Santiago Varela, Spain

RESPONDENT:

Gokulam FC, India

I. Facts

1. On 12 February 2018, the parties entered into an "international chief coach contract", valid as from 12 February 2018 until 28 February 2019.
2. According to point 2.2 of the contract, the coach was entitled to INR 150,000 per month "Less TDS" [Tax deducted at source].
3. On 25 June 2019, the parties entered into a "coach agreement" (the second agreement), valid as from 1 July 2019 until 31 May 2020.
4. Point 2 of the second contract stipulated the following:
 - "2.2 The Club shall pay to the Coach a monthly salary of Rs 1,50,000 (INR One lakh Fifty thousand only equivalent to 2158 USD less TD -. all amounts required to be deducted by the law of the land as applicable to a Foreign professional player, currently now it is 20%) at the end of every month starting from 01/07/2019 till the end of the last match match of the season or 31/05/2020 whichever is earlier to be paid on or before 15th of the succeeding month
 - 3. The Club shall provide the Coach with one single room in the Club's Apartment with common kitchen and dining room.
 - 2.4 In case or violation of discipline or misconduct The Club shall take necessary action towards The Coach according to the Rules and Regulations of The Club.
 - 2.5 During the season, the club will provide the Coach with one flight ticket from Home Town in Spain lo Calicut and one flight ticket from Calicut to Home Town in Spain. Excess baggage charges if any, should be borne by the coach and should not be claimed with the club.
 - 2.6 The Club shall provide transportation from residence to training ground and back." (...)
 - 5.1. The Coach shall not be responsible for complying with any provisions or decisions of The Club not included in the Agreement.
5. On 14 March 2020, the AIFF suspended the competitions in India due to the outbreak of the COVID-19 pandemic until 15 April 2020.
6. On 23 November 2020, the Claimant lodged a claim before FIFA and requested the following amounts:
 - USD 11,245.38, as outstanding remuneration, further detailed as follows:
 - SEASON 2018/2019:
 - Taxes: USD 1,217,70
 - SEASON 2019/2020:
 - April 2019: USD 2,158
 - May 2019: USD 2,158
 - Food (July 2018 to May 2018): USD 1,401.68
 - Air Ticket from Calicut to Mumbai: USD 1,148
 - Air Ticket from Mumbai to Barcelona: USD 163
 - Taxes: USD 2,999
 - USD 12,948, as compensation for breach of contract without just cause under specificity of sport and art. 5 par 1 of the contract and on the basis of the "egregious" circumstance (art. 17 RSTP).

7. In its reply to the claim, the Respondent rejected the claim of the Claimant and requested to award costs on the Respondent.
8. The club explained that the last match of the season was played on 8 March 2020 and that, consequently, no payment is due after said date.
9. In addition, the club stated that "the contract for the 2018-2019 season ended on 28.02.2019 and the contract for the season 2019- 2020 was signed only on 25.06.2019 and therefore April and May, 2019 are periods not covered by any contract and therefore there is no obligation to pay any sums of money to the Claimant under this Claim."
10. The club further rejected the payment of the flight tickets, as it already discharged its obligations in this regard.
11. The club attached a copy of a flight for the journey Barcelona-Mumbai between 17 July 2019 with a return on 4 May 2020.
12. In his replica, the Coach argued that *"the Club did not only fail to comply with its contractual obligations, but also took the decision to unilaterally and prematurely terminate the employment contract without just cause deceitfully trying to resort to "Covid-19" as a reprehensible attempt to find any excuse whatsoever to stop paying the Claimant who had always complied in full with the employment contract."*
13. In this respect, the Coach argued that *"neither the FIFA RSTP, nor the "Covid-19: Football Regulatory Issues" provide the unilateral premature termination of the fix-term employment agreement as an applicable measure under the state of "force majeure"*.

II. Considerations of the Players Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. 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.
2. Subsequently, the Single Judge of the Players' Status Committee referred to art. 3 par. 1 of the Procedural Rules and emphasised that, in accordance with art. 24 par. 1 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players, the Single Judge of the Players' Status Committee is competent to deal with matters which concern employment-related disputes with an international dimension between a coach and a club.
3. In continuation, the Single Judge of the Players' Status Committee analysed which edition of the Regulations of the Status and Transfer of Players should be applicable to the present matter. In this respect, the Single Judge of the Players' Status Committee confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and considering the date when the claim was lodged, the June

2020 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand.

4. With the above having been established, the Single Judge of the Players' Status Committee entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file. However, the Single Judge of the Players' Status Committee emphasized that in the following considerations it will refer only to facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.
5. In this respect, the Single Judge first noted that the parties entered into two employment contracts, the first one valid as from as from 12 February 2018 until 28 February 2019, and the second one being valid as from as from 1 July 2019 until 31 May 2020.
6. In this respect, the Single Judge took note of the Claimant's request to be paid with his salaries of April and May 2019.
7. However, in relation to this request, the Single Judge noted that, as mentioned above, the parties did not conclude a contract covering the months of April and May 2019. Therefore, in view of the non-existence of a valid contract for said period, the Single Judge rejected the Claimant's request for this period.
8. Subsequently, the Chamber took note of the Claimant's additional request to be paid with "taxes".
9. However, in this respect, the Single Judge of the PSC reminded the parties of the contents of art. 12 par. 3 of the Procedural Rules, according to which "*any party claiming a right on the basis of an alleged fact shall carry the burden of proof*".
10. In application of the aforementioned provision, the Single Judge noted that the Claimant did not provide any evidence in support of his allegations and does not justify on which basis he calculates his request concerning "taxes". In fact, the Single Judge observed that the applicable contracts stipulate an amount payable gross "less TDS [Tax deducted at source], and therefore understood that the club is in no obligation to reimburse an equivalent tax amount. Therefore, the Single Judge also rejected the aforementioned request for taxes shall be rejected.
11. The Single Judge then noted that the Claimant requested the payment of air tickets, as stipulated in the contract.
12. In this respect, the Single Judge observed that the club submitted evidence of having provided the agreed air tickets air tickets to the claimant. Therefore, the Single Judge also rejected this part of the claim of the Claimant.
13. The Single Judge also noted that the Claimant formulated a request for "food" in the amount of USD 1,401.68. However, the Single Judge observed in this respect that the Claimant failed to provide any substantive evidence concerning possible incurred costs, and therefore noted that he failed to meet its burden of proof.

14. In addition, the Single Judge noted that the coach requested compensation for breach of contract without just cause.
15. In this respect, however, the Single Judge considered that the parties did not submit that the contract was terminated before its expiration date of 31 May 2020 and that, in fact, the coach in his claim stated that the contract *"was respected and fulfilled in its entirety by the coach until the end of the stipulated period (May 31, 2020)"*.
16. In view of all of the above, the Single Judge established that the Claim of the Claimant should be rejected in full.
17. As to the procedural costs, the Single Judge of the PSC referred to the Covid-19 Football Regulatory Issues – FAQ, published on 11 June 2020 which establish that, given the current circumstances, for any claim lodged between 10 June 2020 and 31 December 2020 (both inclusive), there will be no requirement to pay an advance of costs and no procedural costs shall be ordered.

III. Decision of the Players Status Committee

1. The claim of the Claimant, Fernando Andrés Santiago Varela, is rejected.
2. This decision is rendered without costs.

For 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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