Decision of the Dispute Resolution Chamber

passed on 12 August 2021

regarding an employment-related dispute concerning the player Juan Diego Alegría Arango

COMPOSITION:

Geoff Thompson (England), Chairman
Tomislav Kasalo (Croatia), member
Abu Nayeem Shohag (Bangladesh), member

CLAIMANT:

Deportes Tolima, Colombia
Represented by Mr Cesar Augusto Pinzón Cardona

RESPONDENT 1:

Juan Diego Alegría Arango, Colombia
Represented by Bichara & Motta Advogados

RESPONDENT 2:

FC Honka, Finland

I. FACTS OF THE CASE

1. On 10 March 2017, the Colombian club, Club Deportes Tolima (hereinafter: *the club* or *the Claimant*) and the Colombian player, Mr. Juan Diego Alegría Arango (hereinafter: *the player* or *the Respondent 1*), born on 6 June 2002, signed a settlement agreement (hereinafter: *the settlement agreement*).

2. According to the settlement agreement, the club acquired the totality of the player's federative and economic rights in consideration of the total amount of COP 100,000,000. The settlement agreement was signed by the player, the club, and the player's parents (hereinafter: *the legal representatives*), taking into account that the player was a minor.

3. On 1 July 2017, the club and the player concluded an employment contract valid as from the date of signature until 30 June 2020 (hereinafter: *the first employment contract*). Considering that the player was 15 years old at the time, the first employment contract was concluded for 3 years only, and countersigned by his legal representatives.

4. In accordance with clause 3 of the first employment contract, the club undertook to pay the player, *inter alia*, the following amounts:

   a. Season 2017: monthly salary of COP 737,717;

   b. Season 2018: monthly salary of COP 790,000;

   c. Season 2019: monthly salary of COP 850,000;

   d. Season 2020 (from January until June): monthly salary of COP 910,000; and

   e. Transport allowance during the term of the first employment contract.

5. In addition, the same parties supposedly concluded a second employment contract dated 1 July 2021 and valid until 30 June 2023 (hereinafter: *the second employment contract*). The parties dispute the date in which the second employment contract was in fact signed by them.

6. In accordance with clause 3 of the second employment contract, the club undertook to pay the player, *inter alia*, the following amounts:

   a. Season 2020 (from July until December): monthly salary of COP 910,000;

   b. Season 2021: monthly salary of COP 980,000;

   c. Season 2022: monthly salary of COP 1,050,000;

d. Season 2023: monthly salary of COP 1,130,000; and

e. Transport allowance during the term of the second employment contract.

7. On 19 May 2020, the player (c/o his legal representatives), lodged a complaint before the Colombian Ministry of Labour claiming that the second employment contract was illegal and should be deemed null and void.

8. On 20 May 2020, the player (c/o his legal representatives) notified the club of the termination of their employment relationship. In this respect, the player informed that he had not received any offer from the club in order to extend their employment relationship and, moreover, that he remained open for further negotiations. The same information was provided to the Colombian *Comisión de Estatuto del Jugador, Division Mayor del Futbol Colombiano – Dymayor Tribunal Deportivo, Difutbol, Division aficionada del Futbol Colombiano* and the Ministry of Sport of Colombia.

9. On 28 May 2020, the club answered to the player's notice and pointed out that he was still under contract for three additional years. The club also informed that it complied with all its labour duties and that the player was an important asset to its team.

10. On 3 June 2020, the player (c/o his legal representatives) provided the club with his reply informing that the any additional agreement signed between the parties (*i.e.* the second employment contract) was illegal and that their employment relationship was only valid until 20 June 2020, namely the expiry date of the first employment contract signed between the parties.

11. On 6 June 2020, the player turned 18 years old.

12. On 23 June 2020, the club once again wrote to the player (c/o his legal representative) reiterating that the parties had agreed on the renewal of their contractual relationship. In addition, the club referred to the consequences of an unlawful breach in accordance with the FIFA Regulations on the Status and Transfer of Players (RSTP).

13. On 30 June 2020, the player sent the club a correspondence requesting to be provided with a copy of the agreement capable of justifying the claimed "*additional 3 years of employment relationship between the parties*" (*i.e.* the second employment contract).

14. In parallel, on 5 September 2020, the player and the Finnish club, FC Honka (hereinafter: *FC Honka* or *the Respondent 2*), concluded an employment agreement valid as from the date of signature until 20 November 2021, with an extension option until 30 November 2022.

15. In accordance with said contract, FC Honka undertook to pay the player a monthly remuneration of EUR 2,000 until 20 November 2021, and of EUR 5,000 for the optional season.

16. On 6 September 2020, FC Honka requested the International Transfer Certificate (ITC) of the player, which was refused by the club. On 15 September 2020, the Single Judge of the Players' Status Committee authorised without prejudice the provisional registration of the player with FC Honka.

17. On 9 November 2020, the Colombian criminal court (*i.e. "Juzgado Doce Penal Municipal de Ibagué")* ordered the club to provide the player with a copy of the second employment contract within 48 hours.

18. On 1 February 2021, the second instance Colombian criminal court (*i.e. Juzgado Quinto Penal del Circuito Confunciones de Conocimiento Ibagué*) issued its decision and established, *inter alia*, that the club provided the player with a copy of the first employment contract, but failed to deliver a copy of the second employment contract. As a consequence, the cited court referred to the non-existence of an employment relationship for the period between 2020 and 2023.

II. PROCEEDINGS BEFORE FIFA

19. On 23 February 2021, the club 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 club

20. The club lodged the claim at hand against the player and FC Honka requesting, *inter alia*, compensation for breach of contract in the total amount of EUR 2,000,000.

21. In its claim, the club referred to all the amounts involved in the player's training and development. In this respect, the club pointed out that it had always fulfilled its financial duties toward the player and that he acted in bad faith by ignoring the second employment contract and travelling to Finland in order to initiate a new employment relationship with FC Honka.

22. Subsequently, the club informed that the second employment contract was not officially registered because of the COVID pandemic. In any event, the club mentioned that the 2020 season had to be postponed until the end of May 2021, so that the player breached both the second and the first employment contracts, because he was to be bounded to the club until the end of the relevant sporting season.

23. The club then stressed that FC Honka was also in breach of the RSTP, due to the fact that it knew that the player was still registered with the club and induced the breach.

Consequently, the club argued that the player terminated the contract without just cause and that FC Honka should be jointly liable to the consequences that follow.

24. As to the calculation of the compensation for breach of contract, the club pointed that the following parameters should be taken into consideration:

a. the residual value of the second employment contract amounting to COP 33,031,416;

b. the value of the new employment contract signed with FC Honka;

c. the expenses paid by the club amortised over the term of the contracts in the total amount of COP 141,830,885, broken down as follows:

(i) COP 34,930,885 corresponding to the salaries and transport allowances paid to the player during the first employment contract;

(ii) COP 6,900,000 corresponding to the "*welfare payments*" (in Spanish, *prestaciones sociales*) paid to the player during the first employment contract; and

(iii) COP 100,000,000 corresponding to the acquisition of the player's federative and economic rights as per the settlement agreement.

d. the outstanding performance of the player and his involvement with the Colombian national team;

e. the transfer fee lost by the club, taking into consideration the amount earned with other players previously transferred to other parties;

f. the fact that the termination of the contract occurred during the protected period; and

g. the training compensation due to the club in the amount of EUR 80,444.

25. Based on the foregoing, the club further requested sporting sanctions to be imposed on FC Honka and on the player in accordance with art. 17, par. 4 of the RSTP.

26. Finally, the club requested the reimbursement of its legal costs amounting to COP 3,000,000.

b. Position of the Respondents

27. Both the player and FC Honka (hereinafter referred together as *the Respondents*) filed a statement of defence with the same content.

28. In their reply, the Respondents strongly defended that the second employment contract was null and void since it was signed when the player was still a minor. Consequently, the

Respondents claimed that said contract was forged, as well as that it violated art. 18, par. 2 of the FIFA RSTP and the national law.

29. In support of their allegations, the Respondents referred, *inter alia*, to:

a. a notary declaration related to the nullity of the second employment contract made by the player's legal representatives and dated 5 February 2019, thus almost a year and a half before the date when the club alleges having signed the document;

b. the fact that the player turned 18 years old on 6 June 2020 and, from the correspondences exchanged by the parties on 20 May, 28 May and 3 June 2020, to the logical conclusion that the second employment contract was signed before such date (*i.e.* also before 1 July 2021);

c. the fact that the second employment contract established, for the year 2020, exactly the same remuneration as the first employment contract, being an indication that the documents were signed jointly and for a total period of 6 years; and

d. the decision issued by the Colombian criminal courts supposedly recognizing that the second employment contract was not existent.

30. In light of the above, the Respondents concluded that the player "*was released from any obligation with the club as of 1 July 2020, being entitled to sign a contract with any other club; since the employment contract with Honka FC was only signed on 5 September 2020, the Player has not committed a breach of contract*".

31. In addition, the Respondents also pointed out that the second employment contract was signed by a minor and without the written consent of the player's legal representatives or the authorization of the Colombian Ministry of Labour. Consequently, the Respondents claimed that, in accordance with the national law, the second employment contract was "*manifestly null and void*".

32. In continuation, the Respondents claimed that the second employment contract "*does not qualify as a professional employment contract under the FIFA RSTP*". In this respect, the Respondents claimed that the earnings of the player under the second employment contract did not surpass the expenses he effectively incurred with his footballing activity. Therefore, the Respondents are of the opinion that, in line with FIFA and CAS jurisprudence, the player was to be considered as an amateur.

33. Having established the above, the Respondents turned their attention to the compensation requested by the club and held that it should be rejected as "*groundless, disproportionate and filed in bad-faith*". In particular, the Respondents pointed out that the club did not have any replacement costs, nor provided a concrete offer for the transfer of the player. Additionally, the Respondents maintained that the club saved an amount at least equal to the player's remuneration when not having paid his salaries in the period of the reference.

34. Finally, the Respondents opposed the club's request for sporting sanctions. Furthermore, the Respondents requested the file to be transferred to the Transfer Match System (TMS) department and/or to the FIFA Disciplinary Committee for investigation and imposition of appropriate sanctions on the club for misusing the TMS and forging the documentation.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

35. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 23 February 2021 and submitted for decision on 12 August 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.

36. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and observed that in accordance with art. 24 par. 1 in combination with art. 22 lit. a) and b) of the Regulations on the Status and Transfer of Players (edition February 2021), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Colombian player, a Colombian club and a Finnish club.

37. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it 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 23 February 2021, the February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

38. The Chamber 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 DRC stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.

39. In this respect, the Chamber 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.

c. Merits of the dispute

40. The competence of the DRC and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the DRC started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC 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.

41. Having analysed the parties' submissions, the Chamber acknowledged that they strongly dispute whether there was an employment relationship between them, and the consequences that follow. In particular, the DRC deemed that it was its task to determine whether the second employment contract submitted by the club was to be considered a valid and binding document.

42. In doing so, the Chamber firstly noted that the club, on its part, claimed that its contractual relationship with the player was renewed on 1 July 2021 and was valid until 30 June 2023, so that the Respondents should be jointly liable to the consequences of the premature termination. Alternatively, the DRC observed that the club maintained that its contractual relationship with the player was at least valid until the official end of the 2020 season, postponed to May 2021 due to the COVID pandemic.

43. On the other hand, the DRC was also observant that the Respondents categorically denied the renewal of the player's employment relationship with the club. In particular, the Chamber outlined that Respondents stressed that the second employment contract was forged (pre-dated) and signed with the player while he was still a minor. Consequently, the DRC took due note of the Respondents' argumentation in the sense that, by the time of the conclusion of the new employment agreement with FC Honka, the player was a free agent.

44. In view of this dissent between the parties, the DRC firstly deemed appropriate to remark that, as a general rule, FIFA's deciding bodies are not competent to decide upon matters of criminal law, such as the one of alleged falsified signatures of documents, and that such affairs fall into jurisdiction of the competent national criminal authority.

45. With this in mind, the members of the Chamber turned their attention to the submissions and to the documentation brought forward by the parties. By doing so, they carefully acknowledged that:

    a. On 19 May 2020, the player's legal representatives lodged a complaint before the Colombian Ministry of Labour informing that the player had signed an agreement (*i.e.* the second employment contract), which was to be declared illegal and, hence, null and void;

b. On 20 May 2020, the player notified the club that his employment relationship was to expire on 20 June 2020 and that he remained at its disposal for further negotiations. Subsequently, on 28 May 2020, the club answered the player's previous correspondence and attested that their relationship had been renewed for more 3 years, without providing any evidence whatsoever – in spite of being requested to do so;

c. Furthermore and after the player's response, on 23 June 2020, the club once again confirmed that their employment relationship had already been extended for additional 3 years, and that the player would be liable for the consequences of the termination; and

d. On 1 February 2021, the Colombian criminal courts certified that the club did only provide the player with a copy of the first employment contract, and that there was not any proof of the extension of their relationship until 2023.

46. The foregoing having been established, the DRC considered that the club adopted a controversial behavior towards the player by initially referring to the extended duration of the employment relationship (*i.e.* as per the second employment contract), then by subsequently failing to provide the player with the evidence of existence of said agreement during the exchange of correspondences and the investigation before the Colombian criminal courts.

47. Accordingly, the Chamber deemed that the club (tacitly) admitted that the second employment contract was predated and, in parallel, acted in bad faith while trying to force the player to accept the extension of their employment relationship for additional 3 years – in spite of his manifest intention to follow his career with FC Honka.

48. In light of the above, the Chamber recalled the content of art. 12, par. 3 of the Procedural Rules and unanimously decided that the Respondents could establish that the second employment contract was signed by the parties before the date therein indicated. Likewise, the DRC considered that the documentation on file also corroborates with the Respondent's allegations that the second employment contract was concluded when the player was still a minor, without the written consent of his legal representatives.

49. At this point, the DRC found it important to highlight the content of art. 18, par. 2 of the Regulations, *in verbis:*

"The minimum length of a contract shall be from its effective date until the end of the season, while the maximum length of a contract shall be five years. Contracts of any other length shall only be permitted if consistent with national laws. Players under the age of 18 may not sign a professional contract for a term longer than three years. Any clause referring to a longer period shall not be recognised" (emphasis added).

50. Taking into consideration the abovementioned provision and the overall developments of the case at stake, it was the Chamber's firm opinion that the second employment contract

filed by the club could not be deemed as a valid and binding document to the parties. Specifically, the DRC was firm to determine that conducts such as the one adopted by the club in this case are exactly the type of abusive behavior that art. 18, par. 2 of the Regulations intends to avoid.

51. Finally, the DRC also wished to outline that the club's allegation regarding the automatic extension of the first employment contract could not be upheld. In this respect, the Chamber pointed out that, even if the second employment contract was to be considered (*quod non*), the wording of clause 2 of the first employment contract was clear to establish that it was only valid until 20 June 2020, without further exemptions. In addition, the Chamber highlighted that the player had expressly formalized that his relationship with the club was terminated on 20 June 2020. Therefore, in accordance with the DRC, if the parties intended to extend their employment relationship until the official end of the season, they should have agreed to that in written – as expressly encouraged by the COVID-19 Guidelines issued by FIFA.

52. Consequently, the Chamber unanimously decided that the second employment contract is null and void. It follows that the player was a free agent when signing for FC Honka and thus, in the absence of any valid contract executed between the player and the club, no compensation shall be awarded to the latter.

53. Based on the foregoing, the DRC deemed that the claim of the club should be entirely rejected.

d. Costs

54. The Chamber referred to article 18 par. 2 of the Procedural Rules, according to which *"DRC proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment related disputes between a club and a player are free of charge"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

55. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

56. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Deportes Tolima, is rejected.

2. This decision is rendered without costs.

For the Dispute Resolution Chamber:

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).

CONTACT INFORMATION:

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777