Decision of the
Dispute Resolution Chamber
passed on 15 July 2021
regarding an employment-related dispute concerning the player Camilo da Silva Sanvezzo

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman
Stéphane Burchkalter (France), member
Abu Nayeem Shohag (Bangladesh), member

CLAIMANT:

Persatuan Bolasepak Negeri Johor, Malaysia
Represented by Ariel Reck

RESPONDENT 1:

Camilo da Silva Sanvezzo, Brazil
Represented by Pedro Macieirinha

RESPONDENT 2:

Mazatlan FC, Mexico

I. FACTS OF THE CASE

1. On 13 August 2020, the Malaysian club, Persatuan Bolasepak Negeri Johor (hereinafter: *Claimant*), and the Brazilian player, Camilo da Silva Sanvezzo (hereinafter: *Respondent 1)*) signed a pre-contract agreement (hereinafter: *pre-contract*) valid as from December 2020 to 30 November 2022.

2. In clause 2 of the pre-contract, the parties, *inter alia*, agreed on the following terms to be included in the definitive future employment agreement:

(A) Duration: 7 December 2020 until 30 November 2022.

2.1.1. First year: USD 1,125,000 per annum (7 December 2020 -30 November 2021) paid as follows:

"Monthly salary – USD 50, 000 (the December 2020 salary will remain at USD 50,000 even though the Player will not arrive in Malaysia until after I December 2020)

Signing bonus – USD 525,000 to be paid as per the date schedule below:

USD 75,000 on 30 September 2020
USD 75,000 on 15 December 2020
USD 50,000 on 1 January 2021
USD 62,500 on 1 February 2021
USD 75,000 on 1 March 2021
USD 62,500 on 1 June 2021
USD 75,000 on 1 July 2021
USD 50,000 on 1 October 2021

2.1.2. Second year: USD$1,025,000 per annum (I December 2021 - 30 November 2022) paid as follows:

Monthly salary - USD 54,167

Signing bonus - USD 375,000 to be paid as per the date schedule below:

USD 50,000 on 1 January 2022
USD 62,500 on 1 February 2022
USD 75,000 on 1 March 2022
USD 62,500 on 1 June 2022
USD 7,000 on 1 July 2022
USD 50,000 on 1 October 2022"

II. PROCEEDINGS BEFORE FIFA

3. On 11 March 2021, the Claimant filed the claim at hand before FIFA. In continuation, a brief summary of the position of the parties is detailed.

a. The claim of the Claimant

4. The Claimant indicated that in order to maintain the condition of Respondent 1 until his arrival in Malaysia, the parties agreed that the he would find temporary employment with another club until 7 December 2020.

5. According to the Claimant, Respondent 1 found temporary employment with the Mexican club, Mazatlán FC (hereinafter: *Respondent 2*) with which he concluded an employment sports contract on 7 August 2020.

6. The Claimant alleged that the Respondent 1's agent confirmed via WhatsApp, that he would only be signed with Respondent 2 until November 2020.

7. In September 2020, according to the Claimant, it paid the amount of USD 75, 000 to Respondent 1 as the first instalment of the signing bonus agreed to in clause 2.1.(a) of the pre-contract.

8. Additionally, the Claimant indicated that within the same period, the owner and coach of Respondent 2 confirmed to the media that Respondent 1 was joining its club in December 2020.

9. Moreover, the Claimant stated that after the media announcement, Respondent 1's agent sent the following message to the Claimant via WhatsApp *"good move that you disclosed already the signing of Camilo, because Mazatlan has already made 2 renewal offers and we rejected both but didn't want to reveal our deal before you did".*

10. The Claimant further stipulated that in November 2020, Respondent 2 disclosed on social media that it renewed the contract of Respondent 1 until 2022.

11. Accordingly, on 12 November 2020, the Claimant received a letter from Respondent 1's representative, informing it that the Respondent 1 signed an employment contract with Respondent 2, valid for the period between 1 January 2021 until '*the last match in 2022*' and further rejecting the pre-contract offer of the Claimant by stipulating the following:

"the Pre-Agreement Contract Offer stated that:

This Agreement shall cover the period from the date of execution until the Player undertakes a pre-contract medical test ("the Medical") prior to entering into the Contract;"

And "This Agreement shall contain the agreed terms for the Contract, should the Player successfully pass the Medical;"
This clauses make the Pre-Agreement Contract Offer null and void. All because it disrespects article 18. Nr. 4 of RSTP of FIFA, according to which "The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit". In conclusion, the Pre-Contract Agreement Offer made by PERSATUAN BOLASEPAK NEGERI JOHOR is rejected by Mr. Camilo da Silva Sanvezzo."

12. On 23 December 2020, Respondent 1 sent a further correspondence to the Claimant reiterating his position as detailed in his letter dated 12 November 2020 and in the same letter informing the Claimant that he was willing to discuss the matter telephonically, however this never transpired.

13. The Claimant indicated that Respondent 2 failed to reply to any of its correspondence.

14. On 11 March 2021, the Claimant lodged a claim against Respondent 1 and Respondent 2 at FIFA requesting that the DRC.

(a) condemn Respondent 1 for breach of contract and awarding to the Claimant as compensation for breach of contract the amount of USD 2,150,000 which corresponds to the total value of the pre-contract as detailed in par.3 above, or alternatively an amount the DRC considers appropriate, plus 5% interest *p.a.* from 12 November 2020;
(b) declaring Respondent 2 jointly liable for the payment of the compensation;
(c) sanctioning Respondent 1 with a four month suspension from football;
(d) sanctioning Respondent 2 with a transfer ban for two consecutive windows; and
(e) imposing the costs of these procedures to the Respondents

b. Position of Respondent 1

15. In its reply to the claim, Respondent 1 confirmed that on 7 August 2020, he concluded and signed an employment sports contract with Respondent 2.

16. Respondent 1 indicated that he informed the Claimant of the temporary employment contract with Respondent 2, a construction with which the Claimant agreed.

17. According to Respondent 1, he never received payment in the amount of USD 75,000 as agreed to in clause 2.1. (a) of the pre-contract and as indicated by the Claimant.

18. On 6 November 2020, Respondent 1 signed an amendment to the initial employment sports contract concluded with Respondent 2.

19. On 12 November 2020, Respondent 1 sent a letter to the Claimant declaring that the pre-contract signed, *"was only an offer and that he rejected such offer and according to the*

principle of freedom of contract, everyone is free to enter in contract negotiations and to terminate them again without incurring any liability."

20. Moreover, Respondent 1 indicated that the pre-contract stated that: "*This Agreement shall cover the period from the date of execution until the Player undertakes a pre-contract medical test ("the Medical") prior to entering into the Contract; and this Agreement shall contain the agreed terms for the Contract, should the Player successfully pass the Medical."*

21. In light of the above, Respondent 1 claimed that the pre-contract is null and void *"because it disrespects article 18. 4 of RSTP of FIFA, according to which the validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit*".

22. Additionally, Respondent 1 highlighted the following regarding the pre-contract:

"it was of a provisory nature and does not represent a Contract itself in term of FIFA Regulations. In reality, the essential elements of the contract, in particular the willingness to create a legally binding agreement and establish legal relations to a counterparty, were not present in the case at hand and, therefore, pre-contract be considered as binding nor can the Claimant be entitled to engage the Respondent on a permanent basis, by offering him an official contract."

23. On 8 December 2020, the Claimant sent to Respondent 1 a letter, stipulating the following:

"Accordingly, we formally summon you to offer us your position on the matter in the next five natural days. In particular to confirm or deny whether an employment contract was signed or not between Mazatlán and the Player valid until 2022 and to provide us with your explanation for not honoring the agreement with Johor and not being at the club on the designated date."

24. In reply to the foregoing letter, the Respondent 1 reiterated the content of his letter dated 12 November 2020.

25. Furthermore, Respondent 1 indicated that he was not aware of any conversation that his agent might have had with the Claimant because he can talk on his own behalf or his lawyer as mandated. Accordingly, he *"rejects any conversation that could have been made between the Claimant and the player's agent."*

26. Respondent 1 highlighted that, a further condition of the pre-contract agreement was that he had to be transferred from his former club for free. In this context, he held that his former club on 7 December 2020 was Respondent 2 and therefore, "*Mazatlán FC*" *should have the right to claim against the Claimant payment of the federative and economic rights for the Transfer of the Player."*

27. In conclusion, Respondent 1 requested the following relief:

(a) the claim shall be rejected;
(b) that Respondent 1 shall not be condemned for breach of contract and shall not be sanctioned; and
(c) that the costs shall be imposed to the Claimant.

c. Position of the Respondent 2

28. In its reply to the claim, Respondent 2 indicated that on 7 August 2021, it concluded an employment contract with Respondent 1, valid from 1 August 2020 until the last game of the "Torneo Apertura 2020" tournament, which was played on 13 December 2020.

29. Moreover, it was not aware that Respondent 1 on 13 August 2021 concluded a pre-contract with the Claimant, prior to the claim being filed.

30. Furthermore, Respondent 2 confirmed that on 6 November 2020, it amended the employment agreement with Respondent 1, which amendment was valid from 1 January 2021 until the last game of the "Apertura 2022" tournament.

31. In this context, Respondent 2 emphasised the following:

"THE PLAYER, AT THE DATE OF SIGNING THE AGREEMENT, AS WELL AS AT THE DATE OF THE SIGNING OF THE AMENDMENT AGREEMENT DID NOT HAVE, AND HAS NOT SUBSCRIBED, ANY LABOR OR ANY OTHER TYPE OF COMMITMENT WITH A THIRD CLUB, NATIONAL OR FOREIGN, THAT BINDED HIM OR COULD BIND HIM FOR THE DURATION OF THE AGREEMENT- AS AMENDED BY THE AMENDMENT AGREEMENT- RELEASING THE CLUB FROM ANY RESPONSIBILITY IN THIS REGARD."

32. According to Respondent 2, the Claimant *"in bad faith and in a completely illegal manner, poorly tries to hold this party jointly liable for causes that was never known to this Respondent."*

33. The requests for relief of Respondent 2, were that:

(a) the FIFA DRC completely dismiss the claim raised by the Claimant as it should undeniably be rendered notoriously inadmissible;
(b) in the unlikely event that the FIFA DRC considers that the claim filed by the Claimant is not unreasonable and, therefore, it is admissible, to absolve Respondent 2 since, it shouldn't be rendered jointly and/or severally liable since:

(i) it was impossible for it to be aware of the existence of the pre- contract; and
(ii) Respondent 1 expressly absolved and/or released this representation as per the Employment Agreement and the Amendment Agreement, respectively.

(c) the Claimant is ordered to pay the legal costs and all other expenses of these proceedings.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

34. 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 submitted to FIFA on 11 March 2021 and presented for decision on 15 July 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.

35. 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 (February 2021 edition), 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 Malaysian club, a Brazilian player and a Mexican club.

36. 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 (February 2021 edition in force in the date of decision), and considering that the present claim was lodged on 11 March 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

37. 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.

38. 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

39. The competence of the DRC and the applicable regulations having been established, the DRC 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.

i. Main legal discussion and considerations

40. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the Claimant and Respondent 1 on 13 August 2020 concluded a pre-contract which was conditional upon the passing of a medical examination and the signing of a definitive contract, this would entitle Respondent 1, *inter alia*, to a monthly remuneration of USD 50,000, plus a signing bonus payable in instalments with the first instalment of USD 75,000 being payable on 30 September 2020.

41. The Chamber observed that the Claimant lodged a claim against Respondent 1 before FIFA, maintaining that Respondent 1 breached the terms of the pre-contact and therefore should pay the amount of USD 2,150,000 to the Claimant, corresponding to the total value of the pre-contract and that Respondent 2 should be held jointly liable for payment of the compensation.

42. The DRC noted that the Claimant's claim is based on the pre-contract concluded between the parties, which, in its opinion, is to be considered valid and binding and that according to the Claimant, Respondent 1 did not fulfil his contractual obligations by not signing a definitive contract and not rendering his services to the Claimant in the period as from 8 December 2020.

43. The Chamber further noted that Respondent 1, as opposed to the Claimant, indicated no legally binding employment contract had come into effect between the Claimant and Respondent 1, as the parties merely signed a "pre-contract", which should be declared null and void, since it was subject to certain conditions, i.e. successful passing of a medical examination. Moreover, that Respondent 2 indicated that it was not aware that Respondent 1 on 13 August 2020 concluded a pre-contract with the Claimant, prior to the present claim being lodged at FIFA.

44. In this context, the Chamber acknowledged that its task was to determine whether the pre-contract signed between the Claimant and Respondent 1 established a valid and binding employment contract and if Respondent 1 was in breach of the terms of the said pre-contract.

45. Having stated the aforementioned, the Chamber wished to highlight that in order for a contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract, their role, the duration of the employment relationship, the remuneration.

46. After careful study of the contract presented by the Claimant, the Chamber concluded that all such essential elements are included in the pre-contract, which is therefore to be considered a valid and binding contract.

47. However, the Chamber further established that the pre-contract was only valid until the signing of an employment contract. The DRC observed from the wording of the pre-contract, that the parties intended to conclude a definitive contract in the future i.e. December 2020 and furthermore that such definitive contract would only be signed upon the conclusion of a successful medical examination.

48. In this regard, the members of the Chamber noted that the Claimant failed to contact Respondent 1 to undertake the medical examination as contractually required.

49. Moreover, the DRC took note that in terms of clause 2.1.2 of the pre-contract, the parties agreed that an amount of USD 75,000 were payable to Respondent 1 as part of the signing fee on 30 September 2020, which the Claimant alleged to have paid however Respondent 1 denied receiving such a payment. In this regard, the Claimant submitted an invoice and a remittance document as proof of payment; however, the beneficiary indicated in these documents were not Respondent 1.

50. Having evaluated the above information, the Chamber therefore held that the previously mentioned documents are not conclusive documentary evidence, on the basis of which it could established that the said amount was paid to Respondent 1. Moreover, after having evaluated the documentation and argumentation on file, the, members of the Chamber came to the unanimous conclusion that the Claimant by not paying the agreed signing fee of USD 75,000 on the due date, also failed to respect its financial obligations as per the pre-contract.

51. Following the foregoing circumstances, the DRC concluded that Respondent 1 did not breach the terms of the pre-contract and that – in view of the lack of an invitation for a medical examination – for reasons that cannot be attributed to Respondent 1, no definitive employment contract was signed between the parties.

ii. Consequences

52. Having stated the above, the members of the Chamber proceeded to reject the Claimant's claim.

d. Costs

53. 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.

54. 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.

55. 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, Persatuan Bolasepak Negeri Johor, 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:

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