Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Nana Kofi Egyir

COMPOSITION:

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

CLAIMANT:

Nana Kofi Egyir, Ghana
Represented by Vincent Okantah

RESPONDENT:

SM Sanga Balende, Congo DR
Represented by Marc Cavaliero and Carol Etter

I. FACTS OF THE CASE

1. On 26 March 2018, the Ghanaian player, Nana Kofi Egyir (hereinafter: *Claimant*), and the Congolese club, SM Sanga Balende (hereinafter: *Respondent*) allegedly signed an employment contract (hereinafter: *the disputed contract*) for a period of 2 years valid until 26 March 2020.

2. In accordance with article 5.1 the disputed contract, the Respondent undertook to pay to the Claimant *as follows:*
   - USD 10,000 as sign on fee;
   - USD 1,000 as monthly salary payable at the end of each month;
   - EUR 200,000, by no later than 1 February 2020.

3. In accordance with article 7 of the disputed contract, in the event that the Respondent terminated the contract with the Claimant, he would be entitled to 2 months' salary and a return air ticket to his country of origin.

4. According to TMS, on 3 January 2020, the Claimant signed a new contract with the Ghanaian club Sekondi Hasaacas, valid between 3 January 2020 and 3 January 2021, based on which he was entitled to a monthly salary of Ghana Cedis (GHS) 1,300. In the overlapping period between 3 January 2002 and 26 March 2020, this amounts to GHS 3,900 (approximately USD 2,667).

II. PROCEEDINGS BEFORE FIFA

5. On 22 February 2021, 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 Claimant

6. According to the Claimant, he complied with his contractual obligations until 30 May 2019, when the club unilaterally terminated the disputed contract.

7. The Claimant adds that when the Respondent terminated the disputed contract, it issued a termination letter to him in which it alleged that he had requested to terminate the contract. The Claimant further denies that he requested the termination of the disputed contract.

8. According to the Claimant, the Respondent failed to pay his salaries for the period between August 2018 and May 2019. When he personally, and through his intermediary, queried the late payments, the Respondent repeatedly made undertakings to pay the salaries, to no avail.

9. The Claimant adds that in May 2019, when he requested the payment of his outstanding salaries, the Respondent proceeded to unilaterally terminate the disputed contract.

10. The Claimant further submits that he never requested for the disputed contract to be terminated, but simply demanded for his outstanding salaries.

11. The requests for relief of the Claimant, as amended, were the following:
    - USD 10,000 as the unpaid sign on fee plus interest to be determined by FIFA;
    - USD 10,000 as outstanding salaries for the months between August 2018 and May 2019, plus interest to be determined by FIFA.

b. Position of the Respondent

12. The Respondent in its reply requested that the Claimant's claim be declared partially inadmissible and that as an alternative, the claim be rejected in its entirety.

13. Furthermore, according to the Respondent, the current President of the club, Mr. Alexis Fakih ("the President"), took office in August 2020. This means that this dispute is based on circumstances that had occurred previously and when looking into this matter, he stumbled upon several elements which give reason to believe that the submitted contract is not genuine and therefore disputes that a contract was ever signed between the parties.

14. According to the Respondent, on the basis of the existing documents, the Claimant was transferred to the Respondent on 12 October 2016 by the Ghana Football Association ("GFA"). More precisely, the Respondent adds that the Claimant was officially transferred to the Respondent as an amateur player from the Ghanaian club, Karela United Football Club.

15. In continuation, the Respondent states that it does not contest that the Claimant indeed played for the Respondent. However, it submits that the Claimant played without any written contract.

16. In support of this, the Respondent submits that the Claimant himself – represented by his Intermediary – confirmed in his claim that his Intermediary also represents Mr. Isaac Amoah and Mr. Justice to Mensah ("the other players") and that the parties supposedly entered into a written employment contract on 26 March 2018, on the same day as the other players. This is however contradicted by the employment contracts of the other players, which were already entered into on 23 February 2018 ("hereinafter: *the employment contracts*").

17. Additionally, the Respondent adds that as opposed to the employment contracts, the disputed contract does not contain the initials of the Claimant on every page and yet having to paragraph each page of the contract is also a formal requirement of the employment contract in accordance with article 3 of the contract.

18. Furthermore, as opposed to the employment contracts, the Respondent highlights that the disputed contract does not contain the stamp of the Respondent on every page, a date on the signature page as the other employment contracts dated of 23 February 2018, does not

contain the Visa of FECOFA and does not contain the stamp of the Respondent next to the signatures of its representatives.

19. In continuation, according to the Respondent, the Claimant's contract does not contain the license number of FECOFA of the Claimant next to his name on Page 1 of the disputed contract and also contains a wrong place of birth for the Claimant. According to the Claimant´s passport, he was born in Takoradi, whereas the disputed contract states Accra. The Respondent further indicated that the place of birth of the other players is Accra for both of them.

20. The accumulation of those discrepancies, according to the Respondent, excludes a clerical error especially since the disputed contract was allegedly signed on the very same day as the employment contracts and the same representatives were involved.

21. What is more, the Respondent observes that the intermediary claims that the disputed contract was signed on 28 March 2018, while at the same time stating that it was signed on the same day as the employment contracts of the other players. However, the latter contracts were signed on 23 February 2018.

22. The Respondent also adds that the disputed contract is submitted in a very poor quality, where the logo of the club barely appears in the background contrary to the employment contracts of the other players.

23. Finally, the Respondent notes that the Claimant claims that he "*was registered as a player of the club and with the FECOFA*". However, upon request for information, FECOFA confirmed that this contract was never registered with it.

24. In light of those circumstances, the Respondent submits that it has no other choice but to request the production of the original employment contract of the document submitted by the Claimant for further review of the veracity of the contract and the signatures.

25. For avoidance of doubt, the Respondent reiterates that it contests the legitimacy of the contract submitted by the Claimant and therefore the evidential value of this document and reserves all rights in this respect.

26. As a result, the Respondent made a procedural request that the Claimant be ordered to produce the original of the disputed contract, allegedly signed between the parties.

27. While the Respondent reserved all its right to comment on this very specific issue in the context of these proceedings and/or to initiate any further necessary action, it proceeded to demonstrate that in any event, it does not owe any money to the Claimant.

28. In this regard, the Respondent highlighted that several claims of the Claimant are inadmissible, insofar as they are time-barred on the basis of art. 25 par. 5 of the Regulations on the Status and Transfer of Players ("RSTP").

29. In continuation, the Respondent submits that the Claimant received a monthly salary of USD 500 and submitted payment slips for February and March 2017 as evidence.

30. The Respondent adds that in light of the payment slips, it seems that negotiations between the parties took place at the moment of the payment of the salaries. Indeed, the salary amount was increased from USD 200 to USD 500 and that the submitted handwritten correction further corroborates the absence of any signed contract.

31. The Respondent the proceeds to state that the employment relationship was mutually terminated on 30 May 2019 and that the corresponding letter mentions that nothing is owed anymore between the parties.

32. According to the Respondent, while the Claimant, in his claim, acknowledges the receipt of termination letter back in May in 2019, he now and for the very first time contests the content thereof and claims that the relationship had not been mutually terminated but was unilaterally terminated by the Respondent without just cause.

33. According to the Respondent, this assertion cannot prevail and contradicts the files on record for the following reasons:

    - Firstly, the Claimant did not contest the contents of this correspondence immediately after or within a reasonable time after having received it, thereby showing his agreement with its contents.

    - Secondly, and more importantly, this very termination letter was used by the Claimant's new club, Sekondi Hasaacas FC, when the International Transfer Certificate (ITC) had been requested on behalf of his new club on 27 January 2020.

    - Thirdly, the Claimant exchanged messages with the club secretary of the Respondent on or around 28 December 2020 – 1 January 2021 about a possible return to the Club. Nowhere is the Claimant claiming, let alone requesting, any outstanding monies.

    - Fourthly, the intermediary, who was and still is representing the interests of the Claimant – including in these proceedings –, as well as of Isaac Amoah and to Mensah, contacted the Respondent's President on or around 18 - 22 August 2020 informing him that the Club owed money to Isaac Amoah and to Mensah only and that a claim would follow shortly. There was no claim, let alone allegation, that the Respondent owed any money to the Claimant.

    - Fifthly, while the Claimant claims that he had not been paid on time (or not paid at all) over a certain period of time, he failed to adduce any corroborating evidence of any kind of claim or default notice. Therefore, the file presented by the Claimant is simply void.

34. On the contrary, according to the Respondent, it has submitted numerous documentary evidence demonstrating that the parties mutually terminated their relationship on 30 May

2019 and acknowledging that nothing was owed anymore to each other. As a result, this claim is far-fetched and in any event partially inadmissible.

35. Despite the above elements, the Respondent focuses in demonstrating that, in any event, numerous claims are inadmissible, and that the claim shall furthermore be dismissed in its entirety.

36. According the Respondent, the claim is time barred as more than 2 years have elapsed since the event giving rise to the dispute. In other words, on 22 February 2021, the time limit has expired for the alleged sign on fee starting 28 March 2018 and the monthly salary from August 2018 to January 2019.

37. Nonetheless, the Respondent proceeds to demonstrate that nothing is due to the Claimant as the parties mutually terminated the contract and the Claimant does not contest receiving this letter. Therefore, and for this reason already, the Respondent concludes that the claim shall be dismissed in full, since it is confirmed that any relationship between the parties had been mutually terminated without any monies due.

38. Additionally, the Respondent observes that for the very first time, the Claimant claims that the contract was not terminated by mutual consent and that such argument is doomed to fail since the termination letter had been issued on 30 May 2019, i.e. for almost a two-year period, the Claimant never once contacted the Respondent to contest the content of the termination letter or to claim any outstanding salaries.

39. Furthermore, in the section "*Motif de résiliation du précédent contrat*", the Claimant's new club and its association emphasized that "*Le joueur et son ancien club ont mutuellement convenu d'une résiliation anticipée du contrat de travail".*It is therefore bad faith and a violation of the principle of *venire contra factum proprium* for the Claimant to now allege that the contents of said termination letter would not correspond to the actual reality, when he (i)never contested the mutual termination for over 1.5 years and (ii) even used the fact of having mutually terminated the contract to being able to play for a new club.

40. In turn, the Respondent adds that besides being partially inadmissible due to the statute of limitation for the claim of outstanding salaries from August 2018 – January 2019 and the alleged sign-on fee, the Claimant did not provide any evidence to demonstrate the existence of any outstanding amount due to him. There is no contemporaneous default notice, no message or email in this regard.

41. For all the above reasons, the Respondent requests that the claim be found to be inadmissible, unjustified and without merit.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

1. 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 22 February 2021 and submitted 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.

2. 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 in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Ghanaian player and a Congolese club.

3. However, the Chamber noted the Respondent's submission that several claims of the Claimant are inadmissible, insofar as they are time-barred on the basis of art. 25 par. 5 of the Regulations on the Status and Transfer of Players.

4. In this regard, the Chamber took note of the fact that at the time that the Claimant lodged his claim (on 22 February 2021), the time-limit of two years set forth by the cited article had already elapsed for the following claims:

   - USD 10,000 for the unpaid sign on fee starting on 28 March 2018;

   - The monthly salary of USD 1,000 from August 2018 to January 2019, i.e. a total of USD 6,000 out of the USD 10,000

5. Therefore, the DRC confirmed that this part of the Claimant's claim is barred by the statute of limitations and thus cannot be entertained by the Chamber.

6. 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), and considering that the present claim was lodged on 22 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

7. 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.

8. 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

9. 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

10. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute that a contract was signed between them.

11. In this context, the Chamber acknowledged that it its task was to determine if a contractual relationship exists between the parties and if so, if it was mutually or unilaterally terminated, and the consequences thereto.

12. In continuation, the Chamber took note of the Respondent's submission that the contract on which the claim is based as submitted by the Claimant is not genuine and that as a result, the Respondent made a procedural request for the Claimant to submit the original document but that the Claimant failed to respond to this request.

13. The DRC further noted the Respondent's submission that the Claimant was registered as an amateur and that the parties never signed a contract but acknowledges that the parties "*mutually terminated the contract*". In this regard, the Chamber noted that the Respondent has submitted contradicting statements.

14. Nonetheless, taking into account the submissions of the parties, the Chamber noted that the Claimant submitted a signed contract by both parties and the alleged mutual termination letter does not contain his signature.

15. The Chamber noted that despite the fact that the Claimant failed to submit the original of the contract, one has to assume that there was a contract, as the parties allegedly terminated an existing relationship by means of a termination letter. In this regard, the Chamber concluded that the Respondent's submission leads to the assumption that there was effectively a contract.

16. In this regard, the Chamber took note of the Claimant's submission that the disputed contract was unilaterally terminated by the Respondent without just cause and as a result, he is entitled to outstanding remuneration and compensation for breach of contract.

17. The Chamber also took note of the Respondent's reply confirming that such termination occurred but that it was mutually agreed by the parties. In this regard, the Chamber took note of the fact that the document submitted to prove mutual termination was not signed by the Claimant.

18. As a result, the Chamber concluded that said document was not binding on the Claimant and decided to disregard it and conclude that the contract was unilaterally terminated by the Respondent.

19. As a result, the Chamber concluded that the Claimant's claim is based on a signed and binding contract which was unilaterally terminated by the Respondent and that therefore, the Claimant is in principle entitled to outstanding remuneration and compensation for breach of contract insofar as the unilateral termination by the club was made without any reason and thus without just cause.

20. At this point, the DRC commented on the fact that just because the Claimant remained inactive in requesting the outstanding amounts, does not mean that he effectively received said amounts.

21. With the above in mind, the Chamber concluded that in principle the Claimant was entitled to outstanding remuneration from February to May 2019 and compensation, if any, as result of the Respondent's unilateral termination of the contract.

ii. Consequences

22. 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.

23. Taking into account the abovementioned time-barred claims, the Chamber decided that the Claimant is entitled to outstanding remuneration for the period between February to May 2019, which fall within the time limit.

24. Taking into account article 5.1 of the contract, the Chamber decided on the basis of the principle *pacta sunt servanda* to award the Claimant outstanding remuneration in the amount of USD 4,000 (USD 1,000 per month) for the months of February to May 2019.

25. What is more, in line with the well-established jurisprudence of the DRC in this respect, as well as taken into account the request of the Claimant, the Chamber decided to award 5% interest *p.a.* on the amount of USD 4,000 as from 22 February 2021 until the date of effective payment.

26. In continuation, the Chamber also noted the Claimant's request for compensation for breach of contract and noted that since as contract was terminated on 30 May 2019, the claim for compensation is not time-barred.

27. The Chamber decided that, taking into consideration the Claimant's respective claim and art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract.

28. In this context, the Chamber outlined that, in accordance with said provision, 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 Claimant 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.

29. In application of the relevant provision, the DRC held that it first had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the DRC established that in accordance with article 7 of the contract, in case the Respondent terminated the contract with the Claimant, he would be entitled to 2 months' salary and a return air ticket to his country of origin.

30. In this regard, the Chamber deemed that the termination clause is not proportionate and not reciprocal. As a result, it decided to disregard such termination clause and determined that the calculation of the compensation payable to the Claimant was to be made on the basis of art. 17 of the Regulations.

31. In continuation, the Chamber noted that the residual value of the contract in the period between 1 June 2019 and 26 March 2020 amounts to USD 10,000 (i.e. USD 1,000 per month). Consequently, the Chamber concluded the amount of USD 10,000 shall serve as the basis for the final determination of the amount of compensation for breach of contract.

32. In continuation, the DRC verified as to whether the Claimant 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. According to the contents of art. 17 par. 2 of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the coach's general obligation to mitigate his damages.

33. In this respect, the DRC noted that according to TMS, on 3 January 2020, the Claimant signed a new contract with the Ghanaian club Sekondi Hasaacas, valid between 3 January 2020 and 3 January 2021, based on which he was entitled to a monthly salary of Ghana Cedis (GHS) 1,300. In the overlapping period between 3 January 2002 and 26 March 2020, this amounts to GHS 3,900 (approximately USD 2,667).

34. As a result, the Chamber concluded that the Claimant was able to mitigate his losses by USD 2,667.

35. In view of all of the above, the Chamber decided to award the Claimant the amount of USD 7,333 (USD 10,000-USD 2,667) as the mitigated compensation.

36. What is more, in line with the well-established jurisprudence of the DRC in this respect, as well as taken into account the request of the Claimant, the Chamber decided to award 5% interest *p.a.* on the amount of USD 7,333 as of the date of the claim.

iii. Compliance with monetary decisions

37. Finally, taking into account the consideration above, the Chamber referred to par. 1 lit. and 2 of art. 24bis 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.

38. In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.

39. Therefore, bearing in mind the above, the DRC 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 Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24bis par. 2, 4, and 7 of the Regulations.

40. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Registration Form, which is attached to the present decision.

41. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 8 of the Regulations.

d. Costs

42. 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.

43. 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.

44. 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, Nana Kofi Egyir, is partially accepted, insofar as it is admissible.

2. The Respondent, SM Sanga Balende, has to pay to the Claimant, USD 4,000 as outstanding remuneration, plus 5% interest *p.a.* as of 22 February 2021 until the date of effective payment.

3. The Respondent has to pay the Claimant, USD 7,333 as compensation for breach of contract, plus 5% interest *p.a.* as of 22 February 2021 until the date of effective payment.

4. Any further claims of the Claimant are rejected.

5. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.

6. Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid **within 45 days** of notification of this decision, the following **consequences** shall apply:

    1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.
    2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.

7. The consequences **shall only be enforced at the request of the Claimant** in accordance with article 24bis paragraphs 7 and article 24ter of the Regulations on the Status and Transfer of Players.

8. 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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