

Decision of the Dispute Resolution Chamber

passed on 29 July 2021

regarding an employment-related dispute concerning the player Rafael Gomes de Oliveira

COMPOSITION:

Clifford J. Hendel (USA/France), Deputy Chairman
Angela Collins (Australia), member
Stefano La Porta (Italy), member

CLAIMANT:

Rafael Gomes de Oliveira, Brazil

Represented by Mr Pedro Macieirinha

RESPONDENT:

Negeri Sembilan FA, Malaysia

Represented by Ram Yogan Sivam Solicitors

I. FACTS OF THE CASE

1. The Brazilian player, Rafael Gomes de Oliveira (hereinafter: *Claimant*) and the Malaysian club (hereinafter: *Respondent*) concluded an employment contract valid as from 1 February 2021 until 30 November 2021.
2. According to Schedule A of the contract, the Claimant was entitled to the following remuneration:

“First Year:

- i. Season 2021: Ringgit Malaysia equivalent to USD 6,000.00 (Six Thousand) per month payable on Exchange Rate calculated on Average USD / MYR of Bank Buy / Bank Sell determined by CIMB Bank, the official bank of Negeri Sembilan FC. The Exchange Rate will be determined on the day the salary will be paid. Payment will be made no later than the 7th of the following month.*
 - ii. USD 10,000 (Ten Thousand) to be paid to the Claimant as bonus in the event Negeri Sembilan FC qualifies in the Malaysian Super League 2022”.*
3. On 14 May 2021, the club sent a letter to the Claimant (hereinafter: *termination letter*) terminating the contract and stating as follows:

“We refer to the Above matter end to all our warning and show cause letters dated 3rd, 5th, 10th and 11th May 2021 requesting for an explanation and discussion on the issues pertaining to your poor performance and disciplinary conduct.

We further refer to your text message dated 5th May 2021 and addressed to our Fitness Trainer, Mr. Arulchelvan Illenggo informing us of your dissatisfaction and not wanting to play and join the team for the important away match against JDT on 7th May 2021. We consider this as a serious misconduct and disobedience on your part as a professional player.

We then refer to the meeting held at Wisma PBNS, Medan Rahang, 70 100, Seremban on 10th May 2021 attended by a Director, General Manager, Team Manager and 2 Team Officials and to which you had rudely walked out of the meeting without giving any reasons.

You had then on 12th May 2021 forwarded to our General Manager with your attorneys details in Portugal only to indicate that you are not keen to discuss your issues with us directly and to oblige to your employment contract with us.

In view of this we are left with no choice but to consider that you are not interested to discuss this matter with us and to unilaterally terminate your employment contract with Negeri Sembilan FC. Such being the case we are now to consider that you are no longer contracted with us (...).”

4. On the same day, the Claimant rejected the contents of the club's letter of termination and requested its immediate revocation.
5. On 19 May 2021, the Claimant sent a letter to the club acknowledging the unilateral termination of the contract by the latter and requesting compensation in the amount of USD 42,000 plus 5% interest as of the respective due dates, to be paid within the next 10 days.

II. PROCEEDINGS BEFORE FIFA

6. On 11 June 2021, the Claimant filed a claim for compensation for breach of contract against the Respondent before FIFA. A summary of the parties' respective positions is detailed in continuation.

a. The claim of the Claimant

7. According to the Claimant, the Respondent put him under duress to terminate the contract prematurely. Ultimately, some negotiations were held between the parties in order to find a mutual agreement in this respect.
8. However, on 14 May 2021, the Claimant received the termination letter, to which he immediately opposed. Thereafter, he was prevented from entering the club's facilities, nor was he allowed to train or participate in any official matches.
9. According to the Claimant, he had always fulfilled all of his contractual obligations.
10. The Claimant concludes that the Respondent terminated the contract without just cause..
11. The requests for relief of the Claimant were the following:

Compensation for breach of contract: USD 42,000 corresponding to the residual value of the contract, i.e. salaries from May until November 2021, plus 5% interest as of the respective due dates.

b. Position of the Respondent

12. In reply to the claim, the Respondent stated that, prior to terminating the contract, the Claimant had been warned multiple times in writing and had an unprofessional conduct.
13. The Respondent denied that the Claimant was put under duress to terminate the contract. In this regard, the Respondent explained that a series of incidents happened as follows:

- The Claimant performed badly in training sessions and had an unsatisfactory performance for 5 consecutive matches. As a result, on 3rd May 2021 the Respondent issued a warning letter to the Claimant reminding him of his duties and responsibilities and to give his full commitment during training and official matches,
 - On 4 May 2021, the Claimant failed to follow instructions given by the Respondent's Fitness Trainer to do the ice bath as required in any after-match procedure. As a result of which, on 5 May 2021 the club sent a second warning letter to the player,
 - On 5 May 2021, the Claimant was absent from a dinner which he was supposed to attend with the rest of the team. Later that evening, the Claimant sent a Whatsapp message to the team's Fitness Coach, explaining that he had forgotten to inform them of his absence because he had overslept. Furthermore, in the same message, the Claimant declared that there was no reason for him to attend the match the next day,
 - The team had to leave for the said match without the Claimant, whereas the coach had plans to field him.
14. Following such incidents the parties had a meeting on 10 May 2021 but the player Claimant stormed out of the meeting shortly after said meeting had started.
 15. On 12 May 2021, the Respondent received a Whatsapp from the Claimant, stating that he is represented by a lawyer from Portugal, however the said lawyer did not contact them. In particular, the Respondent emphasised that it never received the Claimant's lawyer's email dated 11 May 2021 since it was sent to the wrong email address.
 16. Finally, on 14 May 2021, the Respondent decided to issue the termination letter. The Respondent stands by the contents of such letter and deems that it had sufficient grounds to terminate the contract.
 17. Similarly to the email dated 11 May 2021, the Respondent did not receive the Claimant's letter wherein the latter rejected the termination.
 18. The Respondent further emphasised that it had intended to hold discussions with the Claimant regarding his absences and attitude in the performance of his contractual obligations, hence why the meeting on 10 May 2021; however the Claimant did not wish to communicate with them.
 19. The Respondent also denied that it prevented the Claimant from attending trainings or entering the club's facilities or to play in official matches.

20. Finally, the Respondent underlined that the Claimant left the country without notice on 29 May 2021 and that this act constituted a unilateral termination of the contract. The Respondent then discovered through social media that the player had joined a new club in Indonesia. In the Respondent's opinion, it never terminated the contract and the contract is still in force; the Claimant has therefore breached it by joining another club.
21. In conclusion, the Respondent asked the DRC to dismiss the Claimant's claim.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

22. 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 11 June 2021 and submitted for decision on 29 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.
23. 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 Brazilian player and a Malaysian club.
24. 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 11 June 2021, the current edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

25. 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.

26. 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

27. 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

28. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties dispute who is to be held liable for the early termination of the contract.
29. In this regard, the Chamber took note of the fact that the Respondent appears to believe that it is the Claimant who terminated the contract unilaterally; however, the Respondent acknowledges having sent the termination letter to the Claimant. In the Chamber's view, the contents of the said letter is very clear: the Respondent notified the Claimant that it had decided to terminate the contract.
30. In view of the above, the DRC determined that it was the Respondent which had terminated the contract unilaterally with its letter issued on 14 May 2021.
31. In this context, the Chamber acknowledged that it must establish whether the Respondent had sufficient grounds to terminate the contract unilaterally.
32. The reason given by the Respondent for the termination of the contract are two-fold: i. the Claimant's low motivation which affected his sporting performance and more particularly; ii. the Claimant's insubordination.
33. At this point, the Chamber was eager to emphasise 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 to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can always only be an *ultima ratio*.

34. Reverting to the grievances which the Respondent held against the Claimant, and in particular, the alleged acts of insubordination, the Chamber noted that these appear to be connected to the player's alleged absence at an official dinner as well as his absence from an official match. These events occurred just a few days before the termination letter was issued.
35. As to the meeting held on 10 May 2021, the Chamber held that there is not sufficient evidence on file to determine precisely what transpired during this meeting and the context of the player allegedly storming out of such meeting.
36. Given the overall circumstances surrounding the present matter and the evidence on file, the Chamber ruled that the termination of the contract by the Respondent was hasty and partly based on a subjective assessment of the Claimant's motivation to perform his duties.
37. In view of the above, the Chamber was of the opinion that the Respondent did not have just cause to prematurely terminate the employment contract with the Claimant since there would have been more lenient measures to be taken (e.g., among others, a suspension or a fine), in order to sanction the alleged misconduct, which is at the basis of the termination of the employment contract by the Respondent.
38. Overall, the Chamber decided that there was no just cause for the Respondent to unilaterally terminate the employment relationship between the parties and that, therefore, the Respondent had breached the employment contract without just cause on 14 May 2021.
39. Bearing in mind the previous considerations, the Chamber went on to deal with the consequences of the early termination of the employment contract without just cause by the Respondent.
40. In this regard, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive compensation for breach of contract from the Respondent.
41. 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.
42. In application of the relevant provision, the Chamber held that it first of all 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 Chamber established that no such

compensation clause was included in the employment contract at the basis of the matter at stake.

43. Subsequently, and in order to evaluate the compensation to be paid by the Respondent, the Chamber took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early termination occurred. In this respect, the Chamber pointed out that at the time of the termination of the employment contract on 14 May 2021, the contract would run until 30 November 2021, this is, for another seven months. Consequently, taking into account the financial terms of the contract, the Chamber concluded that the remaining value of the contract as from its early termination by the Respondent until the regular expiry of the contract amounts to USD 42,000 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.
44. In continuation, the Chamber remarked that following the early termination of the employment contract at the basis of the present dispute, the Claimant remained unemployed and was, therefore, unable to mitigate his damage.
45. In conclusion, the DRC ruled that the Respondent must pay the Claimant compensation for breach of contract in the amount of USD 42,000, amount which it deems fair, reasonable and proportionate in light of the specificities of the present matter.
46. Furthermore, in accordance with the Claimant's respective claim as well as the longstanding jurisprudence of the DRC, 5% interest per annum shall apply on the amount of the compensation as from the date of the claim, i.e. as from 11 June 2021, until the date of effective payment.

ii. Compliance with monetary decisions

47. Finally, 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.
48. 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.
49. 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.

50. 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.
51. 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

52. 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.
53. 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.
54. 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, Rafael Gomes de Oliveira, is partially accepted.
 2. The Respondent, Negeri Sembilan FA, has to pay to the Claimant the following amount:
 - USD 42,000 as compensation for breach of contract plus 5% interest *p.a.* on the said amount as from 11 June 2021 until the date of effective payment.
 3. Any further claims of the Claimant are rejected.
 4. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.
 5. 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.
 6. The consequences **shall only be enforced at the request of the Claimant** in accordance with article 24bis paragraphs 7 and 8 and article 24ter of the [Regulations on the Status and Transfer of Players](#).
1. 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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