

Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Gaira Joof

COMPOSITION:

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

CLAIMANT:

Gaira Joof, Gambia
Represented by Jonás Vallina

RESPONDENT:

Hapoel Um El Fahem, Israel
Represented by Amal Henawe

I. FACTS OF THE CASE

1. On 1 November 2020, the Claimant and the Respondent signed an employment contract, valid between 1 November 2020 and 30 May 2021, based on which the Claimant was inter alia entitled to the following:
 - a monthly salary of USD 3,750 net, payable until the 10th day of each month between November 2020 and May 2021, the salary of May being pro rata until the last day of the league (Note: according to information available on Google and Wikipedia, the last regular game of the Respondent was played on 25 May 2021 and the last playoff match of the Respondent was played on 31 May 2021);
 - a car, as well as payment of expenses related to the use and maintenance of the car (excluding fuel), costs of repairs, licensing, insurance fees, tax;
 - in case of an injury in the framework of the team and/or of the training or matches of the team, coverage of all medical, surgery and physiotherapeutic treatment.
2. Furthermore, the contract contained in art. 3.1 the following clause: *'Subject for the team achieving promotion to the Israeli first league (Ligat Haal) and according to section 3.2 of the loan agreement between Superstars Academy FC and the Club dated 01.11.2020, the club will have an option to extend the agreement for 2021/22 playing season to be exercise in writing no later than 01.05.2020'*.
3. On 25 February, the Claimant suffered an injury, but did not receive – according to the Claimant – any medical assistance from the Respondent, which was in fact pushing of the Claimant to play in a match against Maccabi Ahi Nazareth.
4. On 26 February 2021, the Respondent took away – for 10 days – the car of the Claimant, only returning it on 8 March 2021.
5. On 7 March 2021, the Respondent arranged that the Claimant could undergo a MRI scan in the city of Tulkur, Palestine, where he was diagnosed with a torn meniscus. According to the Claimant, he had to undergo surgery as soon as possible, however the Respondent did not provide him any assistance, eventually leading to the Claimant paying at his own expenses for a new medical examination on 18 March 2021.
6. On 19 March 2021, the Claimant requested the Respondent an update as to how his injury would be treated. Also, the Claimant put the Respondent in default for the payment of the February 2021 salary.
7. On 20 March 2021, the Respondent offered the Claimant a release from his contract, in exchange for the payment of the overdue salary for February 2021, which proposal was rejected by the Claimant.

8. After the Respondent urged him on 21 March 2021 to leave his apartment and after the Claimant found out that in the night from 22 to 23 March 2021, his car (and personal belongings in it) were taken again from the parking spot, the Claimant reported such circumstances to the local police station.
9. Afterwards, the Claimant received his personal belongings back from the Respondent, however not the car, and the Claimant was urged by the Respondent to report for a medical examination in the local hospital at 10:00 am on 24 March 2021.
10. On 23 March 2021, the Claimant put the Respondent in default for the outstanding salaries of January, February and March 2021, as well as requesting for adequate medical treatment and giving back his car and personal belongings, providing a 15 days' deadline to pay him the outstanding salaries and a 10 days' deadline to sort out the other requests.
11. In the period between 23 March and 8 April 2021, the Claimant kept on training alone, depending on the help of his teammates to sometimes reach the training centre, as his car was taken from him.
12. On 7 April 2021, the Respondent offered the Claimant 'to negotiate' and offered to pay for his surgery however not for the physiotherapist, 'making a final offer of 50/50'. Said offer was rejected by the Claimant.
13. On 8 April 2021, the Claimant unilaterally terminated the contract with immediate effect.
14. After having been requested by FIFA to provide an update on his contractual situation, the Claimant confirmed that after the unilateral termination of the contract, he remained unemployed.

II. PROCEEDINGS BEFORE FIFA

15. On 28 April 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

16. The requests for relief of the Claimant, as amended, were the following:
 - Outstanding remuneration in the total amount of USD 12,467.74, plus 5% interest *p.a.* as from 23 March 2021, broken down as follows:
 - unpaid part of the salary for December 2020 (USD 250),
 - the unpaid salaries for January, February and March 2020 in the amount of USD 3,750 each,

- the unpaid part of the salary for the period between 1 and 8 April 2020 in the amount of USD 967.74.

- Compensation for breach of contract in the amount of USD 6,550, corresponding to the residual value of the contract in the period between 8 April and 31 May 2021;
- '*amount compensation to mitigate for the related damages*' in the amount of USD 32,499.99 (i.e. the potentially missed income for the Claimant in the season 2021/2022 as per the extension option for 6 months in the new season: $USD\ 65,000/12*6= USD\ 32,499.99$)
- USD 300 as '*expenses for transportation*';
- USD 587.55 as '*expense that the player has in returning to Gambia*';
- USD 5,000 as '*medical surgery*';
- USD 4,320 as '*physiotherapy for 90 days period*';

b. Position of the Respondent

17. In reply to the Claimant's claim, the Respondent confirmed that the Claimant got injured on 25 February 2021 and that he was sent for a MRI examination on 7 March 2021. The Respondent argues that from said examination, no damage to the meniscus or any other serious injury was found.
18. The Respondent further explains that on 11 March 2021, the Claimant again underwent an examination at Dr. Ahmad Biadsa, which scheduled a surgery on 24 March 2021 in the Hillel Yaffe Hospital in Hadera, Israel.
19. The Respondent further argues that allegedly in the period between 11 March and 24 March 2021, the Claimant worsened his injury 'outside of his service in the team'. What is more, the Respondent argues that it provided the Claimant with appropriate medical treatment (including physiotherapy treatments), however the Claimant refused to cooperate.
20. Moreover, the Respondent points out that the Claimant incorrectly sent his correspondences (including his termination letter) to the club's TMS manager (who was on holidays), which was according to the Respondent not the correct contact person.
21. What is more, the Respondent argues that the Claimant received his claimed outstanding salaries '*in checks deposited into his account*'.
22. Moreover, the Respondent referred to the standard contract of the Israel Football Association (IFA) and argues that based on said contract '*it shall pay to the Claimant for his sick days according to the law*'. The Respondent argues that the Claimant received his salaries directly from the national.

c. Replica of the Claimant

23. The Claimant pointed out that some of the evidences provided by the Respondent are not duly translated into one of the official FIFA languages. Furthermore, the Claimant states that he never received the amounts that were allegedly paid to the '*national insurance*' and also that he never received any amounts from '*the national insurance system*'.
24. What is more, the Claimant argues that the Respondent did not comply with its contractual obligation to provide him with adequate medical treatment, and that he only underwent surgery on 24 March 2021, one month after the injury.

d. Duplica of the Respondent

25. In its duplica, the Respondent first if all submitted several translations of documents that were initially only submitted in Hebrew.
26. What is more, the Respondent stated that the Claimant had received his full salary from both the Respondent and the National Insurance Institute, and that as a result, his claim should be rejected.
27. Alternatively, the Respondent states that the Claimant must submit a copy of his claim submitted to the National Insurance Institute for work injury, and that '*the documents must be presented to the defendant so that he can amend the statement of defense on his behalf according to the situation after the plaintiff receives the funds from the National Insurance Institute*'.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

28. 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 28 April 2021 and submitted for decision on 15 July 2021. Taking into account the wording of art. 21 of the 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.
29. 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 Gambian player and a Israeli club.

30. 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 28 April 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

31. 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.
32. 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

33. 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

34. 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 whether or not the Claimant was provided sufficient medical treatment during the time whether he was injured, and whether or not he received the monthly salaries related to the period between December 2020 and March 2021. Furthermore, the parties disagree as to whether the unilateral termination of the contract on 8 April 2021 was made with or without just cause.
35. In this context, the Chamber acknowledged that its task was to determine whether or not the Claimant had received his monthly remuneration in the period between December 2020 and March 2021, as well as to determine whether or not the termination of the contract on 8 April 2021 was made with or without just cause.

36. First of all, the members of the Chamber wished to point out that submissions of the parties as regards to the allegedly outstanding salary payments, are not unequivocally clear and – based on the documentation on file, it could not be established with certainty to which extend the salary costs during the Claimant’s injury are covered for by the National Insurance in Israel.
37. What is more, the Chamber took note of the fact that the Respondent submitted documentary evidence that the Claimant had also signed a standard contract of the IFA, based on which the Claimant was entitled to sick pay, according to the law and the Claimant allegedly confirmed that he would return the total amount of ILS 23,678. Said document - in which the Claimant allegedly confirmed that he would pay back an amount of ILS 23,678 - is not contested by the Claimant, but the Respondent, on the other hand, was not able to demonstrate in a constructive matter that it paid the relevant monthly salaries to the Claimant, or that the National Insurance had paid already several amounts to the Claimant, in relation to the payments due to him during his injury.
38. As a result, the members of the Chamber reached the conclusion that there is no other option but to conclude that the Respondent did not comply with its financial obligations as per the contract and therefore, seriously neglected its financial obligations towards the Claimant.
39. As a result, the Chamber concluded that the Claimant had a just cause to unilaterally terminate the contract on 8 April 2021 and is entitled outstanding remuneration and compensation for breach of contract.

ii. Consequences

40. 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.
41. 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.
42. First of all, the members of the Chamber concurred that the Respondent must fulfil its obligations as per employment contract up until the date of termination of the contract in accordance with the general legal principle of “*pacta sunt servanda*”.
43. Consequently, the Chamber decided that the Respondent is liable to pay to the Claimant the remuneration that was outstanding at the time of the termination i.e. the amount of USD 11,500, consisting of the unpaid part of o USD 250 of the salary for December 2020, as well as the unpaid salaries in the amount of USD 3,750 each for the period between January and March 2021.

44. What is more, in line with the Chamber's well-established jurisprudence, as well as the request of the Claimant, the members of the Chamber decided to award 5% interest *p.a.* on the amount of USD 11,500 as from 23 March 2021.
45. Furthermore, the Chamber decided to reject the amounts claimed as costs for '*medical surgery*' and '*physiotherapy for 90 days period*', in view of the lack of documentary evidence submitted by the Claimant. The Chamber was however convinced to award the amount of USD 57 as costs for one session of physiotherapy, as said costs were according to the Chamber linked to the injury the Claimant suffered, and because the Claimant was able to back said request up with corroborating documentary evidence for said part of his claim.
46. Additionally, the members of the Chamber wished to point out that the costs claimed by the Claimant as car replacement costs are rejected since there is no documentary evidence of the Claimant on file, on the basis of which it could be established that Claimant indeed occurred costs in the amount of USD 300.
47. In continuation, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to any outstanding salaries on the basis of the relevant employment contract.
48. 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.
49. 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.
50. Subsequently, and in order to evaluate the compensation to be paid by the Respondent, the members of 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 8 April 2021, the contract would run for another 2 months, i.e. until 31 May 2021, in which a total of USD 7,500 was still to be paid.

51. In this respect, the Chamber wished to point out that it did not take into account the monetary value for a the potential extension of the contract in the season 2021/2022, as the option triggering said extension was conditioned upon the Respondent being promoted to the Israeli First League, an event which is not backed by any kind of documentary evidence submitted by the parties.
52. 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 Claimant until the regular expiry of the contract amounts to USD 7,500 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.
53. In continuation, the Chamber remarked that the Claimant had explained that after the unilateral termination of the contract, he remained unemployed and was therefore not able to mitigate his damages. Consequently, the members of the Chamber decided to not apply any further mitigation to the amount of USD 7,500.
54. In view of all of the above, the Chamber decided that the Respondent must pay the amount of USD 7,500 to the Claimant as compensation for breach of contract without just case, which is considered by the Chamber to be a reasonable and justified amount as compensation.
55. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

iii. Compliance with monetary decisions

56. Finally, taking into account the consideration under numbers 43. and 54. 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.
57. 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.
58. 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.

59. 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.
60. 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.

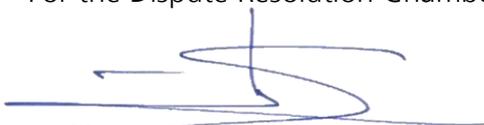
d. Costs

61. 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.
62. 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.
63. 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, Gaira Joof, is accepted.
2. The Respondent, Hapoel Um El Fahem, has to pay to the Claimant, the following amount:
 - USD 11,500 as outstanding remuneration, plus 5% interest *p.a.* as from 23 March 2021 until the date of effective payment;
 - USD 57 as medical costs;
 - USD 7,500 as compensation for breach of contract.
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](#).
7. 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