

Decision of the Dispute Resolution Chamber

passed on 1 July 2021

regarding an employment-related dispute concerning the player Mohamed Munir Khalifa

COMPOSITION:

Clifford J. Hendel (USA & France), Deputy Chairman
Tomislav Kasalo (Croatia), member
Pavel Pivovarov (Russia), member

CLAIMANT:

Mohamed Munir Khalifa, Libya
Represented by Anis Ben Mime

RESPONDENT:

Al Merreikh Sport Club, Sudan

I. FACTS OF THE CASE

1. On 28 January 2021, the Libyan player, Mohamed Munir Khalifa (hereinafter: *the player* or *the Claimant*) and the Sudanese club, Al Merreikh Sport Club (hereinafter: *the club* or *the Respondent*) allegedly signed a contract (hereinafter: *the contract*).
2. The contract had the following conditions:
 - a. Term: from 27 February 2021 to 26 January 2022;
 - b. A total remuneration of USD 300,000, broken down as follows:
 - i. Sign-on fee of USD 100,000 to be paid upon the execution of the contract; and
 - ii. Monthly salary of USD 8,330 payable by the end of each month *"from January 2021 to January 2022"*.
3. Schedule 2 of the contract states as follows, handwritten in its Arabic original:

"In deviation/addition to the provisions under the [contract], the [player] and the [club] agree as follows:

 1. *The parties agree on the payment of*
 2. *the sum of \$150,000 per month of April 2021*
 3. *the sum of \$50,000 per month of July 2021."*
4. By correspondence dated 28 January 2021, but seemingly not sent said date, the club:
 - a. confirmed that on 29 January 2021 at 1:32am an offer had been made to the player via his agent, occasion on which the club also requested the player to produce his "TPO declaration" and "certificate of clearance" from his previous club within the following 8 hours;
 - b. stated that because such deadline was not respected, the offer had been withdrawn.
5. On 29 January 2021 at 22:18 (UTC+1) the player's attorney sent an email to the club, stating as follows (*quoted verbatim*): *"On behalf of the player Mohamed el munir, Please find attached the contract of employment between player Mohamed el munir and Al merreikh club"*.
6. On 11 February 2021, the player put the club in default of payment of USD 100,000, granting it a deadline of 15 days to cure the breach.
7. On 26 February 2021, the club replied to the player's notice and denied that a contract had been executed. The club indicated that it had withdrawn its offer to the player on 29 January 2021, and that the contract did not bear the club's signature nor stamp. The club argued that the contract submitted by the player was a standard one found in the internet and had no reference to the club itself.

8. On 15 March 2021, the player terminated the contract.
9. Subsequently, the player signed a new contract with Al Ittihad Tripoli, valid as from 15 April 2021 until 15 October 2021, for a total remuneration of LYD 150,000.
10. On 08 April 2021, the Claimant lodged the claim at hand claiming he had just cause to terminate the contract. Accordingly he sought the payment of the following: (a) USD 100,000 as sign-on fee; and (b) USD 324,900 as compensation for breach of contract, broken down as follows: USD 300,000 as contract value plus 3 salaries of USD 8,330 each.
11. Despite having being invited to do so, the Respondent did not file a reply to the claim.

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

12. 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 08 April 2021 and submitted for decision on 1 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.
13. 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. 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 Libyan player and a Sudanese club.
14. 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 8 April 2021, said edition of cited regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

15. 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.

16. 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

17. 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

18. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. In this way, the DRC considered that the Respondent renounced its right to defence and thus accepted the allegations of the Claimant.
19. Furthermore, as a consequence of the aforementioned consideration, the members of the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules, they shall take a decision upon the basis of the documents on file, in other words, upon the statements and documents presented by the Claimant.
20. Having said this, the DRC acknowledged that, in accordance with the contract signed by and between the parties, the Respondent was obliged to pay to the Claimant *inter alia* the amount of USD 100,000 upon the execution of the contract.
21. Taking into account the documentation presented by the Claimant in support of his petition, the DRC, by majority decision, concluded that the Claimant had substantiated his claim with sufficient documentary evidence. In this respect, the majority of the members of the Chamber concurred that the specimen of the contract submitted by the Claimant contained all the *essentialia negotii* necessary to establish that the contract had been validly concluded between the parties, in particular as it included the signatures of the parties involved.
22. The DRC further highlighted by majority decision that, since the claim stood uncontested as the Respondent did not file its position, any arguments to the contrary – as those alleged

by the club in the notices exchanged with the player – lacked evidence and thus could not be upheld.

23. On account of the aforementioned considerations, the majority of the members of the Chamber established that the Respondent failed to remit the Claimant's remuneration in the total amount of USD 100,000 in accordance with the contract concluded between the parties, in spite of having been put in default to cure such contractual breach within a deadline of 15 days, to no avail.
24. Accordingly, bearing in mind such constellation and the unequivocal contents of art. 14bis of the Regulations, the Chamber determined, by majority decision, that the Claimant had just cause to terminate the contract.

ii. Consequences

25. 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.
26. The Chamber observed that the outstanding remuneration at the time of termination was equivalent to USD 108,330, corresponding to the salary of February as well as the sign-on fee of USD 100,000.
27. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the player the abovementioned amount, i.e. USD 108,330.
28. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, 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 player 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 Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of 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.

30. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
31. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract until its term. Consequently, the Chamber concluded that the amount of USD 291,630 (*i.e.* the salaries between March 2020 and January 2021 of a total of USD 91,630, plus the two lump sum payments of April 2021 and July 2021 respectively of USD 150,000 and USD 50,000) serves as the basis for the determination of the amount of compensation for breach of contract.
32. In continuation, the Chamber verified as to whether the player 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 constant practice of the DRC as well as art. 17 par. 1 lit. ii) 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 player's general obligation to mitigate his damages.
33. Indeed, the player found new employment. In accordance with the pertinent employment contract, the player was entitled to LYD 150,000, which is approximately USD 33,110. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of USD 33,110.
34. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason *i.e.* overdue payables by the club, and therefore decided that the player shall receive additional compensation.
35. In this respect, the DRC, by majority decision, decided to award the amount of additional compensation of USD 24,990, *i.e.* three times USD 8,330 as the monthly remuneration of the player.
36. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, it was decided that the club must pay the amount of USD 283,510 to the player (*i.e.* USD 291,630 minus USD 33,110 plus USD 24,990), which was to be considered by the majority of the members of the Chamber as a reasonable and justified amount of compensation for breach of contract in the present matter.

iii. Compliance with monetary decisions

37. Finally, taking into account the applicable Regulations. 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 Account 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.

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Mohamed Munir Khalifa, is partially accepted.
2. The Respondent, Al Merreikh Sport Club, has to pay to the Claimant the following amounts:
 - USD 108,330 as outstanding remuneration;
 - USD 283,510 as compensation for breach of contract without just cause.
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