

## **Decision of the Single Judge of the Players' Status Committee**

passed on 9 July 2021

regarding an employment-related dispute concerning the coach Sergio Nuno Carvalho

### **BY:**

**Roy Vermeer** (Netherlands), Single Judge of the PSC

### **CLAIMANT:**

**Sergio Nuno Carvalho, Portugal**

Represented by Mr. Gustavo Pinheiro

### **RESPONDENT:**

**Al-Nassr, Saudi Arabia**

Represented by Mr. Daniel Munoz Siera

## I. FACTS OF THE CASE

1. On 11 January 2019, the Portuguese Coach, Sergio Nuno Carvalho (hereinafter: *Claimant*), and the Saudi Arabian club, Al-Nassr (hereinafter: *Respondent*) signed an employment contract valid as from the date of signature until 30 May 2020 (hereinafter: *the employment contract*).
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant *inter alia* EUR 600,000, payable as follows:
  - EUR 200,000, within 10 working days as from the effective date;
  - EUR 200,000, no later than 1 August 2019;
  - EUR 200,000, no later than 1 February 2020.
3. On 1 June 2020, the parties entered into an additional contract (hereinafter: *the new contract*) valid from 10 September 2020 until 30 May 2022 by which the Respondent agreed to pay the Claimant EUR 800,000 payable in 8 instalments as follows:
  - EUR 100,000, no later than 30 August 2020;
  - EUR 100,000, no later than 30 December 2020;
  - EUR 100,000, no later than 30 March 2021;
  - EUR 100,000, no later than 30 June 2021;
  - EUR 100,000, no later than 30 August 2021;
  - EUR 100,000, no later than 30 December 2021;
  - EUR 100,000, no later than 30 March 2022;
  - EUR 100,000, no later than 30 June 2022.
4. According to article 3 of the new contract, the Claimant was also entitled to bonuses on the following occasions, each time they would be achieved during the duration of the employment relationship payable no later than the last day of the next month following that month in which the sporting success has been obtained:
  - EUR 300,000 in case of winning the Saudi League;
  - EUR 150,000 in case of winning the Saudi King's Cup;
  - EUR 300,000 in case of winning the AFC Champions League;
  - EUR 150,000 in case of winning the Arab Cup.
5. Clause V1.2 (termination) of the new contract states as follows:

*"In case the Assistant Coach terminates the agreement for just cause or the Club terminates without just cause, in such the Club shall be obliged to pay to the Assistant Coach the residual value of the contract, taking into account the principle of mitigation foreseen by Swiss law".*
6. In December 2020, the Respondent terminated the contract with the Claimant.
7. By correspondence dated 31 December 2020, the Claimant put the Respondent in default of payment of EUR 258,576, as part outstanding payment for the month of February 2020 and

the full salaries for the months between August and December 2020. In the same letter, the Claimant also requested payment of the outstanding bonuses in the amount of Saudi Arabian Rial (SAR) 309,000 (equivalent of EUR 67,097) and EUR 600,000 as compensation for the termination of the contract by the Respondent.

8. In the same letter, the Claimant informed the Respondent that he would remain in Saudi Arabia until 5 January 2021 and that if the parties failed to settle the matter, he would submit a claim to FIFA.

## II. PROCEEDINGS BEFORE FIFA

9. On 28 January 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

10. According to the Claimant, on 27 December 2020, during a meeting, the Respondent dismissed the Head Coach Rui Vitoria and all his assistant coaches (the Claimant included) without just cause, thereby terminating the contract. However, the Claimant adds that he did not receive the termination notice in writing.
11. According to the Claimant, at the time of the employment termination, the Respondent was already late with several payments as follows:
  - Outstanding Salaries in the amount of EUR 258,576 broken down as follows:
    - EUR 58,576 as outstanding salary for the month of February 2020, as the Respondent only paid EUR 141,424 of EUR 200,000;
    - EUR 200,000 as overdue payments for August and December 2020.
  - Bonuses in the amount of SAR 309,000.
12. The Claimant adds that in the days following the termination, he tried to establish an amicable solution to settle the late salaries and the compensation due. Despite his efforts, the Respondent was unwilling to resolve the matter.
13. According to the Claimant, the Respondent terminated the contract unilaterally and that pursuant to clause VI.2 of the new contract, it should pay him as compensation for such contractual termination, the residual value of the new contract.
14. According to the Claimant, at the termination on 27 December 2020, there were 6 outstanding instalments of EUR 100,000 and that considering the agreed compensation based on clause VII.2 of the new contract, the Respondent should pay EUR 600,000 as compensation for the termination.

15. In summary, the requests for relief of the Claimant, were the following:

-EUR 258,576 as outstanding salaries (EUR 58,576 for the month of February 2020, EUR 200,000 for the months of August and December 2020, pursuant to clause 3.1 of the contract and clause 3.1 of the new contract);

-EUR 600,000 as compensation for breach of contract for the period between March 2021 and June 2022, pursuant to clause VI.2 of the new contract;

-SAR 309,000 as match bonuses.

**b. Position of the Respondent**

16. According to the Respondent, in December 2020, it decided to part ways with the Head Coach and his entire team, the Claimant included.

17. In regards to the Claimant's request for SAR 309,000 as outstanding bonuses, the Respondent rejected this claim and submitted that the Claimant had failed to meet his burden of proof in relation to this claim in accordance with article 12.3 of the Rules Governing the Proceedings of the Players' Status Committee and the Dispute Resolution Chamber (Procedural Rules).

18. In continuation, the Respondent stated that the Claimant tried to sustain his claim for bonuses by submitting witness statements, allegedly provided by the people within the club. In this regard, the Respondent requested that the Players' Status Committee (PSC) disregards these statements, which fall short in accrediting the facts that they supposedly attest and that all the supposed witnesses could have a personal relationship with the Claimant, which could explain their bias against the Respondent.

19. In addition, the Respondent also noted that the Claimant did not provide any piece of evidence to corroborate that any of the happenings on which he based his claim had indeed taken place.

20. In regards to the compensation claim by the Claimant, the Respondent submits that the amount of compensation must be mitigated with any amounts that he received from any other employer after the termination of the contract.

21. In conclusion, the Respondent submitted that the Claimant failed to meet its burden of proof in regards to his entitlement to receive any bonuses, that any compensation to be awarded to the Claimant must be mitigated, subject to the Claimant submitting his new contractual details and that the Claimant should be ordered to pay legal and procedural costs.

### III. CONSIDERATIONS OF THE PLAYERS' STATUS COMMITTEE

#### a. Competence and applicable legal framework

22. First of all, the Single Judge of the Players' Status Committee (hereinafter also referred to as *the Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 28 January 2021 and submitted for decision on 9 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 Single Judge referred to art. 3 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (February 2021), the Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Portuguese Coach and a Saudi Arabian club.
24. Subsequently, the Single Judge 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 28 January 2021, the January 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### b. Burden of proof

25. The Single Judge 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 Single Judge stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties.
26. In this respect, the Single Judge 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 Single Judge and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following

considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

#### **i. Main legal discussion and considerations**

28. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that both parties confirm that in December 2020, the Respondent verbally and unilaterally terminated the contract.
29. Additionally, the Single Judge noted the Claimant's submission that the Respondent had terminated the contract without just cause and that as a result he is entitled to outstanding remuneration and compensation for breach of contract.
30. In this context, the Single Judge acknowledged that it its task was to determine whether the Claimant is entitled to the amounts as requested (cf. point 15 above).
31. The Single Judge also noted that the Respondent did not contest that the Claimant was entitled to outstanding remuneration and compensation but submitted that the compensation due should be mitigated in the event that the Claimant signed a new contract since the termination.
32. However, the Single Judge took note of the fact that the Respondent contested that any bonuses were due to the Claimant and that he had failed to meet the burden of proof in this regard.
33. With the above in mind and taking into account that the Claimant's request for relief, but for the bonuses, remained uncontested by the Respondent, the Single Judge concluded that in principle the Claimant was entitled to outstanding remuneration and compensation as result of the Respondent's unilateral termination of the contract in line with the principle *pacta sunt servanda*.
34. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent. By doing so, the Single Judge concluded that the Claimant was entitled to EUR 258,576 as outstanding salaries as follows:
- EUR 58,576 as salary for the month of February 2020;
  - EUR 100,000 as salary for the month of August 2020;
  - EUR 100,000 as salary for the month of December 2020.
35. What is more, in line with the well-established jurisprudence of the PSC in this respect, as well as taken into account the request of the Claimant, the Single Judge decided to award 5% interest *p.a.* on the above amounts as follows:
- on the amount of EUR 58,576 for the month of February 2020 as of 1 March 2020;
  - on the amount EUR 100,000 for the month of August 2020 as of 1 September 2020;
  - on the amount EUR 100,000 for the month of December 2020 as of 1 January 2021.

36. In regards to the outstanding bonuses requested by the Claimant, the Single Judge took into account the provisions under III.b above and agreed that the Claimant had failed to meet the burden of proof that he was entitled to the requested bonuses, as no (sufficient) evidence in this respect was advanced by the Claimant. The Single Judge decided to accordingly uphold the position of the Respondent in this respect and thus reject this part of the Claimant's claim.
37. In continuation, the Single Judge decided that, taking into consideration the Claimant's respective claim and article 6 of annexe 8 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract.
38. The Single Judge held that he 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 Single Judge established that in accordance with article VII.2 of the new contract, the parties agreed to award the residual value of the contract in case of termination.
39. In this regard, the Chamber deemed that the compensation clause is proportionate and reciprocal.
40. Subsequently, the Single Judge noted that at the time of contract termination, there were 6 outstanding instalments of EUR 100,000 which amounts to EUR 600,000 as the residual value of the contract.
41. In view of all of the above, the Single Judge decided that the Respondent must pay the amount of EUR 600,000 to the Claimant in accordance with article VII.2 of the contract.
42. What is more, in line with the well-established jurisprudence of the DRC and PSC in this respect, as well as taken into account the request of the Claimant, the Single Judge decided to award 5% interest *p.a* on the amount of EUR 600,000.
43. As a result, the Single Judge awarded EUR 600,000 as compensation for breach of contract, plus 5% interest *p.a.* as of the date of the claim, i.e. 28 January 2021.

## **ii. Compliance with monetary decisions**

44. Finally, taking into account the consideration above, the Single Judge referred to 8 annexe 8 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.
45. In this regard, the Single Judge 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.

46. Therefore, bearing in mind the above, the Single Judge 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. 8 annexe 8 of the Regulations.
47. 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.
48. The Single Judge 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. 8 annexe 8 of the Regulations.

#### **d. Costs**

49. The Single Judge referred to article 18 par. 1 of the Procedural Rules, according to which *"Costs in the maximum amount of CHF 25,000 are levied in connection with proceedings of the Players' Status Committee and the single judge (with the exception of proceedings relating to the provisional registration of players), as well as for proceedings before the DRC relating to disputes regarding training compensation and the solidarity mechanism. Costs are to be borne in consideration of the parties' degree of success in the proceedings (...)".*
50. Accordingly, and bearing in mind that the Claimant's claim was largely accepted and, for the most part, not contested by the Respondent, the Single Judge decided that procedural costs in the amount of CHF 20,000 were in order and that these should be borne by the Respondent alone.
51. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.



#### IV. DECISION OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

1. The claim of the Claimant, Sergio Nuno Carvalho, is partially accepted.
2. The Respondent, Al-Nassr, has to pay to the Claimant outstanding remuneration in the amount of EUR 258,576, plus 5% interest *p.a.* until the effective date of payment as follows:
  - on the amount of EUR 58,576 as of 1 March 2020;
  - on the amount of EUR 100,000 as of 1 September 2020;
  - on the amount of EUR 100,000 as of 1 January 2021.
3. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of EUR 600,000, plus 5% interest *p.a.* as of 28 January 2021 until the effective date of 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 8 of Annexe 8 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 8 of Annexe 8 and article 24ter of the [Regulations on the Status and Transfer of Players](#).
8. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Respondent to FIFA (cf. note relating to the payment of the procedural costs below).

For the Players' Status Committee:



**Emilio Garcia 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](http://www.fifa.com) | [legal.fifa.com](http://legal.fifa.com) | [psdfifa@fifa.org](mailto:psdfifa@fifa.org) | T: +41 (0)43 222 7777