Decision of the Dispute Resolution Chamber

passed on 29 July 2021

regarding an employment-related dispute concerning the player Fayçal Rherras

COMPOSITION:

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

CLAIMANT / COUNTER-RESPONDENT 1:

Faycal Rherras, Morocco & Belgium
Represented by Mr Ludovic Deléchat

RESPONDENT / COUNTER-CLAIMANT:

Mouloudia Oujda, Morocco
Represented by Mr Mohamed Ghazi

COUNTER-RESPONDENT 2:

PFC Levski Sofia, Bulgaria

I. FACTS OF THE CASE

1. On 10 November 2020, the player, Mr Fayçal Rherras, who holds both Moroccan and Belgian nationalities (hereinafter: *player* or *Claimant / Counter-Respondent 1*) and the Moroccan club, Mouloudia Oujda (hereinafter: *club* or *Respondent / Counter-Claimant*), concluded an employment contract (hereinafter: *contract*), valid from 10 November 2020 to 30 June 2023, according to which the player was entitled to receive the following remuneration:

   Season 2020/21
   - Signing bonus of Moroccan Dirhams (MAD) 653,000 DH net payable at the signing, namely on 10 November 2020;
   - Monthly salary MAD 80,000 net payable "*each end of the month*";

   Season 2021/2022
   - Signing bonus of MAD 400,000 net payable on 15 September 2021 and MAD 223,400 payable on 31 March 2022;
   - Monthly salary MAD 60,000 net payable "*each end of the month*";

   Season 2022/2023
   - Signing bonus of MAD 400,000 net payable on 15 September 2022 and MAD 346,250 payable on 31 March 2023;
   - Monthly salary MAD 80,000 net payable "*each end of the month*".

2. The player was also entitled to performance bonuses as well as a monthly amount of MAD 5,000 for his accommodation as well as two air tickets per sporting season.

3. Art. 15 of the contract stipulates as follows:

   "En cas de contestation et / ou litige né de l'exécution et / ou l'interprétation des clause du présent contrat, les parties sont tenues de recourir à tous les moyens et procédures en vue d'un règlement amiable du litige.

   En cas d'échec, le différend est soumis, par l'une ou l'autre partie, à la chambre de résolution des litiges de la Fédération Internationale de Football Association (FIFA). Les décisions de la chambre de résolution des litiges de la FIFA sont susceptibles de recours au Tribunal Arbitral du Sport (TAS) conformément aux dispositions des statuts et règlements de la FIFA »

   Free translation to English:

   "In the event of a dispute arising from the execution and / or interpretation of the clauses of this contract, the parties are required to resort to all means and procedures for an amicable settlement of the dispute. In the event of failure, the dispute is submitted by either party to the dispute resolution chamber of the Fédération Internationale de Football

Association (FIFA). The decisions of FIFA's dispute resolution chamber are subject to appeal to the Court of Arbitration for Sport (CAS) in accordance with the provisions of FIFA's statutes and regulations"

4. On 18 December 2020, the player gave notice to the club to pay him the sum of MAD 653,000 net, representing the entire signing bonus due on 10 November 2020 within 15 days.

5. The player once again put the club on notice on 13 January 2021, requesting the club to pay him the total sum of MAD 733,000 net, representing the entirety of the signing bonus that was due on 10 November 2020 as well as the salary for December 2020 within 15 days.

6. On 29 January 2021, the player sent a letter of early termination of the employment contract invoking just cause in accordance with art. 14bis of the Regulations on the Status and Transfer of Players.

7. On 4 February 2021, the player and the Bulgarian club, PFC Levski Sofia, concluded an employment contract valid as from signature until 30 June 2022.

8. According to the said contract, the player was entitled to the following remuneration:
   - EUR 6,000 net per month as from 4 February until 30 June 2021;
   - EUR 8,000 net as from 1 July 2021 until 30 June 2022.

9. On 10 May 2021, the player and PFC Levski Sofia concluded an agreement for the mutual termination of their contract, according to which the player was entitled to receive a total amount of EUR 30,643.78.

10. Thereafter, the player remained unemployed until the passing of the present decision.

II. PROCEEDINGS BEFORE FIFA

11. On 5 February 2021, the player filed a claim for outstanding remuneration and compensation for breach of contract against the club before FIFA. A summary of the parties' respective positions is detailed below.

a. The claim of the Claimant / Counter-Respondent 1

12. As a preliminary remark with respect to the competence of this Chamber to decide on the present dispute, the Claimant / Counter-Respondent 1 underlined that FIFA's deciding bodies should retain jurisdiction in accordance with art. 22b) of the Regulations on the Status and Transfer of Players as he holds the Belgian nationality.

13. In addition, the Claimant / Counter-Respondent 1 underlined that the contract refers to his Belgium nationality, while art. 15 of the contract stipulates that FIFA shall be competent in case of disputes between the parties.

14. As to the substance of the matter, the player referred to the two default notices dated 18 December 2020 and 13 January 2021 and to the remuneration allegedly outstanding at the time of his unilateral termination of the contract on 29 January 2021.

15. It is the player's belief that he has met the requirements of art. 14bis of the Regulations on the Status and Transfer of Players and, therefore, that he has terminated the contract with just cause. In particular, the player alleged that the club had failed to pay an amount of MAD 733,000, which represents more than six months' salary.

16. The Claimant / Counter-Respondent 1 made the following requests for relief:

- Outstanding remuneration: MAD 733,000 net,
- Compensation for breach of contract: MAD 3,169,650 corresponding to the residual value of the contract + MAD 60,000 corresponding to the accommodation allowance due until the end of the contract,
- Additional compensation in accordance with art. 17 par. 1 ii. of the Regulations on the Status and Transfer of Players: MAD 373,373.45.

b. Position of the Respondent / Counter-Claimant

17. The Respondent / Counter-Claimant primarily contested FIFA's competence to deal with the present dispute on account of the fact that the player holds the Moroccan nationality. Consequently, the club, referring to art. 22 b) of the Regulations on the Status and Transfer of Players, deems that there is no international dimension to the present matter.

18. Indeed, the Respondent / Counter-Claimant underlined that the player was registered as a local player, with his Moroccan identity card.

19. Furthermore, the club referred to the local rules applicable with respect to the foreigner's quota, which had already been used up by other players than the Claimant / Counter-Respondent 1.

20. Equally, the Respondent / Counter-Claimant emphasized that the player's nationality indicated in the relevant TMS transfer instruction was his Moroccan nationality.

21. Notwithstanding the above, *"in the unlikely event the FIFA DRC would declare itself competent to deal with the present matter"*, the club lodged a subsidiary counter-claim against the player.

22. In this regard, the Respondent / Counter-Claimant argued that the player did not have just cause to terminate the contract, since the latter acted in bad faith. The club referred to the

fact that, following the player's second default notice and the player's disinterest in the pursuit of the employment relationship, the parties tried to settle the matter amicably in the course of the month of January 2021. The club was willing to settle the matter, and in this sense it did not oppose to the issuance of the player's ITC in favour of his new club, PFC Levski Sofia.

23. The player, however, lodged a claim at FIFA already on 4 February 2021, whilst he had, in fact, already found a new club during the time they were negotiating to solve the matter amicably. Furthermore, the Respondent / Counter-Claimant suggested that the player, who had requested to travel abroad in January 2021 in order to undergo some medical tests, was in fact in the midst of undergoing medical tests with PFC Levski Sofia during the relevant trip.

24. In continuation, the Respondent / Counter-Claimant stated that the player had not respected the formalities of art. 14bis RSTP prior to terminating the contract. Indeed, the club underlined that, while the deadline as per the player's second default notice dated 13 January 2021 was still running, the player left the club's training camp and did not return to the club thereafter, thus violating his own contractual obligations.

25. As a consequence of the above, the Respondent / Counter-Claimant affirmed that the player would, *quod non*, only be entitled to the amounts outstanding at the time of the termination of the contract by the player, which the club calculates as follows:

    MAD 653,000 as signing bonus + Salaries due between 10 November 2020 and 27 January 2021, i.e. 78 days (MAD 80,000 / 30 * 78) = MAD 208,000 minus MAD 80,000 paid to the player in December 2020 = MAD 781,000

26. Furthermore, the club subsidiarily claimed compensation for breach of contract against the player as follows:

    Residual value:
    28-31 January 2020: MAD 80,000 / 31 * 4 = MAD 10,323
    February-June 2020: 5 x MAD 80,000 = MAD 400,000
    July 2021 to June 2022: 12 x MAD 60,000 = MAD 720,000
    July 2022 to June 2023: 12 x MAD 50,00 = MAD 600,000
    TOTAL: MAD 1,730,323

27. As to the calculation of the residual value, the club considers that the signing-on bonus should not be included in the calculation, since these are only due *"upon signature of the contract".* Furthermore, the club deemed that the compensation due to it shall equal the average of the contract with the player and his new contract.

28. Finally, in the further subsidiary, should this Chamber deem that it is competent and that the player had just cause to terminate the contract, the Respondent / Counter-Claimant claimed that the player should not be entitled to the accommodation allowance nor to the

additional compensation. Equally, any amounts due to him as compensation shall be reduced by taking into account his salaries received at the new club.

c. Claimant / Counter-Respondent 1's position as to the Respondent / Counter-Claimant's subsidiary counterclaim

29. In reaction to the club's subsidiary counterclaim, the player first held that, by lodging the said counterclaim, the club had implicitly accepted the competence of FIFA to deal with the present matter. The player referred in this regard to a decision of the DRC: https://digitalhub.fifa.com/m/1cf008c3defc81f7/original/io1liloeco8u7aq1j1ed-pdf.pdf and argued that the action of lodging a counterclaim constituted a violation of the principle of *venire contra factum proprium*.

30. Furthermore, as to the substance of the dispute and the arguments raised by the club, the player denied having acted in bad faith. He underlined that he had made a last counter-proposal regarding the settlement of the dispute on 24 January 2021, to which the club did not reply.

31. The Claimant / Counter-Respondent 1, therefore, deemed that he was free to sign a contract with his new club, PFC Levski Sofia, on 4 February 2021.

32. The player otherwise mainly reiterated his previous arguments in support of his claim.

d. Counter-Respondent 2's position as to the Respondent / Counter-Claimant's subsidiary counterclaim

33. According to its usual practice in similar cases, the FIFA administration extended the club's counter-claim in the subsidiary to the player's new club, i.e. PFC Levski Sofia (hereinafter also referred to as *Counter-Respondent 2*).

34. In reply to the subsidiary counterclaim, the Counter-Respondent 2 first noted that it was called as a party in the proceedings although the club had not lodged its claim against it. In other words, no claims were formulated by the club against PFC Levski Sofia.

35. In view of the above, PFC Levski Sofia clarified that it will not intervene as to the substance of the contractual dispute and that its statement will be limited to the issue of the possible application of art. 17 par. 4 of the Regulations on the Status and Transfer of Players, namely the question of its possible inducement for the player to breach the contract.

36. In this regard, the Counter-Respondent 2 stated that it had never interfered in the employment relationship between the player and the club, and that it had not contacted the player during the term of said contractual relationship.

37. According to the Counter-Respondent 2, it was the player's intermediary who had contacted them at the beginning of February 2021 to introduce the player. In the communications that ensued, the player was presented as a free agent who had terminated his contract with his previous club with just cause on 29 January 2021. Exercising due

diligence, the club asked the player to provide them with proof of his unilateral breach of the contract, and the player provided them with the letters dated 13 January and 29 January 2021. After analysis of the said documentation, PFC Levski Sofia deemed that the player had respected all applicable rules prior to terminating the contract.

38. PFC Levski Sofia also contacted the club on 3 February 2021 clearly stating its interest in the player and requesting more information about the termination. The club did not object in any way to the player's transfer and provided them with a third-party ownership (TPO) declaration.

39. PFC Levski Sofia denied that the player underwent medical tests with them in January 2021.

40. For all the reasons above, the Counter-Respondent 2 deemed that it did not induce the player to breach his contract with the Respondent / Counter-Claimant.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

41. First, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) noted that the present matter was presented to FIFA on 5 February 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: *Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

42. With respect to its competence to hear the present matter, the Chamber acknowledged that the Respondent / Counter-Claimant had challenged the competence of FIFA's deciding bodies. The player, however, insists on FIFA's competence.

43. The parties' respective positions with respect to this Chamber's jurisdiction in the present matter can be summarized as follows.

44. According to the Respondent / Counter-Claimant, the present dispute lacks international dimension as the player holds the Moroccan nationality and the Respondent / Counter-Claimant is also Moroccan. Therefore, the Respondent / Counter-Claimant, referring to art. 22 b) of the Regulations on the Status and Transfer of Players, holds that the DRC cannot entertain the player's claim.

45. The Respondent / Counter-Claimant explained that the player was registered at the Moroccan Football Federation as a local player, using his Moroccan identity card. The club also referred to the applicable internal rules with respect to the foreigners' quota and explained that the respective quota was used by other foreign players, reason for which the club registered the player as a Moroccan player.

46. Furthermore, the Respondent / Counter-Claimant emphasized that the player's nationality indicated in the relevant TMS transfer instruction was his Moroccan nationality.

47. The player, for his part, relied on the fact that he also holds the Belgian nationality and that the employment contract refers to such nationality.

48. Moreover, the player referred to art. 15 of the contract, which is a jurisdiction clause, and which explicitly stipulates that the FIFA DRC shall be competent to hear any dispute between the parties to the contract.

49. Finally, the player also puts forward that the Respondent / Counter-Claimant had lodged a counterclaim. According to the player, by lodging the said counterclaim, the Respondent / Counter-Claimant had implicitly accepted the competence of the FIFA DRC.

50. The player concludes, therefore, that the present matter has an international dimension and that the DRC is competent on the basis of the provisions of art. 22 b) of the Regulations on the Status and Transfer of Players.

51. After having recalled the parties' respective positions as to its competence, the Chamber first emphasized that, in any event, the matter of its competence is one that it must analyse *ex officio*.

52. In this context, the Chamber wished to recall the 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 referred to the contents of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.

53. The Chamber also recalled that, in accordance with art. 6 par. 4 of Annexe 3 of the Regulations on the Status and Transfer of Players (edition February 2021) (hereinafter: *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.

54. The Chamber then stated that, in accordance with art. 3 par. 1 of the Procedural Rules as well as art. 24 par. 1 in combination with art. 22 b) of the Regulations, the Dispute Resolution Chamber is in principle competent to deal with employment-related disputes between players and clubs of an international dimension.

55. The wording of the cited provisions implies that the first condition that needs compulsorily to be fulfilled in order for FIFA to be competent to hear an employment-related dispute between a club and a player is that said dispute has an "international dimension". This means that FIFA is only competent to hear an employment-related dispute of such kind when the parties have different nationalities.

56. The jurisprudence of the DRC shows that, in claims where a player has dual citizenship, one of which is the same as the nationality of the club, the case lacks international dimension. In particular, in the case of players, the registration of a player is a factor when assessing if the international dimension is present, due to the fact that clubs may enjoy benefits in

registering a player with a certain nationality, including regulations on limitations of home-grown players/foreign quota. On this basis, the DRC, again referring to its jurisprudence in similar matters, confirmed that there is a presumption that the player's (shared) nationality is that of his registration.

57. Consequently, the Chamber determined that in case the parties share a common nationality, the relevant dispute is considered a purely internal (national) matter to be decided by the competent authorities in the respective country, save in the event the party relying on the international dimension submits conclusive and substantial evidence to prove the contrary. Nevertheless, the DRC also confirmed it must assess these matters on a case-by-case basis, taking into account any particular aspects in the matter in question.

58. In the present matter, the Chamber noted that it remains uncontested that both the player and the club have the Moroccan nationality. It is also uncontested that he holds another nationality, the Belgian nationality.

59. In view of the foregoing, the Chamber determined that the player carried the burden of the proof in line with aforementioned art. 12 par. 3 of the Procedural Rules to demonstrate that he was registered as a Belgian national or that there were any other circumstances which would lead the DRC to being competent to hear the present dispute in that it would have established the international dimension.

60. With the aforementioned in mind, the Chamber first turned to the player's argument with respect to the jurisdiction clause contained in art. 15 of the contract. The Chamber duly acknowledged that the said clause referred to the competence of the FIFA DRC to settle disputes between the parties to the contract; this being said, the Chamber held that, as previously mentioned, its competence is a matter that it shall decided upon *ex officio*, in accordance with the applicable regulatory provisions. In other words, a jurisdiction clause in an employment contract giving competence to a particular deciding body is not *per se* binding on the DRC, for its competence derives not from the contractual arrangements between any given parties but in fact from the Regulations.

61. In continuation, the Chamber addressed the player's argument pertaining to the fact that the Respondent / Counter-Claimant has lodged a counterclaim.

62. In this regard, the DRC took due note of the decision of the DRC upon which the player relied, and noted that, in the considerations of the said decision, the Chamber had emphasized the following: *"In this regard, it was neither argued by the player nor the documentation on file appears to show that the player's counterclaim in front of the NDRC of the Football Federation E was somehow subsidiary to his objection to the competence of said national deciding body"*.

63. Reverting to the present matter, the Chamber recognized that the Respondent / Counter-Claimant was only presented in the subsidiary form, should the DRC rule that it is competent to handle the present dispute. It is, from the wording of Respondent / Counter-Claimant's submission, absolutely clear that its primary request is for the DRC to deny its competence to deal with the present matter. In that sense, the DRC concluded that the Respondent / Counter-Claimant had in no way violated the principle of *venire contra factum proprium*.

64. At this point, the Chamber turned to the other elements in its possession in order to determine the issue of which of the player's nationalities shall be considered as the one at the basis of the contractual relationship between the parties.

65. In this regard, the DRC noted that the employment contract refers to both of the player's nationalities, i.e. Moroccan and Belgian.

66. Equally, the relevant TMS transfer instruction does mention the player's Moroccan nationality exclusively, as underlined by the Respondent / Counter-Claimant.

67. Furthermore, the player was indeed registered as a Moroccan player with the Moroccan Football Federation. This was also confirmed by the Moroccan Football Federation itself upon request of the FIFA administration.

68. All of the above-mentioned elements put together led the DRC to decide that the Claimant / Counter-Respondent 1 could not rebut, on the basis of art. 12 par. 3 of the Procedural Rules, the presumption of a lack of international dimension in the present matter. Indeed, all elements point to the fact that both nationalities were referenced in the employment contract and the player was registered with the Moroccan nationality, and that as such the dispute is to be considered a national matter.

69. In conclusion, the DRC decision is that the Claimant / Counter-Respondent 1's counterclaim is inadmissible.

b. Costs

70. 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.

71. 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.

72. 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

The claim of the Claimant / Counter-Respondent 1, Fayçal Rherras, is inadmissible.

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).

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