

Decision of the Single Judge of the Players' Status Committee

passed on 09 July 2021

regarding an employment-related dispute concerning the coach Pedro Sacramento

BY:

Roy Vermeer (Netherlands), Single Judge of the PSC

CLAIMANT:

Pedro Sacramento, Portugal

Represented by 14 Sports Law

RESPONDENT:

Al Nassr, Saudi Arabia

Represented by Mr. Daniel Muñoz

I. FACTS OF THE CASE

1. On 1 September 2018, the Portuguese coach, Mr. Pedro Sacramento (hereinafter: *the coach* or *the Claimant*), and the Saudi club, Al Nassr (hereinafter: *the club* or *the Respondent*), signed an employment contract by means of which the Claimant was hired as the coach of the Respondent's U-17 football team (hereinafter: *the employment contract*).
2. Item 3 (a) of the employment contract established the following: *"The period of this contract shall start from 01/09/2018 and expires on 30/06/2019 automatically renewable unless either party notifies in writing that he is not willing to renew the contract before at least 15 days from the contract expiry date"*.
3. In consideration of his services and under item 4 of the employment contract, the club undertook to pay the coach the total amount of EUR 55,000, payable in 10 equal instalments of EUR 5,500 each, until the first ten days of the following month.
4. Furthermore, item 8, par. 2 and 5 read as follows:

"2. If the contract period expires and the two parties or any one of them is not willing to renew it after he notifies the other party before 15 days from its expiry date.

[...] 5. If either party terminates this contract by his sole will for no valid reason, he shall pay to the other party a liquidated damage of two months salary according to the provisions of article 77 of the Labor Law".
5. Finally, item 9, par. 2 of the employment contract stipulated the following: *"any dispute which may occur between the two parties on this contract or its interpretation shall be subject to the jurisdiction of the competent authority concerned with judging the labor cases in Saudi Arabia as stated in the Saudi Labor Law"*.
6. On 22 May 2019 (i.e. by the end of the season 2019/2020), the coach travelled back to his country for vacation. In accordance with the flights tickets submitted by the coach and allegedly issued by the club, he was supposed to go back to the Saudi Arabia on 11 August 2019, in order to resume his duties as per the employment contract.
7. On 23 October 2019, Mr. Hélder Cristóvão - the technical director of the club's academy / youth squads and coordinator of the coaching staff (hereinafter: *Mr. Cristóvão*) - and a club's representative exchanged messages via WhatsApp regarding the payments due to him and the coaching staff as a result of *"the agreement for leave the club"*.
8. On 16 December 2019, Mr. Cristóvão sent the club an e-mail regarding the payments due to the coaching staff. In this opportunity, Mr. Cristóvão wrote, *inter alia*, that the club owed

EUR 11,000 to the coach, regarding season 2018/2019, plus EUR 5,000 regarding season 2019/2020.

9. On 17 September 2020, the coach sent the club a default notice stating, *inter alia*, that: (i) as the coach did not receive any notification in writing from the club in accordance with item 3(a) of the employment contract, it was considered to be automatically renewed for equivalent period, *i.e.* until June 2020; and (ii) the coach's salaries from May to December 2019 and from January to April 2020 were outstanding. To this extent, the coach granted the club a 10 days' deadline in order to cure its breach.
10. On 27 September 2020, the club replied to the coach's notice and stated that the employment contract had not been renewed after the end of the first season. In this regard, the club recalled that the coach was hired as part of the working staff led by Mr. Cristóvão, who had already been informed that the project to develop the youth squads of the club was not going to continue.
11. On 18 November 2020, the club paid EUR 5,550 to the coach "*corresponding to a monthly salary that remained unpaid to date*".
12. On 23 November 2020, the coach sent the club a second default notice by means of which he acknowledged receipt of the amount of EUR 5,496.88, but informed that the club still owed him the total of EUR 60,503.12 corresponding to the salaries of June to December 2019 and January to April 2020. At the end, the coach granted the club another 10 days in order to proceed the payment of his outstanding remuneration.
13. On 2 December 2020, the club replied to the coach's second notice and reiterated its arguments concerning the renewal of the employment contract.

II. PROCEEDINGS BEFORE FIFA

14. On 31 December 2020, the coach 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 coach

15. First and foremost, the coach argued that FIFA is to be considered competent to hear the dispute irrespective of the jurisdiction clause established in art. 9 par. 2 of the employment contract.
16. In this regard, the coach stated that, at the time of the signature of the employment contract, he did not know that such clause was invalid. In this respect, the coach submitted that "*according to Saudi Labour Law, the disputes between players, coaches and clubs cannot, by any means, be submitted to Saudi Courts*".

17. In support of his allegations, the coach referred to art. 7 par. 6 of the Saudi Labour law and submitted a legal opinion issued by Dr. Abdulaziz M. Alfadhli (hereinafter: *Mr. Abdulaziz*), which states that *"there is an explicit article in the current Saudi Labour Law (Article 7) that clearly excludes players and coaches' disputes with sports clubs, as the Saudi labor system [sic] does not applicable to such disputes"*.
18. In light of the above, the coach claimed that the jurisdiction clause included in the employment contract (item 9) should be deemed null and void and, hence, that the FIFA Players' Status Committee has jurisdiction to rule over this matter in accordance with art. 22, lit. c) of the FIFA Regulations on the Status and Transfer of Players (RSTP).
19. In continuation, the coach entered the substance of the dispute.
20. In doing so, he referred to the content of the employment contract and to the flight tickets allegedly issued by the club. In this respect, the coach explained that he flew back to Portugal after the end of the season 2018/2019 and was supposed to return to Saudi Arabia on 11 August 2019, only when he realized that his trip had been cancelled by the club.
21. In this context, the coach stated that the club did not timely (or personally) notify him of its unwillingness to renew the employment contract (cf. item 3(a) of the employment contract). Moreover, the coach claimed that his relationship with the club was not bound to Mr. Cristóvão and, as such, that he himself should have been formally and directly notified of his contractual obligations. Specifically, the coach pointed out that *"there is not a single reference to Mr. Cristóvão [in the employment contract] nor any reference to his competence to decide over the contractual status of the coach or even any provision that could establish a subordinate relationship between the Claimant and Mr. Cristóvão"*.
22. In light of the above, the coach argued that the employment contract was automatically renewed not only once, but twice *i.e.* both for the season of 2019/2020, as well as for the season of 2020/2021. Accordingly, the coach deemed that the employment contract was only terminated without just cause by the club on 27 September 2020, *"the first time the club informed the coach – directly, indirectly or even implicitly – that they did not rely upon the services of the coach"*.
23. As a consequence, the coach claimed that he is entitled to the outstanding salaries of June 2019, as well as the total remuneration due for the *"renewed"* periods (*i.e.* from July 2019 until June 2020 and from July 2020 until the date of the claim, in December 2020).
24. As to the compensation, the coach stated that the residual value of the employment contract corresponds to EUR 33,000 (*i.e.* the salaries from January until June 2021) and that he was not able to mitigate his damages.
25. Therefore, the coach requested, *inter alia*, payment of the following amounts plus 5% interest p.a. as from the due dates:

- a. EUR 3,12 corresponding to the remaining salary of May 2019;
 - b. EUR 5,500 corresponding to the salary of June 2019;
 - c. EUR 55,000 corresponding to the salaries from July 2019 until June 2020 (*i.e.* the first renewal of the employment contract);
 - d. EUR 27,500 corresponding to the salaries from July 2020 until December 2020 (*i.e.* the second renewal of the employment contract);
 - e. EUR 33,000 as compensation for breach of contract.
26. Alternatively, the coach requested the club to be ordered to pay EUR 60,503.12 (instead of EUR 93,503.12) as outstanding remuneration plus EUR 33,000 as compensation for breach of contract.
27. Finally, the coach requested sporting sanctions to be imposed on the club.

b. Reply of the club

28. The club started its response by challenging FIFA's competence to hear the dispute based on the jurisdiction clause contained in item 9, par. 2 of the employment contract. In this respect, the club made the following remarks:
- a. The parties freely and expressly agreed on submitting any dispute to the competent labour courts of Saudi Arabia;
 - b. Such reference to the ordinary courts was made in accordance with art. 22, caput of the FIFA RSTP, and is legitimate in accordance with FIFA and CAS jurisprudence;
 - c. The coach failed to adduce conclusive evidence as to why the Saudi labour courts would not be competent to adjudicate on any dispute arising from the employment contract;
 - d. Despite the conclusion that the coach is not a legal practitioner, he should know that he would provide his services in Saudi Arabia and be aware of the consequences;
 - e. The legal opinion filed by the coach lacks of legal effects, because it does not contain documentary evidence of Mr. Abdulaziz's legal experience, as well as it is to be considered "*a fallacy*";
 - f. *"the fact that the KSA general labour law is not applicable to players and to coaches, by virtue of article 7, does not entail by direct consequence that the KSA labour courts are not competent to adjudicate in disputes arising between such persons and national clubs. Furthermore, to even admit the hypothetical scenario of that finding, it would*

be absolutely incongruous that an activity performed in the territory of KSA wouldn't be under the scrutiny of its judicial power"; and

- g. in accordance with the Saudi Law of Civil Procedures, the labour courts are competent to hear disputes arising from termination of employment, such as the one at stake.
- 29. In view of the above, the club concluded that *"FIFA lacks jurisdiction to adjudicate on this case and, consequently, the claim lodged by the Claimant shall be deemed inadmissible"*.
- 30. As to the substance, the club pointed out that, contrary to the coach's allegations, he was hired as part of the coaching staff under the coordination of Mr. Cristóvão, aiming to develop the youth teams of the club. As such, the club clarified that, by the end of the 2018/2019 season, it *"agreed with Mr. Cristóvão that the relationship between him and all the coaching staff he brought with him to the club was not going to continue"*.
- 31. In this context, the club pointed out that the coach left the club and did not send any communication for almost 18 months. Consequently, the club stressed that *"under no circumstances one can argue that the employment contract had been renewed for a second season"*. In addition, the club also held that there was a *"common understanding between all the parties that the employment relationship between the whole coaching staff, including Mr. Pedro Sacramento, and Al Nassr Saudi Club, was not renewed for a second season"*.
- 32. In support of its allegations, the club referred to the principle of *venire contra factum proprium* and maintained that the coach (i) never came back to the club after he left at the end of the 2018/2019 season; (ii) never contacted the club after his departure to Portugal; and (iii) never requested to have flight tickets booked for his trip to Saudi Arabia. Furthermore, the club also alleged that Mr. Cristóvão, on behalf of the coaching staff, always considered the employment relationships as terminated at the end of the 2018/2019 season, only requesting the due amounts until then.
- 33. Along the same lines, the club referred to the WhatsApp messages supposedly exchanged between the coach and Mr. Cristóvão and remarked that the coach had it perfectly clear that his relationship with the club was coordinated by Mr. Cristóvão and that his employment had ended after the first season.
- 34. Finally, the club argued that the coach is *"desperately trying to obtain an unjust enrichment from the club"*.
- 35. Based on the abovementioned considerations, the club held that the last month that the coach provided his services to the club was March 2019 and that all the due amounts were already paid. Therefore, the club affirmed that the coach is not entitled to any further remuneration from the club.

c. Rejoinder of the coach

36. In his rejoinder, the coach reiterated his arguments regarding FIFA's competence to hear the dispute. In particular, the coach pointed out that:
- a. the legal opinion attached to his statement of claim was written by one of the foremost experts in Saudi Law, with significant experience in commercial and labour disputes;
 - b. *"the jurisdiction of Saudi labour courts is prima facie determined by the applicability of the Saudi general labour law, i.e. Saudi labour courts apply the Saudi General Labour Law and are competent insofar as the General Labour Law applies"*;
 - c. the Saudi labour courts are not competent to discharge a decision in an employment-related sports dispute;
 - d. the Saudi Labour Law expressly excludes players and coaches from its scope; and
 - e. the club *"has failed to indicate one single instance where Saudi Labour Courts accepted jurisdiction in an employment-related dispute involving one of its coaches or players"*.
37. Consequently, the coach stated that he *"has been able to meet the burden of proof with regards to FIFA judicial bodies' competence to solve the present dispute"*.
38. Subsequently, the coach opposed the club's arguments and reiterated his own as to the substance of the matter. The coach also held, *inter alia*, that the club did not address the lack of formal notification concerning the non-renewal of the relationship as established in items 3 and 8 of the employment contract. Thus, the coach argued that it remained undisputed that said relationship between the parties was automatically extended until the end of the 2020/2021 season.
39. Finally, the coach reiterated his requests for relief as described in the statement of claim.

d. Final comments of the club

40. In its final comments, the club, *inter alia*, pointed out that the coach did not provide *"a single piece of evidence that could confirm his position"* that Mr. Abdulaziz is a *"leading Saudi legal practitioner, with significant experience in commercial and labour disputes"*. Additionally, the club also indicated that the coach failed to meet his burden of proof to deviate from item 9 of the employment contract.
41. As to the substance, the club once again concluded that it *"successfully sustained [their] arguments and accredit that the employment relationship between the parties only lasted one season and that the employment contract was not renewed at all"*.
42. At the end the club reiterated its requests for the claim of the coach to be ruled inadmissible or, alternatively, to be entirely rejected.

III. CONSIDERATIONS OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

43. 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 31 December 2020 and submitted for a 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.
44. 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 (edition February 2021), the Players' Status Committee is, in principle, 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 club.
45. At this point, the Single Judge acknowledged however that the club challenged FIFA's competence to hear the dispute based on the content of item 9, par. 2 of the employment contract.
46. With the above in mind, the Single Judge went on carefully analysing the wording of such clause, *in verbis*: "*Any dispute which may occur between the two parties on this contract or its interpretation shall be subject to the jurisdiction of the competent authority concerned with judging the labor cases in Saudi Arabia as stated in the Saudi Labor Law*".
47. In doing so, the Single Judge firstly outlined that the coach agreed that, in principle, by means of the employment contract the parties have expressly and clearly agreed that in case of any divergences derived from the employment contract, they would submit the dispute to the consideration and decision of the competent court of Saudi Arabia. What is more, the Single Judge outlined that the argumentation of the coach in stating that FIFA is competent anyway is not that such clause is not clear or exclusive, but follows the reasoning that the Saudi courts lack competence due to specific circumstances related to Saudi labour law.
48. As a consequence, and taking into account the position of the coach, the Single Judge referred to the PSC's long-standing jurisprudence on the matter, and decided that item 9, par. 2 of the employment contract is in principle to be considered as a valid reference to the jurisdiction of the ordinary courts of Saudi Arabia.
49. Subsequently, the Single Judge turned his attention to the coach's allegations in the sense that he is not a "*legal practitioner*" and, hence, that he was not aware that the clause was,

in his view, invalid due to specific circumstances related to Saudi labour law. In this respect, the Single Judge finds it important to emphasise that the coach confirms that at the moment of signing the contract, he agreed that any potential dispute would not be submitted to the dispute resolution system of FIFA. Only afterwards, the coach realised that in view of an alleged impossibility to claim in the Saudi courts, his only alternative was to seek recourse in front of the FIFA Players' Status Committee. This is important since the coach thus explicitly agreed to move away from the dispute resolution system of FIFA.

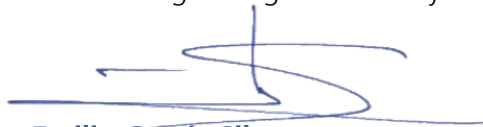
50. Having established the above, the Single Judge observed that the parties strongly disputed whether the ordinary courts of Saudi Arabia are indeed competent to rule upon controversies involving sport-related matters.
51. In this context, the Single Judge highlighted that the coach, on his part, stated that the dispute at hand would fall outside the labour courts' jurisdiction. On the other hand, the Single Judge was also observant of the club's allegations to the contrary, *i.e.* that the national courts of Saudi Arabia are competent to hear disputes concerning the termination of employment in accordance with the national Law, even in football.
52. With due regard to the above, the Single Judge is willing to accept that in case the courts in Saudi Arabia are indeed not competent to decide upon a dispute between a foreign coach and a club, he would be competent to decide upon the matter.
53. In this respect, 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. Given that the coach recognises that the contract contains an exclusive jurisdiction clause, the burden of proof to establish that FIFA is anyway competent lies with the coach.
54. After carefully analysing the documentation brought forward by the parties, the Single Judge deemed that the coach could not establish on a balance of probabilities that the ordinary courts from Saudi Arabia are not competent to adjudicate in disputes between coaches and clubs.
55. In particular, the Single Judge stressed that the legal opinion provided by the coach could not be considered as a substantial evidence in support of the coach's allegations since it did not unequivocally establish that the coach's claim would fall outside the scope of the national courts, but rather demonstrated that, apparently, the ordinary labour law would not be applicable to sports-related disputes. Put differently, the contents of the expert witness report filed by the coach did not seem to pertain to an issue of jurisdiction but rather of applicable (material) law. In any case, the Single Judge deemed that the documentation provided by the coach was insufficient to rule that indeed the Saudi courts would *per se* decline competence to rule on the matter. No extracts of the law have been provided, neither any literature or jurisprudence backing the position of the coach.

56. Consequently, following the common approach of the jurisprudence, the Single Judge concluded that FIFA is not competent to enter into the substance of this dispute. The Single Judge thus decided that the claim is inadmissible.
57. Lastly, the Single Judge referred to article 18 par. 1 lit. i) of the Procedural Rules, according to which no costs shall be levied by the parties for claims lodged between 10 June 2020 and 31 December 2020 (both inclusive). Accordingly, he decided that no procedural costs were to be imposed on the parties.
58. Likewise and for the sake of completeness, the Single Judge recalled the contents of art. 18 par. 4 of the Procedural Rules, and defined that no procedural compensation shall be awarded in these proceedings.

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

1. The claim of the Claimant, Pedro Sacramento, is inadmissible.
2. This decision is rendered without costs.

For the Single Judge of the Players' Status Committee:



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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