

Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Maroof Yusuf

COMPOSITION:

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

CLAIMANT:

Maroof Yusuf, Nigeria
Represented by Abd Al Rahman Ali

RESPONDENT:

El Zamalek, Egypt
Represented by Nasr Eldin Azzam

I. FACTS OF THE CASE

1. On 26 September 2018, the Nigerian player Maroof Yusuf (hereinafter: the Claimant or the Player) and the Egyptian club Zamalek (hereinafter: the Respondent or the Club) signed an employment contract (hereinafter: the Contract) valid for three seasons until the “end of the 2020/2021 season”.
2. According to art. 3 of the Contract, the Claimant was entitled to total remuneration of Egyptian pounds (“EGP”) 19,355,000 payable as follows:
 - a. *First Season: 1000 EGP is payable at the start of the season, over 2 payments instalments at the rate of 500 EGP*
 - b. *Second Season: 9,032,258 EGP payable over 4 payments instalments at the rate of 2,258,064.50 EGP*
 - c. *Third Season: 10,322,580 EGP payable over 4 payments instalments at the rate of 2,580,640 EGP; payable as follows:*
 - i. *First instalment: 2,580,646 EGP payable at 1 Aug 2020*
 - ii. *Second instalment: 2,580,646 EGP payable at 1 Dec 2020*
 - iii. *Third instalment: 2,580,646 EGP payable at 1 Apr 2021*
 - iv. *Fourth instalment: 2,580,646 EGP payable at 31 July 2021*
3. The Claimant was loaned out to the club Al Shorta (Iraq) for the season 2018/2019 and to the club Mokawloon Al Masry (Egypt) for the season 2019/2020.
4. On 2 November 2020, the Claimant sent a notice to the Respondent requesting information regarding return to training, arranging an appointment at the Embassy and requesting the Respondent to book flights for him.
5. On 5 November 2020, the Claimant sent a further communication stating that he will be in Egypt on the 15 November 2020 and requesting training information.
6. On 11 November 2020, the Claimant sent a third email requesting confirmation of his status with the team and requesting payment of outstanding amounts.
7. On 16 November 2020, the Respondent replied sent an email to the Claimant requesting him to provide several medical tests results, including PCR covid results.
8. On 18 November 2020, the Claimant replied to the previous email providing the PCR test, stating that he was available to undertake any tests with the Club’s medical team and inquiring about his registration status.

9. On 26 November 2020, the Claimant inquired again about his registration status and requested *"the due payments stipulated in my contract"*.
10. On 28 November 2020, the Respondent replied to the previous emails inviting the Claimant to a meeting at Club premises on the following day.
11. On 1 December 2020, the Claimant replied arguing some of the Respondent's statements and requesting payment of the amounts due.
12. On the same day, the Respondent sent an email stating that the Claimant had not attended the proposed meeting and invited him for another meeting on the following day.
13. On 3 December 2020, the Claimant gave a 45 days' period to settle the outstanding dues.
14. On 5 December 2020, the Player signed an employment contract with Egyptian club Al Bank Ahly FC, according to which he was entitled to receive the amount of EGP 6,243,000 for the season 2020/2021.
15. On 18 January 2021, the Claimant gave a final 7-days' deadline to the Respondent to comply to no avail.

II. PROCEEDINGS BEFORE FIFA

16. On 28 February 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

17. According to the Claimant, the Respondent did not incorporate him for pre-season due to start on 1 November 2020.
18. Furthermore, the Claimant alleges that he did not receive the payment for the months of August and December 2020, in the total amount of EGP 5,161,280.
19. The Claimant submits that according to the Egyptian Football Association ("*EFA*") regulations, *"if a player's name is not included on the club's list, and didn't receive his dues for more than one month it will be considered a free transfer, and the player contract will be terminated just cause with a compensation."*
20. Moreover, the Claimant states that the Respondent did not registered him in the team list for season 2020/2021, and deliberately did not include him in the team trainings for pre-season 2020/2021.

21. The Claimant states that the Respondent was notified that a *"grace period of 45 days from the termination of the contract to end the relationship satisfactorily for the two parties and pay the player's dues"*.
22. In view of the above-mentioned circumstances, the Claimant considers that *"his contract is terminated for just cause"* and made the following requests for relief:

"Claimant Request:

10,322,580 EGP. Corresponding to the last year salary of his contract season 2020/2021 plus 5% interests.

Termination indemnity; as a breach of contract for the non-payment of the player salary, termination by the club without "just cause", we claim an indemnity for those non-payments as well as the "moral damages" and "sporting damages". We trust the FIFA and estimators to value the entitlement indemnity"

b. Position of the Respondent

23. The Respondent does not dispute that the Claimant terminated the Contract on the 3 December 2020.
24. However, according to the Respondent, the Claimant had no just cause to terminate the contract as *"no two monthly salaries were outstanding"* due to the extension of the 2019/2020 season no remuneration of the next season has come due yet.
25. The Respondent argues that it had until the 6 December 2020 and not 30 November 2020 to register players and according to the Respondent, this is confirmed by the fact that the Player himself signed a contract with Al-Bank Ahly Club on 5 December 2020.
26. The Respondent points to the fact that the term of the Contract *"is set seasonally and not calendar"*.
27. The Respondent states that as the Contract needs to be interpreted in accordance to the will and intention of the parties, *"it's crystal clear that the Parties agreed to the payment of the Gross 2,580,645 EGP at the beginning of the 2020/2021 season"*.
28. It is further submitted that *"as the 2019/2020 season came to end on 31 October 2020 and as the payment of August 2020, December 2020, April 2021, and July 2021 are mentioned in the third part of the Contract season 2020/2021, it's completely illogical to claim a payment which is not due yet as all the player notices were sent before the beginning of the 2020/2021 season on 11 December 2020"*
29. In the Respondent's view *"any salaries requested before the start of the 2020/2021 season shall be considered unlawful or part of the previous season"*.

30. Furthermore, the Respondent submits that it had *"no obligation to pay the Player any salary before their due time (i.e the start of the new season) pursuant to FIFA recommendation issued in June 2020 in regards to COVID-19"*.
31. Thus, the Respondent submits that no just cause can be asserted since, no outstanding salaries were due and the Player contributed in full by not cooperating with the Club.
32. The Respondent argues that on 28 November 2020 and while the Claimant was still under a contractual relationship with the Respondent, it came to the Club's some information that the Player had started negotiations with some club without its knowledge.
33. The Respondent further argues that *"the Player had already started negotiations way before the signing of the contract with Al-Bank Ahly club since the sums of money involved are over 12 million pounds. Not to mention the fact that he refused to attend to meetings scheduled to settle his position and register him"*.
34. In the Respondent's view, the FIFA DRC should *"take into consideration the breach of the Player but also it should assert that the Player had a lack of interest and bad faith"*. In this regard, the Respondent pleads that *"bad faith from the Player's side can be easily asserted as he wanted to make use of the COVID-19 situation to mislead FIFA DRC into believing that his due are not being paid while season 2020/2021 hasn't started yet and while he was engaged in negotiations with other clubs"*.
35. Based on the above, the Respondent states that the Claimant *"has committed several bad faith breaches and not entitled to compensation"*.
36. The Respondent's requests for relief are:

"To fully reject the Claimant's claims.

To decide that the Player in breach of his contract and not entitled to receive any compensation.

Alternatively, if it deemed that the Player entitled to receive any compensation that should be in the net amount due to the player after mitigating the new contract signed by the Player and the due taxes and fees according to the Egyptian Laws, i.e. the player shall not receive more than net amount of 2 Million EGP as compensation.

To reduce proportionate amount from the player in light of his bad faith from the final maximum net amount of Player equal to 2 million EGP".

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

37. 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 February 2021 and submitted for decision on 15 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.
38. 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 Nigerian player and an Egyptian club.
39. 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 February 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

40. 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.
41. 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

42. 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

43. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that whilst the parties do not dispute that the termination of the Contract took place, the dispute is if this termination was or without just cause.
44. In this context, the Chamber acknowledged that its task was to ascertain the nature of the termination and the consequences arising thereof.
45. First of all, the members of the Chamber analysed the documentation on file and concluded that it remained undisputed that the Respondent owed to the Claimant the amount of EGP 5,161,280, amount equal to 2 quarterly payments or 6 monthly salaries.
46. Furthermore, the Chamber was pointed to the arguments from the Respondent regarding the outstanding salaries due to the Claimant and the alleged continuation of the season. The DRC noted the Respondent alleged that as the contract is agreed seasonally, the dates of payment should not be taken into account and that as the season had not ended yet, no salaries were due. In this regard, the DRC deemed that these arguments cannot be upheld.
47. The DRC determined that the parties in use of their respective contractual autonomy freely agreed in the Contract a date in which the Claimant's salary shall be paid. Furthermore, the Respondent had not provided any evidence that the payment had been made nor any convincing evidence for disregarding these dates. In particular, the DRC could observe that the Respondent had not presented any evidence on any alteration of the payment dates being proposed, and even less so accepted, to the Claimant. Based on this circumstance, the members of the Chamber concluded that the Respondent had seriously neglected its financial obligations towards the Claimant.
48. On account of the above and taking into consideration the Chamber's longstanding jurisprudence in this respect, as well as the unequivocal contents of art. 14 of the Regulations, the Chamber decided that the Claimant had just cause to unilaterally terminate the Contract on 3 December 2020 and that the Respondent is to be held liable for the early termination of the contract with just cause by the player.

ii. Consequences

49. 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.
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51. First of all, the members of the Chamber concurred that the Respondent must fulfil its obligations as per Contract up until the date of termination of the contract in accordance with the general legal principle of "*pacta sunt servanda*". 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 EGP 5,161,280.
52. What is more, as well as based on the absence of specification by the Claimant, the Chamber decided to also award 5% interest as from the date of claim until the date of effective payment.
53. 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.
54. 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.
55. 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.
56. 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 contract on 3 December 2020, it would still run until "*the end of the 2020/2021 season*", which according to the information available on TMS was due to take place on 26 August 2021.
57. 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 until its regular expiry, amounts to EGP 5,161,292. The DRC confirmed hence that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.

58. In continuation, the Chamber remarked that following the early termination of the employment contract at the basis of the present dispute, the Claimant found new employment and therefore was able to mitigate his damages in line with art. 17 of the Regulations.
59. In particular, the Chamber noted that the Claimant found employment with Al Bank Ahli FC and was able to mitigate his damages in the amount EGP 6,243,000. Consequently, the Chamber found that the Claimant had been able to fully mitigate his damages.
60. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which the Claimant 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 Respondent, and therefore decided that the Claimant shall receive additional compensation.
61. In this respect, the DRC highlighted that the player shall be entitled to EGP 2,580,646 as additional compensation, which corresponds to 3 monthly salaries.
62. In view of all of the above, the Chamber decided that the Respondent must pay the amount of EGP 2,580,646 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.
63. Finally, in line with its longstanding jurisprudence in this respect, the Chamber decided to also award 5% interest p.a. on the compensation as from the date of claim.

iii. Compliance with monetary decisions

64. Finally, taking into account the aforementioned considerations, 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.
65. 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.
66. 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.

67. 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.
68. 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

69. 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.
70. 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.
71. 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, Maroof Yusuf, is partially accepted.
2. The Respondent, El Zamalek, has to pay to the Claimant, the following amounts:
 - EGP 5,161,280 as outstanding remuneration plus 5% interest *p.a.* as from 1 March 2021 until the date of effective payment.
 - EGP 2,580,645 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 1 March 2021 until the date of effective payment
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](#).

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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