



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/8086 RKS Raków Częstochowa S.A. v. Emir Azemovic & FIFA

CONSENT ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom

in the arbitration between

RKS Raków Częstochowa S.A., Częstochowa, Poland

Represented by Kamil Kosior, Attorney-at-law, Krakow, Poland

Appellant

and

Emir Azemovic, Montenegro

Represented by Mirko Poledica and Filip Blagojevic, Sindikat Profesionalnih Fudbalera Nezavisnost (Union of the Professional Football Players of Serbia), Belgrade, Serbia

First Respondent

&

Fédération Internationale de Football Association, Zürich, Switzerland

Represented by Mr Alexander Jacobs, Senior Legal Counsel, FIFA Litigation Department, Zürich, Switzerland

Second Respondent

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

I. PARTIES

1. RKS Raków Częstochowa S.A. (the “Club” or the “Appellant”) is a professional football club with its registered office in Częstochowa, Poland. The Appellant is a member of the Polish Football Association (the “PZPN”), which in turn is affiliated with the Fédération Internationale de Football Association.
2. Emir Azemovic (the “First Respondent” or the “Player”) is a professional football player of Montenegrin nationality.
3. Fédération Internationale de Football Association (the “Second Respondent” or “FIFA”) is the international governing body of football, with its headquarters in Zürich, Switzerland
4. The Appellant, the First Respondent and the Second Respondent shall collectively be referred to as the “Parties”.

II. FACTUAL BACKGROUND

5. On 20 June 2019, the Club and the Player entered into an employment contract, valid from 1 July 2019 until 30 June 2022 (the “Contract”).
6. Pursuant to clause 2 of the Contract, the Club undertook to pay the Player as follows:
 - a. For the 2019/20 season: An annual gross salary of PLN 481,435.56, divided into monthly instalments of PLN 40,119.63, equivalent to a net monthly salary of EUR 7,000;
 - b. For the 2020/21 season:
 - i. An annual gross salary of PLN 515,822.16, divided into monthly instalments of PLN 42,985.18, “*if the Player played at least 1800 minutes in Ekstraklasa (first tier in Poland) in the Club’s first team in season 2019/20*”; or
 - ii. An annual gross salary of PLN 481,435.56, divided into monthly instalments of PLN 40,119.63, “*if the Player played less than 1800 minutes in season 2019/20 in Ekstraklasa (first tier in Poland) in Club’s first team*”;
 - c. For the 2021/22 season:
 - i. An annual gross salary of PLN 515,822.16, divided into monthly instalments of PLN 45,208.64, “*if the Player played less than 1800 minutes in Ekstraklasa (first tier in Poland) in Club’s first team in season 2020/21*”; or

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

- ii. An annual gross salary of PLN 550,208.64, divided into monthly instalments of PLN 45,850.72, *“if the Player played more than 1800 minutes in Ekstraklasa (first tier in Poland) in Club’s first team in season 2020/21”*.

7. Clause 7 of the Contract provided that:

“Any disputes concerning the validity, existence or termination of the Contract shall be settled by the competent authorities of the Polish Football Association, acting in accordance with separate regulations. Property disputes arising from this Contract shall be the competence of the Football Arbitration Court”.

(the “Arbitration Clause”)

8. Further Clause 8 of the Contract provided that:

“An integral part of this Contract are the [...] (rules governing the relations between the sports club and a professional player), adopted by Resolution of the Polish Football Association’s Board (No III/54 27/03/2015), which is enclosed to this Contract”.

9. This resolution no. III/54 of the PZPN, dated 27 March 2015 and further amended on 25 June 2020 on the *“Minimum Requirements for Standard Player Contracts in the Professional Football Sector”* (the “Resolution”) provides the following, at Article 8(4)(d):

“The club has the right to unilaterally terminate the Contract for reasons attributable to the Player through a statement submitted to the Player in writing under pain of nullity, only in the following cases:

[...]

d. The Player has not been present at training sessions at least three times in a period of consecutive six months (regardless of whether in a calendar year or in a Competition Season) without presenting a written excuse to the Club within 7 days of the absence, provided that the declaration of termination of the Contract is submitted by 10 January or 10 days after the end of a given Competition Season, respectively, depending on whether the Player’s absence took place within the six-month period ended before one of the above-mentioned dates”.

10. In early January 2020, the Club arranged a meeting with the Player, at which the Player was informed that he was no longer required for the first team, that he would not be travelling with them for the Club’s pre-season tour in Cyprus and that he would be demoted to the second team.
11. On 16 January 2020, the media reported that the Player and another teammate, Andrija Luković had been excluded from the Club’s pre-season tour in Cyprus.
12. On 20 January 2020, the Club, represented by Mr Wojciech Cygan, President of the Management Board, issued a letter to the Player notifying him that effective

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

immediately, he was *“a player of the second team of [the Club], with Tomasz Kuźma as the head coach”*.

13. On 21 February 2020, Mr Dominic Ebenbeng, a representative of the Club contacted the Player via WhatsApp informing him that the owner had decided to pay the Player *“salary for February and half of salary for March [...] immediately (on Monday)”* as full and final settlement for the termination of the Contract.
14. On 12 March 2020, the Polish government suspended all sporting activity due to the onset of the Covid-19 pandemic.
15. On 13 March 2020, Mr Dominic Ebenbeng contacted the Player on WhatsApp on behalf of the Club, asking whether the Player would be *“interested in terminating now with march and april to be paid?”* [sic]. The Player responded the same day, stating that he was *“not interested in terminating [his] contract”* and that it was *“not worth the 2 salaries to take the risk and maybe be without a club till next year”*.
16. On 14 or 15 March 2020, the Player travelled to Austria with his family.
17. On 26 March 2020, Mr Cygan was reported by the media to have discussed the contractual situation of the Player, among other players of the Club. He was reported to have stated that:

“[...] This situation has absolutely nothing to do with the prevailing coronavirus epidemic. Players have long known that they have little chance to playing in the first team, and their ambitions are definitely higher than playing in our fourth league reserves”
18. On 1 April 2020, the Club informed the Player, *“[...] from the point of view of generally applicable law”* that he was *“not entitled to receive remuneration for the provision of football services for the period of non-performance of these services, i.e. from 14th of March, 2020”*.
19. By way of a further letter dated 6 April 2020, the Club informed the Player that due to Covid-19, it was unable to bear the costs of his remuneration and further that it intended to *“pursue legal action to have the [Contract], legally dissolved”*.
20. On 15 April 2020, the Player travelled back from Austria to Poland, where he was required to quarantine for a period of 14 days, in accordance with applicable government regulations at the time.
21. On 18 April 2020, the Club informed the Player that his relegation to the second team had been *“withdrawn”*, that he was promoted back to the first team with immediate effect and that the next training session was on 20 April 2020.
22. In reply, on 19 April 2020, the Player informed the Club that as he was subject to a 14-day quarantine, it would be impossible for him to attend any training sessions until 29 April 2020. The Player also requested for the payment of his outstanding salary for March 2020, which was unilaterally withheld by the Club.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

23. Following the Player's absence from first team training on 20 April 2020, the Club summoned the Player to attend a disciplinary meeting of the 'Club's Board' on 23 April 2020. Whilst the Player agreed to attend, he also noted that it would be inappropriate to impose any disciplinary sanctions on him, given that he was under the reasonable assumption that he had been demoted to the second team. Notwithstanding, the Player proposed that he takes the 14 days spent in quarantine as 'paid leave' in accordance with the terms of the Contract.
24. The Club's position, reiterated in its letter of 23 April 2020, was that it had not authorised the Player to leave Poland and therefore the Player's inability to fulfil his contractual obligations due to the imposed quarantine is the sole responsibility of the Player.
25. As such, on 24 April 2020, the Club invited the Player to a rescheduled disciplinary meeting on 27 April 2020.
26. In response, on 25 April 2020, the Player stated that he would attend and reiterated his offer to designate his 14 days spent in quarantine as 'paid leave' in accordance with his employment contract. He also offered to reduce his salaries for the months of April – June 2020 by 20% and from July to September 2020 by 10%.
27. On 30 April 2020, the Club sanctioned the Player with a fine of PLN 15,000. By a separate letter issued four minutes later, the Club notified the Player that it had unilaterally terminated the Contract, pursuant to a decision dated 29 April 2020.
28. On 4 August 2020, the Player signed a contract with Aluminij FC in Slovenia at a monthly salary of EUR 1,500 (the "Aluminij Contract"). He only received his work permit to start playing with Aluminij FC in December 2020.
29. On 5 August 2020, Aluminij FC wrote to the Club asking them to sign a Third Party Ownership declaration. The Club refused to do so unless the Player confirmed in writing that (i) the Club had no outstanding obligations towards the Player; for which (ii) the Player would not file a claim against it.
30. On 21 October 2020, the Player filed a claim for breach of contract against the Club before the FIFA Dispute Resolution Chamber (the "FIFA DRC").
31. On 7 May 2021, the FIFA DRC issued the findings of its decision as follows:
 - “1. *The claim of the Claimant, Emir Azemovic, is accepted.*
 2. *The Respondent, RKS Rakow Czestochowa, has to pay to the Claimant, the following amount:*
 - *EUR 4,000 as outstanding remuneration plus 5% interest p.a. as from 11 April 2020 until the date of effective payment.*
 - *EUR 7,000 as outstanding remuneration plus 5% interest p.a. as from 11 May 2020 until the date of effective payment.*

- *EUR 153,500 as compensation plus 5% interest p.a. as from 21 October 2020 until the date of effective payment.*

3. *Any further claims of the Claimant are rejected.*

[...]"

(the "Appealed Decision")

32. On 31 May 2020, the FIFA DRC notified the Parties of the grounds of the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 21 June 2021, the Club filed its Statement of Appeal against the Player and FIFA with the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, the Club nominated Mr Mark A. Hovell as sole arbitrator for the dispute.

34. By way of a letter dated 28 June 2021, the CAS Court Office invited the Respondents to indicate whether they agreed to the appointment of Mr Hovell as sole arbitrator, as suggested by the Appellant.

35. On 29 June 2021, the Player consented to the appointment of Mr Hovell as sole arbitrator in the proceedings.

36. On 1 July 2021, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code.

37. On 5 July 2021, FIFA also consented to the appointment of Mr Hovell as sole arbitrator in the proceedings.

38. On 22 July 2021, the CAS Court Office notified the Parties that in the absence of any challenge, Mr Hovell, Solicitor in Manchester, UK had been appointed as Sole Arbitrator to hear the present dispute.

39. On 4 August 2021, the CAS Court Office notified the Parties that following the Club's payment of its share of the advance of costs, the Player and FIFA had 20 days to submit their Answers to the CAS.

40. In the same letter, the CAS Court Office also invited the Player and FIFA to comment on the Club's request for the production of "*bank account statements from August 2020 until today, from all relevant bank accounts to which he receives payments from the club NK Aluminij, in order to establish the real amount of remuneration to which Mr Emir Azemovic is entitled in relation to the contraction relationship with NK Aluminij*".

41. In accordance with Article R55 of the CAS Code, FIFA and the Player filed their Answers on 3 September 2021 and 7 September 2021, respectively.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

42. On 28 October 2021, after considering all the Parties' availability, the CAS Court Office informed the Parties that a hearing would take place by videoconference on 10 December 2021.
43. On 15 November 2021, the CAS Court Office communicated the Order of Procedure to the Parties.
44. On 16 November 2021, FIFA signed and returned a copy of the Order of Procedure to the CAS Court Office.
45. On 18 November 2021, the Player signed and returned a copy of the Order of Procedure to the CAS Court Office. The Player reiterated his request for an operative award prior to the reasons, given that the amounts sought by him were crucial for his financial situation.
46. On 30 November 2021, the Club signed and returned a copy of the Order of Procedure to the CAS Court Office.
47. On 6 December 2021, the CAS Court Office notified the Parties that on the request of the Club, the hearing on 10 December 2021 was cancelled and rescheduled to 14 January 2022.
48. On 12 January 2022 and subsequently on 13 January 2022, respective counsel for the Club and Player, informed the CAS Court Office that the Parties agreed to mutually settle the matter, pursuant to a settlement agreement signed by the Club and the Player, dated 12 January 2022 (the "Settlement Agreement"). As such, it was requested that the Sole Arbitrator:
 - a. Suspend the hearing scheduled for 14 January 2022; and
 - b. Ratify and embody the Settlement Agreement in a Consent Arbitral Award.
49. On 13 January 2022, in light of the Player's and Club's request, the CAS Court Office informed FIFA of the Settlement Agreement and notified all Parties that the hearing scheduled for 14 January 2022 had been adjourned.

IV. THE SETTLEMENT AGREEMENT

50. The Club and the Player signed the Settlement Agreement on 12 January 2021.
51. The Sole Arbitrator has been requested to ratify the Settlement Agreement.
52. The Settlement Agreement concluded between the Player and the Club provides as follows:

"The Club and the Player are hereinafter collectively referred to as the Parties.

The appearing Parties mutually recognize each other's full capacity and legal standing

to enter into this Settlement Agreement [...], hereby expressing their true will (without there being any defect in granting their consent) as well as the full force of their representations.

Whereas

a. On 6 May 2021, the FIFA DRC issued a decision in the case with ref. no. 20-01536 (FPSD-278), whereby FIFA, inter alia, ordered the Club to pay the Player the following amounts: (1) EUR 4,000 as outstanding remuneration plus 5% interest p.a. as from 11 April 2020 until the date of effective payment; (2) EUR 7,000 as outstanding remuneration plus 5% interest p.a. as from 11 May 2020 until the date of effective payment and (3) EUR 153,500 as compensation plus 5% interest p.a. as from 21 October 2020 until the date of effective payment (the "Decision").

b. The Club appealed the Decision and filed the Statement of Appeal before the Court of Arbitration for Sport ("CAS") and the matter was assigned with the following case reference no. Cas 2021/A/8086 (the "Appeal").

c. The parties have agreed to finally and amicably settle the Appeal under the terms and conditions stipulated herein.

Therefore, the Parties agree as follows

1. Settlement of the Appeal

1.1. The Parties hereby mutually agree and consent to settle amicably and definitively the Appeal which derives from the Decision.

1.2. The Settlement Agreement is conditional upon:

- The signature of this Settlement Agreement.*
- Full payment of the amounts within the prescribed deadline.*
- Each party will bear its own legal costs regarding the present dispute.*
- All costs derived from the Appeal (CAS and Sole Arbitrator's fees) shall be borne by the Club. Any remaining advance of costs derived from the Club shall be reimbursed to the Club once the CAS Court Office provides with the liquidation.*

*1.3. In virtue of the foregoing, with the signature **and full payment** of this Settlement Agreement:*

- The Player irrevocably renounces to claim from the Club any amounts and/or considerations which derive from the Decision and he agrees that he has no remaining or other claims against the Club with respect to their employment relationship based on the Professional Football Contract concluded on 20 June 2019 (the "**Contract**"), the subject matter of the*

Decision and the Appeal and undertakes he shall not pursue any such further claims in any forum.

- *The Club irrevocably commits to pay directly to Mr Azemovic the amounts detailed in the subsequent clause 1.4 of this Settlement agreement, by a bank transfer to the bank account indicated by the Player. Any delay of payment caused by the lack of receipt by the Club of the abovementioned notification on time shall not be deemed as a responsibility of the Club. Therefore, such delay shall not be regarded as a violation of this Settlement Agreement which shall remain in full force and effect.*

The Parties have been legally advised of the importance and of the legal consequences of the present clause and they insist on its implementation.

1.4. *The Parties agree as follows:*

- *The Club acknowledges and freely accepts to pay Mr Azemovic as full damage compensation the amount of **EUR 154,000.00 (ONE HUNDRED FIFTY FOUR THOUSAND EUROS)**, which shall be paid in the following manner.*
 - 1) *EUR 77,000.00 (SEVENTY SEVEN THOUSAND EUROS) shall be paid by 17 January 2022;*
 - 2) *EUR 77,000.00 (SEVENTY SEVEN THOUSAND EUROS) shall be paid by 15 July 2022;*
- *The Player declares that timely payment of the amount specified in clause 1.4 of this Settlement Agreement exhausts any and all claims of the Player against the Club under any basis whatsoever, including the Contract, the Decision and the Appeal, and he undertakes not to raise any further claims against the Club before any forum.*

2. **Amounts**

2.1. *If the Club fails to comply with the foregoing payment schedule, the Player will be entitled to request the jurisdictional bodies of FIFA (included the Disciplinary Committee) to open disciplinary proceedings against the Club on the basis of the FIFA Regulations and Disciplinary Code, as well as to take any measures which might be deemed appropriate in order to force the Club to pay him the corresponding amounts specified in the Decision decreased by any and all amounts that have already been paid by the Club (the “**Outstanding Amount**”). If, for any reason, the FIFA Disciplinary Committee does not open proceedings against the Club and in such situation the Player needs to go again through the FIFA Dispute Resolution Chamber procedure, he shall be entitled to claim interest of 5% p.a. accrued on the Outstanding Amount as from the date of filing by the Player of the statement of claim before the FIFA DRC i.e. 31 October 2020, until the date of effective payment of the Outstanding Amount.”*

V. JURISDICTION

53. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”

54. Pursuant to Article 57 of the FIFA Statutes, FIFA recognises the jurisdiction of the CAS to “*resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents*”.

55. Further pursuant to Article 58(2) of the FIFA Statutes, “*Recourse may only be made to CAS after all other internal channels have been exhausted*”.

56. It is not disputed that these proceedings involve an appeal against a decision rendered by the FIFA DRC, which further provided for a right of appeal to the CAS.

57. Furthermore, the jurisdiction of the CAS was not disputed by the Parties who confirmed this by the Order of Procedure duly signed by all Parties.

58. It follows that the CAS has jurisdiction to hear this dispute.

VI. RATIFICATION AND INCORPORATION OF THE SETTLEMENT AGREEMENT BY CAS

59. In accordance with the second sentence of Article R56(2) of the CAS Code “*(...) Any settlement may be embodied in an arbitral award rendered by consent of the parties.*”

60. Therefore, the Sole Arbitrator is expressly allowed to issue an Award embodying the terms of the settlement if all parties to the dispute agree. The Sole Arbitrator’s endorsement of the Settlement Agreement and its incorporation in an award serves the obvious purpose of making easier the enforcement of the Settlement Agreement.

61. Whilst the Settlement Agreement was entered into by the Club and the Player, the Sole Arbitrator notes that FIFA has not objected to the Settlement Agreement. Further, FIFA’s involvement in the matter at hand was to defend the Club’s claim that the dispute between it and the Player should have been dealt with at first instance by “*the competent authorities of the Polish Football Association*” and not by the FIFA DRC. As the Club and the Player have now settled their dispute, the issue as to where the first instance hearing should have taken place is moot. As such, all Parties to the dispute have agreed to embody the Settlement Agreement in a Consent Award. However, as any settlement “*may*” be embodied in an award, it is up to the Sole Arbitrator to verify the *bona fide*

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

of the Settlement Agreement, so that the consent award mechanism is not manipulated by the Parties as in instrument of fraud, and to acknowledge that the settlement terms are not contrary to public policy principles and mandatory rules.

62. The Sole Arbitrator, having reviewed the text of the Settlement Agreement and the evidence on file, finds no reason to object to or disapprove the terms of the Settlement Agreement and is satisfied that the agreement constitutes a *bona fide* settlement of the dispute of which he was seized.
63. Accordingly, by consent, an Award is made directing the Club and the Player to fully comply with all the terms of the Settlement Agreement. The Settlement Agreement and Consent Award terminates the arbitral proceedings: *CAS 2021/A/8086 RKS Raków Częstochowa S.A. v. Emir Azemovic & FIFA*.

VII. COSTS

64. As noted above (at paragraph 52 of this Consent Award), Clause 1.2 of the Settlement Agreement stated the following regarding the issue of costs:

“1.2. The Settlement Agreement is conditional upon:

[...]

- *Each party will bear its own legal costs regarding the present dispute.*
 - *All costs derived from the Appeal (CAS and Sole Arbitrator’s fees) shall be borne by the Club. Any remaining advance of costs derived from the Club shall be reimbursed to the Club once the CAS Court Office provides with the liquidation.”*
65. There was no reference to FIFA’s position on costs in the Settlement Agreement, however, the Sole Arbitrator notes that the costs of the arbitration are to be borne by the Club and that FIFA did not retain external counsel, so the Sole Arbitrator determines that:
- a. the costs of the arbitration (to be notified by the CAS Court Office) shall be borne by the Club; and
 - b. each Party shall bear its own costs and expenses, if any, incurred in these proceedings.
66. All other motions or prayers for relief are dismissed.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Settlement Agreement submitted to the CAS Court Office by RKS Raków Częstochowa S.A. and Mr Emir Azemovic on 13 January 2022 is hereby ratified by the CAS with the consent of the Parties and its relevant terms are incorporated into this arbitral award.
2. The arbitral procedure *CAS 2021/A/8086 RKS Raków Częstochowa S.A. v. Emir Azemovic & FIFA* is terminated and deleted from the CAS roll.
3. RKS Raków Częstochowa S.A. and Mr Emir Azemovic are hereby ordered to perform the obligations and duties as per the Settlement Agreement referred to above.
4. The arbitration costs, to be determined and served to the Parties by the CAS Court Office shall be borne by RKS Raków Częstochowa S.A.
5. Each Party shall bear its own costs and expenses sustained in connection with these arbitration procedures.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 May 2022

THE COURT OF ARBITRATION FOR SPORT

Mark A. Hovell
Sole Arbitrator