

Decision of the Dispute Resolution Chamber

passed on 6 April 2022

regarding an employment-related dispute concerning the player Michael Kporvi

BY:

Tomislav Kasalo (Croatia)

CLAIMANT:

Michael Kporvi, Ghana
Represented by Eby Emenike

RESPONDENT:

AS du Faso Yennenga, Burkina Faso

I. Facts of the case

1. On 31 July 2021, the Ghanaian player Michael Kporvi (hereinafter: *the player*) and the Burkinabe club AS du Faso Yennenga (hereinafter: *the club*) concluded an employment contract (hereinafter: *the contract*), valid between 1 August 2021 and 31 May 2024, based on which the player was entitled to a monthly salary of West African CFA Franc (CFA) 300,000, a sign-on fee of CFA 3,000,000 as well as accommodation allowance.
2. On 28 August 2021, the player informed the club that he suffered an injury and was informed by the club's president that he should take rest.
3. On 5 December, 9 December and 17 December 2021, the player requested the club, via WhatsApp, for a discussion about his future at the club, however to no avail.
4. On 6 January 2022, the player left Burkina Faso and returned to Ghana.
5. On 8 January 2022, the player again tried to reach out to the president of the club via WhatsApp to inquire about his situation, however to no avail.
6. On 24 January 2022, the player expressed his intention to unilaterally terminate the contract if the outstanding part of the sign-on fee and the outstanding salaries were not paid on time, however to no avail.
7. On 9 February 2022, the player put the club again in default for the payment of the outstanding part of the sign-on fee and the outstanding salaries, providing it a seven days' deadline to remedy its default, however again to no avail.
8. After the termination of the contract, the player remained unemployed.

II. Proceedings before FIFA

9. On 23 February 2022, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the player

10. In his claim, the player explains that (1) three weeks after 1 August 2021, he received CFA 1,000,000 out of the CFA 3,000,000 as sign-on fee, (2) at the end of August 2021, he received the monthly salary of CFA 300,000 and (3) at the end of September 2021, he received the monthly salary of CFA 300,000.
11. What is more, the player explains that the salaries for October, November and December 2021 were not paid at all.

12. The requests for relief of the Claimant, as amended, were the following:

Outstanding remuneration:

- CFA 2,000,000 as outstanding part of the sign-on fee;
- CFA 1,500,000 as outstanding salaries for the period between October 2021 and February 2022;
- plus '5% interest'.

Compensation for breach of contract:

- CFA 8,100,000 as residual value of the contract in the period between March 2022 and May 2024;
- plus '5% interest'.

b. Position of the club

13. Despite having been invited to do so, the Respondent failed to answer to the Claimant's claim.

III. Considerations of the Single Judge of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *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 23 February 2022 and submitted for decision on 6 April 2022. Taking into account the wording of art. 34 of the October 2021 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
15. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 1 lit. a) of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players (March 2022 edition), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Ghanaian player and a Burkina Faso club.
16. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (March 2022 edition), and considering that the present claim was lodged on 23 February 2022, the August 2021 edition

of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

17. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

18. Its competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts, as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations, he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

19. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that, in view of the lack of a (timely) reply within the deadline provided to the club, the claim of the player remained uncontested. Consequently, the Single Judge deemed that the club had renounced to its right of defence and, thus, had accepted the allegations of the player.
20. As a consequence of the aforementioned considerations, the Single Judge concurred that, in accordance with art. 21 par. 2 of the Procedural Rules, a decision shall be taken upon the basis of the documents already on file, in other words, upon the statements and documents presented by the player.
21. In view of the foregoing, the Single Judge acknowledged that it his task was to determine whether or not the player had effectively terminated the contract and if so, whether or not said termination was made with or without just cause, as well as what the consequences of said termination would be.
22. In this respect, the Single Judge took note that the player did not send a termination letter to the club by means of which he officially unilaterally terminated the contract in force between the parties. In this respect, based on the well-established jurisprudence of the Chamber, as well as the specific circumstances of the matter at hand, the Single Judge decided that it can be understood that by lodging a claim against the club before FIFA on 23 February 2022, the

player had effectively expressed his intention to not return to the club anymore and thus, terminated the contract.

23. What is more, the Single Judge considered that on 23 February 2022, 5 monthly salaries, as well as the sign-on fee remained outstanding, without valid reason, by the club. Consequently, and considering that the club had repeatedly and for a significant period of time been in breach of its contractual obligations towards the player, the Single Judge decided that the player had just cause to unilaterally terminate the employment contract on 23 February 2022 and that, as a result, the club is to be held liable for the early termination of the employment contract with just cause by the player.

ii. Consequences

24. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the club.
25. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to 5 salaries under the contract, for the period between October 2021 and February 2022 in the amount of CFA 300,000 each, as well as the unpaid part of the signing on fee in the amount of CFA 2,000,000, thus in total amounting to CFA 3,500,000.
26. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the club is liable to pay to the player the amounts which were outstanding under the contract at the moment of the termination, i.e. CFA 3,500,000.
27. In addition, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the player interest at the rate of 5% *p.a.* on the outstanding amounts as from 23 February 2022 until the date of effective payment.
28. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, 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 player 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.
29. In application of the relevant provision, the Single Judge held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the

contractual parties in the event of breach of contract. In this regard, the Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

30. As a consequence, the Single Judge determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
31. Bearing in mind the foregoing as well as the claim of the player, the Single Judge proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Single Judge concluded that the amount of CFA 8,100,000 (i.e. 27 monthly salaries of CFA 300,00 each) serves as the basis for the determination of the amount of compensation for breach of contract.
32. In continuation, the Single Judge verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
33. In this respect, the Single Judge noted that the player, after the unilateral termination of the contract, had remained unemployed and that thus, no further mitigation or additional compensation shall be applied in the matter at hand.
34. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of CFA 8,100,000 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
35. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the player interest on said compensation at the rate of 5% *p.a.* as of 23 February 2022 until the date of effective payment.

iii. Compliance with monetary decisions

36. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 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.

37. In this regard, the Single Judge highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
38. Therefore, bearing in mind the above, the Single Judge decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the player, 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. 24 par. 2, 4, and 7 of the Regulations.
39. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form, which is attached to the present decision.
40. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

d. Costs

41. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
42. Likewise and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
43. Lastly, the Single Judge 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, Michael Kporvi, is accepted.
2. The Respondent, AS du Faso Yennenga, has to pay to the Claimant, the following amount(s):
 - CAF 3,500,000 as outstanding remuneration, plus 5% interest *p.a.* as from 23 February 2022 until the date of effective payment;
 - CAF 8,100,000 as compensation for breach of contract without just cause, plus 5% interest *p.a.* as from 23 February 2022 until the date of effective payment.
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players (August 2021 edition), if full payment (including all applicable interest) is not made **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 the ban shall be of up to 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 made by the end of the three entire and consecutive registration periods.
5. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
6. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 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 17 of the Procedural Rules).

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