

Decision of the Dispute Resolution Chamber

passed on 3 August 2022

regarding an employment-related dispute concerning the player Haurylovich Aliaksei

BY:

Philippe Diallo (France)

CLAIMANT:

Haurylovich Aliaksei, Belarus
Represented by Strela Sport

RESPONDENT:

Okzhetpes, Kazakhstan

I. Facts of the case

1. On 9 February 2021, the National Dispute Resolution Chamber of the Kazakhstan Football Federation (hereinafter: *the KKF NDRC*) issued a decision in the context of an employment-related dispute between the Belarussian player, Mr Aliaksei Haurlyovich (hereinafter: *the player or the Claimant*), and the Kazakhstani club, FC Okzhetpes (hereinafter: *the club or the Respondent*).
2. On 17 March 2021, the KKF NDRC applied a disciplinary sanction on the club for the non-compliance of its previous decision. Specifically, the KKF NDRC order the club to pay a fine of KZT 100,000 and banned it on the registration of transfers of players.
3. On 15 April 2021, the club and the player signed a settlement agreement (hereinafter: *the settlement agreement*).
4. Clause III of the settlement agreement read as follows:

“If this club fails to comply with clause I.2 of this agreement, the player has the right to receive an additional compensation in form of fine in the amount equal to 0.05% of the amount owed for each day of delay in payment. In this case, the player has the right, at his discretion, to apply either to the Dispute Resolution Chamber of the KFF with a request to renew the sanctions against the club and collect the amount of the debt in full in accordance with the Decision of the FKK DRC and this clause, excluding the amounts already paid, or to the Dispute Resolution Chamber of FIFFA, with a request to enforce an execution of this agreement terms”.
5. On 1 July 2021, the player lodged a claim before the KKF NDRC requesting the enforcement of the decision in line with the settlement agreement.
6. On 8 July 2021, the club sent the player a *“notification of termination of the settlement agreement”*. In this opportunity, the club held that the contract concluded between the parties *“does not comply with the principles of fairness, contains obvious errors in terms of the total amount of the debt and the calculation of penalties”*. As such, the club maintained that the settlement agreement could not be executed.
7. On 18 August 2021, the KKF NDRC decided to terminate the proceeding on non-fulfilment of the terms of the settlement agreement. Said decision read: *“this decision may be appealed to the KFF Appeal Committee in accordance with the procedure provided for by the KFF Disciplinary Regulations”*.
8. On 18 August 2021, the Claimant filed a claim before FIFA with reference FPSD-3355.
9. On 16 December 2021, the DRC passed a decision rendering the claim FPSD-3355 inadmissible.

10. On 15 March 2022, the KFF DRC communicated the findings of the decision rejecting the claim of the Claimant.
11. On 3 May 2022, the Appeal Committee of the KFF DRC passed a decision rejecting the appeal of the Claimant.

II. Proceedings before FIFA

12. On 26 May 2022, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

13. According to the Claimant, the Respondent partially paid the debt, namely fulfilled article I. I. of Settlement agreement and made a payment of KZT 12,000,000.
14. The Claimant argues that the Respondent didn't fulfil other articles of Settlement Agreement related to payment of second part of payment in amount of KZT 18,496,695.07 and penalties in amount equal to 0.05% of the amount owed for each day of delay in payment.
15. The Claimant filed the following requests for relief:

Hereby Claimant asks FIFA Player's Status Committee to accept present claim for consideration.

- To oblige Respondent to pay the outstanding debt to Claimant in accordance with Settlement Agreement in amount of KZT 18,496,695.07

- To oblige Respondent to pay penalty to Claimant in amount equal to 0.05% of the amount owed for each day of delay in payment in accordance with terms of Settlement Agreement

b. Position of the Respondent

16. According to the Respondent, on 26 December 2021 the Football Tribunal had already dismissed the claim of the Claimant in a previous proceeding FPSD-3355.
17. The Respondent further states that the Claimant should have appealed the previous decision of the Football Tribunal to the CAS.

c. Replica of the Claimant

18. The Claimant states the refusal of the previous decision by the Football Tribunal *"had another nature and content, namely simultaneous trial in organs of FIFA and KFF, but not in refusal to pay the part of existing debt."*
19. In the Claimant's view, the Respondent *"strongly tries to mislead FPSD that the dispute was already resolved, even though Respondent knows and has information that previous disputes were regarding enforcement of Settlement Agreement"*.
20. The Claimant argues that *"using business relations and legal norms Respondent has to pay his outstanding debt to Claimant. All documents, which were enclosed by Respondent in the form of disagreement do not cancel the debt of Respondent to Claimant"*.

d. Duplica of the Respondent

21. The Respondent states that *"the Claimant once again using the "Forum Shopping" strategy by lodging two claims before different competent deciding bodies with a view to obtain the most advantageous possible outcome. This goes against the principle of electa una via. non datur recursus ad alterum"*.
22. The Respondent underlines that *"according point 5 of the Decision of Appeal Committee dated 3 May 2022 the Player could appealed the decisions of Kazakhstan bodies in Court of Arbitration for Sport. But the player appealed to the FIFA bodies once again."*

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

23. First of all, 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 16 May 2022 and submitted for decision on 3 August 2022. Taking into account the wording of art. 34 of the June 2022 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.
24. 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 (July 2022 edition), he is in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Belarussian player and a Kazakhstani club.

25. Nevertheless, while carefully analysing the documentation on file, the Single Judge noted that despite the Claimant not making reference in the claim, he had already filed a previous claim against the Respondent with identical factual background in front of the DRC (FPSD-3355). Moreover, the Single Judge observed that based on the evidence available the said claim was not appealed to the Court of Arbitration for Sport ("CAS"), becoming final and binding.
26. The Single Judge further noted that after the decision passed by the DRC in the case FPSD-3355, the KFF DRC and the Appeal Committee of the KFF DRC passed subsequent decisions in the parallel proceedings opened by the Claimant.
27. The Single Judge did not fail no notice that the decision of the Appeal Committee of the KFF DRC could have been appealed to the CAS. Although again the Single Judge noted that, based on the evidence on file, no appeal had been filed against the said decision.
28. In view of the foregoing, the Single Judge deemed important to underline that in the spirit of the applicable regulations, a player – or a club – who actively decides to bring forward a dispute before a local deciding body, rather than making use of the alternative dispute resolution process proposed within the legal framework of FIFA, must demonstrate consistency in relation to the choice of the course of action. Accordingly, the Single Judge cannot condone the attitude of a party who at first decides to submit a labour dispute to a competent, specific, local deciding body, and subsequently decides to submit this very same dispute (between the same parties, based on the same legal framework) to FIFA; the same is to be noted if the party submits a claim before FIFA and thereafter seeks to lodge the same claim in front of different national bodies. Finally, the Single Judges wished to emphasise that a party who chooses a certain course of legal remedy may not then decide to change the legal forum of the dispute, as this would jeopardise the credibility of the sporting dispute resolution system.
29. In this respect, the Single Judge found no reason to deviate from the previous decision of the DRC in the case FPSD-3355 and referred to the principle of *electa una via, non datur recursus ad alteram* and understand that in the present case the player elaborated and developed an inconsistent procedural strategy, known as "*Forum Shopping*", by lodging several claims before different competent deciding bodies with a view to obtain the most advantageous possible outcome.
30. The Single Judge underlined that this conclusion is in line with the long-standing jurisprudence of the Football Tribunal (see, for example, DRC decision of 12 February 2020, Stancu; DRC decision of 12 August 2020, Simkovic Thomas; DRC decision of 4 October 2018, Gutheissung) and CAS (CAS 2007/A/1301).

31. Consequently, and in line with the well-established jurisprudence of the Football Tribunal, the Single Judge decided that the player's claim is inadmissible.

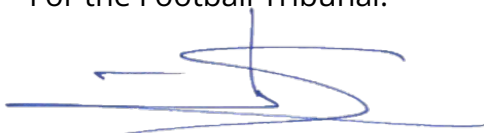
b. Costs

32. 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.
33. 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.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Haurylovich Aliaksei, is inadmissible.
2. 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).

CONTACT INFORMATION

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777