

# Decision of the Players' Status Chamber

passed on 02 August 2022

regarding an employment-related dispute concerning the coach Davor  
Berbe

**BY:**

**Kristy Hill, New Zealand**

**CLAIMANT:**

**Davor Berber, Serbia**  
Represented by Min Park

**RESPONDENT:**

**Football Association of Maldives, Maldives**

## I. Facts of the case

1. On 19 January 2022, the Serbian coach, Mr Davor Berber (hereinafter: *the coach* or *the Claimant*), and the Football Association of Maldives (hereinafter: *the FAM* or *the Respondent*), concluded an employment contract valid as from the date of signature until 18 January 2023 (hereinafter: *the employment contract*). Accordingly, the Claimant was employed as the Head Coach of the Respondent's Senior Women's Team.
2. In accordance with clause 10 of the employment contract, the Respondent undertook to pay the following amounts to the Claimant, until the 10th day of each month:
  - a. USD 5,500 net as salary;
  - b. USD 500 as food allowance; and
  - c. USD 250 as transport allowance.
3. Additionally, clause 10 of the employment contract established that the coach would be entitled to the following bonuses:
  - a. USD 1,000 net for winning an international match against a higher-ranked team;
  - b. USD 300 net for winning an international match against a lower-ranked team.
4. On 26 April 2022, the Claimant (via his agent) put the Respondent in default and requested payment of USD 15,925 within 10 days. The debt was broken down as follows:
  - a. USD 13,753 as the *pro rata* salary from 16 January until 31 March 2022;
  - b. USD 1,250 as the *pro rata* food allowance from 16 January until 31 March 2022;
  - c. USD 625 as the *pro rata* transport allowance from 16 January until 31 March 2022;
  - d. USD 300 as bonus for the match won against Seychelles on 16 February 2022 (cf. clause 10.4 of the employment contract).
5. On 6 May 2022, the Claimant filed the claim at hand before FIFA and maintained that the Respondent failed to honour its financial duties as per the employment contract. As a consequence, he requested FIFA: (i) to terminate their relationship; and (ii) to award him the total amount of USD 75,300 net.
6. The Claimant's requests for relief were as follows, in quoted *verbatim*:

"8. Therefore, we would like to terminate contract and file a lawsuit against "B".

9. The detailed breakdown of the amount in dispute is as follows:

1) Components of payment: monthly salary (5,500\$), monthly food allowance (500\$), monthly transport allowance (250\$), winning bonus (300\$)

2) *Currency: monthly salary, winning bonus should be paid by United States Dollar & monthly food allowance and monthly transport should be paid by Maldivian currency 'Rufiyaa'*

3) *Overdue period: as the clause 10.8 in contract between 'A' and 'B', the first payment of salary (salary from 19<sup>th</sup> January 2022 ~ 31<sup>th</sup> January) should have paid on 9<sup>th</sup> February 2022 at least. However, Maldives Football Association 'B' have not paid any kind of payments to 'A' more than 3 months.*

10. *Therefore, Coach 'A' would like to terminate the contract basis on regulation for terminating the a contract with just cause for outstanding salaries (14bis) and ask 'B' to compensate 75,300 \$ (seventy five three hundred United States Dollar) net as well as bear all legal costs of this procedure".*

7. On 23 May 2022, the Respondent was invited to file its answer to the claim, to no avail.
8. On 14 June 2022, the FIFA general secretariat requested the Claimant updated information on his employment situation.
9. On 17 June 2022, the Claimant confirmed that he was still "*under contract*" with the Respondent.
10. Also on 17 June 2022, the FIFA general secretariat invited the Claimant to file further comments on the termination of the employment contract. In particular, the FIFA general secretariat wrote *inter alia* as follows:

*"(...) bearing in mind the contents of your petition before submitted before the Football Tribunal, we revert to our previous correspondences and would like to reiterate that on the basis of article 4 of Annexe 2 of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the Regulations), either party to an employment contract between a coach and a member association may terminate the contract if they deem to have a just cause for such a termination. In case of a dispute, it is up to the competent decision-making body to establish exclusively whether a contractual breach occurred (with or without just cause), who is to be deemed responsible, and what are the consequences of such a breach (cf. article 6 of the Annexe 2 of the Regulations) (...)*

*In light of the above, please be note that it is not FIFA to terminate an employment contract between a coach and a member association, rather to rule upon the consequences of such termination (cf. art. 22, par. 1, lit. c) of the Regulations).As such, any termination shall be declared by the parties themselves.*

*Bearing in mind the foregoing and on the basis of art. 23, par. 2 of the Procedural Rules Governing the Football Tribunal (hereinafter: the Procedural Rules), we kindly ask you to provide us with, by no later than 22 June 2022:*

*• the date and proof of termination of the employment contract dated 19 January 2022 binding yourself to the Football Association of Maldives, if any.*

*Should we not receive the requested information and/or documentation within the aforementioned deadline, we shall understand that you do not wish to provide further comments, and hence the case shall be submitted for a decision of the PSC in due course. Said body shall make its ruling on the basis of the documentation on file."*

11. As no response was filed by the Claimant within the granted deadline, the FIFA general secretariat informed the parties on 7 July 2022 that the case would be submitted to the Player's Status Chamber for consideration and a formal decision.

## **II. Considerations of the Players' Status Chamber**

### **a. Competence and applicable legal framework**

12. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 6 May 2022 and submitted for decision on 2 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.
13. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (RSTP) (July 2022 edition), the Players' Status Chamber is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Serbian coach and the Football Association of Maldives.
14. Notwithstanding the above, the Single Judge took due consideration that the Claimant expressly confirmed that he is "*still under contract with Maldives Football Association*", as well as requested FIFA's intervention to terminate their employment relationship. The Single Judge further noted that the Claimant was awarded the opportunity to clarify his contractual status and was equally warned that the termination of a contract could only be performed by the parties and not by FIFA.

15. In this respect, the Single Judge recalled that that, in line with art. 4 of Annexe 2 of the FIFA RSTP (July 2022 edition), either party to an employment contract between a coach and a member association may terminate the contract if said party deem to have a just cause. Moreover, in case of a dispute, it is up to the competent decision-making body to establish whether a contractual breach occurred (with or without just cause), who is to be deemed responsible, and what are the consequences of such a breach (cf. art. 6 of the Annexe 2 of the FIFA RSTP).
16. In other words, the Single Judge outlined that it is not up to FIFA to terminate an employment contract between a coach and a member association, rather to rule upon the consequences of such termination on the basis of art. 22, par. 1, lit. c) of the FIFA RSTP. It follows that any termination should be declared by the parties themselves since terminating an employment agreement on behalf of a party falls outside the scope of the FIFA RSTP.
17. As a result, the Single Judge determined that she was not in a position to terminate the employment contract between the parties, as requested by the Claimant. Consequently, she decided that this specific claim of the Claimant was inadmissible.
18. Having established the above, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (July 2022 edition), and considering that the present claim was lodged on 6 May 2022, the March 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### **b. Burden of proof**

19. 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 she 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**

20. Her competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, she 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 she will refer only to the facts, arguments and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

**i. Main legal discussion and considerations**

21. The foregoing having been established, the Single Judge moved to the substance of the matter and determined that, as the employment contract concluded between the parties remains valid and in force, her task was limited to establishing the outstanding remuneration due by Respondent to the Claimant, if any.
22. In this context, she turned her attention to the documentation on file and highlighted that until the date of the decision, the Claimant had not acknowledged receipt of any payment by the Respondent. Likewise, she considered that the latter, on its part, failed to reply to the claim, thus accepted the allegations of the Claimant.
23. Based on the aforementioned considerations and on the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Claimant should be entitled to the outstanding salaries and allowances sought, as follows:
  - a. USD 2,419.34 net as the *pro rata* salary (USD 2'129.03), food allowance (USD 193.54) and transport allowance (USD 96.77) of January 2022;
  - b. USD 6,250 net as the salary (USD 5,500), food allowance (USD 500) and transport allowance (USD 250) of February 2022;
  - c. USD 6,250 net as the salary (USD 5,500), food allowance (USD 500) and transport allowance (USD 250) of March 2022;
  - d. USD 6,250 net as the salary (USD 5,500), food allowance (USD 500) and transport allowance (USD 250) of April 2022;
  - e. USD 6,250 net as the salary (USD 5,500), food allowance (USD 500) and transport allowance (USD 250) of May 2022;
  - f. USD 6,250 net as the salary (USD 5,500), food allowance (USD 500) and transport allowance (USD 250) of June 2022; and
  - g. USD 6,250 net as the salary (USD 5,500), food allowance (USD 500) and transport allowance (USD 250) of July 2022.
24. Furthermore, the Single Judge stressed that, in line with the constant practice of the Football Tribunal, the Claimant would be entitled to interest at the rate of 5% *p.a.* on the outstanding amounts as from the respective due dates until the date of effective payment. Nevertheless, considering the principle of *non ultra petita* according to which the deciding body is bound by the limits of a party's request for relief, the Single Judge determined that no interests should be awarded to the Claimant, as these were not requested.

25. For the sake of completeness, the Single Judge established that, as there was no proof of termination on file, any other monetary request made by the Claimant in connection with the termination employment contract was premature.

#### ii. Compliance with monetary decisions

26. Taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 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.
27. In this regard, the Single Judge highlighted that, against associations, the consequence of the failure to pay the relevant amounts in due time shall consist of a restriction on receiving a percentage of development funding, up until the due amounts are paid.
28. Therefore, bearing in mind the above, the Single Judge 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 creditor, a restriction on receiving a percentage of development funding shall become immediately effective on the association in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
29. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
30. The Single Judge recalled that the above-mentioned ban will be lifted immediately upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

#### d. Costs

31. 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.
32. 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.
33. Lastly, the Single Judge rejected any other requests for relief made by any of the parties.

### III. Decision of the Players' Status Chamber

1. The claim of the Claimant, Davor Berber, is partially accepted insofar as it is admissible.
2. The Respondent, Football Association of Maldives, has to pay to the Claimant the amount of **USD 39,919.34 net** as outstanding remuneration.
3. Any monetary claims of the Claimant with regards to the eventual termination of the employment contract entered into by and between the Claimant and the Respondent are premature.
4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.
6. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players 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 restricted on receiving a percentage of developing funding, up until the due amounts are paid.
7. The consequences **shall only be enforced at the request of the Claimant** in accordance art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
8. This decision is rendered without costs.

For the Football Tribunal:



**Emilio García Silvero**

Chief Legal & Compliance Officer



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**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**

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