

Decision of the Players Status Chamber (PSC)

passed on 2 August 2022

regarding an employment-related dispute concerning the coach Arsov Dejan

BY:

Kristy HILL (New Zealand), Single Judge of the PSC

CLAIMANT:

Al Ahly Benghazi, Libya

RESPONDENT:

Arsov Dejan, Serbia

I. Facts

1. On 8 October 2020, the coach and the club concluded an employment contract, valid as from 1 November 2020 until 31 October 2023.
2. According to clause 4 of the contract, the coach was entitled to the following remuneration:
 - a. For season 2020/2021 (from 1 November 2020 to 31 October 2021)
 - i. USD 11,000 (or the equivalent in Libyan dinars) before the 10th day of each month;
 - b. For season 2021/2022 (from 1 November 2021 to 31 October 2022)
 - i. USD 13,000 (or the equivalent in Libyan dinars) before the 10th day of each month;
 - c. For season 2022/2023 (from 1 November 2022 to 31 October 2023)
 - i. USD 15,000 (or the equivalent in Libyan dinars) before the 10th day of each month;
 - d. Several performance bonuses.
3. Clause 5 of the contract stipulates that the coach is entitled to an annual leave of 30 days.
4. Clause 6 of the contract establishes that *"In case of the first party or the second party decide to cancel the contract the one how request to cancel have to pay (tow months salary), and have to send or give a written letter three weeks before to finishing the relationship. The parties agreed that they accept voluntary and irrevocably in this contract to do not go to any court or sport institution against each other"*.
5. In addition, clause 9 of the contract stipulates that *"the club may terminate the contract in one of the following cases: - If the second party was found guilty in a felony or a misdemeanour related to the state or the character of his identity; - If he violated his official duties"*.
6. On 23 June 2021, the coach sent the club a Whatsapp message with the following content: *"Salah my apologies because I did not replay to you. My situation with my wyfe is very difficult. She is in hospital for these 5 days. Ali the problems are spread. And we are looking the solution for her. 1 am with her since the morning till the evening when I go home to sleep. 1 slept before 22h. Problems about the medical staff, because everybody are in Covid hospitals. So, in this moment I have "life" game 1 need to win. 1 am husbent and father of 3 kids and I must safe her. Nothing is more important then she in my life. My focus is only to safe her. Sorry, this is a big thruth. 1 do not no how long will be this condition. Everything depence of our reactions and quality treatment. So, 1 cannot leave her now in the most important moment for her. Even I want to corne to help to the team, but unfortunately it s not possible, because I will never forgive to myself if something is happening to hir and I am not there ... 1 wish to you and your family good health and all the best ... And try to understand my position like father and husbent ... Coach Dejan"*
7. On 3 July 2021, the coach sends the club an email in which he states the following: *"As agreed I inform you that I agree with common and friendly cancellation from the 08.06.2021. I wish you and the club the best and I was really happy to worked with you"*

8. On 23 December 2021, the club send the coach a default notice, in which it states that the coach left the club around mid-June without authorization and *de facto* terminated their contract without just cause. In particular, the club explains that on 7 June 2021 the coach requested one week of holidays in order to take care of his sick wife. The coach however did not return after one week, in spite of the club's (alleged) reminders. The club claims to have provided the coach with an air ticket for 21 June 2021, which was pushed forward as per the coach's request (note: on file, ticket with departure date 8 June 2021 from Cairo -> Istanbul -> Belgrade and return date 21 June 2021 from Belgrade -> Istanbul -> Tunis). The club acknowledges having received the coach's letters of 23 June 2021 and 3 July 2021, but denies having ever proposed the amicable termination of the contract. The club reminds the coach of the content of clause 6 of the contract and claims to have sent him another reminder on 23 July 2021. The club was surprised to hear that the coach had concluded a new employment contract with the Saudi club Al Khaleej FC without previously terminating his contract with the club. The club claims that the coach's departure has caused great damage to the club, as they could not immediately engage a new coach and had therefore an unsuccessful participation in the competitions. Based on the foregoing, the club understands that the coach terminated their contract without just cause and requests from him the payment of USD 391,000 plus interest within 10 days as from receipt of the letter, otherwise the club would have no other option then lodging a claim against him before FIFA.
9. In summer 2021, the coach concluded a new employment contract with the Saudi club Al Khaleej FC. Such contract was allegedly mutually terminated after 8 matches.
10. On 7 June 2022, the club lodged a claim against the coach before FIFA for breach of contract.
11. In brief, the club repeats the facts detailed in its default notice of 23 December 2021, mentioned above. In addition, the club claims to have honoured all its contractual obligations towards the coach. Nevertheless, the latter left the club on 7 June 2021 as per his request to accompany his sick wife and never returned. The club claims to have made several attempts to solve the matter amicably before sending the coach the default notice of 23 December 2021 (note: no evidence of any written communication from the club to the coach prior to 23 December 2021 on file). The coach, however, did not make the payment of the requested amount of compensation requested in the club's correspondence of 23 December 2021 within the granted deadline.
12. For having allegedly breached their employment contract and caused the club great sporting and financial damage, the club requests FIFA to order the coach to pay the club the following amounts:
 - a. USD 391,000 as residual value of the contract, as compensation for unjustified breach of contract, plus interest of 5% p.a. as from the due dates;
 - b. USD 150,000 as moral (USD 50,000) and sporting (USD 100,000) damages, caused by the unjustified termination in the course of the season, plus interest of 5% p.a. as from the due dates;
 - c. USD 10,000 as attorney fees;
 - d. the relevant procedural costs.

13. In his reply to the claim, the coach explains that on 28 April 2021, after a match of the African Cup in Algeria, he requested the club to amicably terminate the contract, as he needed to accompany his wife, who was *“very sick in hospital and diagnosed with cancer”*. As per the coach, the club’s president denied his request as he was *“worried about what the fans would say since the Al Ahly Benghazi FC was at the top of the National Libyan Football league...instead he told Mr Dejan Arsov to bring his wife to Benghazi (which a complete non sense...and highlight that Mr Saidi was in complete denial with regards to Mr Dejan Arsov wife situation)”*.
14. As per the coach, as soon as the team returned to Libya, all passports of the coaching team were confiscated by the club, with the explanation that they were needed in order to solve visa issues. The coach claims that in the following days he tried to arrange a meeting with the club’s president, however without any success.
15. The coach also states that 15 days after their return to Libya, he met the club’s president *“on the training field at the training session, where he agreed to release the Coach Dejan Arsov from his contract with a common agreement in an amicable manner where no claim would be made by either parties, as he explained the seriousness of his wife situation”*. Thus, he was surprised to have been contacted by the club, requesting his return. In reply, the coach recorded a video in English explaining the reasons of his departure before the end of the season, which was reposted by the club in its website on 5 July 2021, explaining *“that he was leaving the club due to urgent family matter, and that the club had agreed to release him from his contract and that there was no issues with any board members of the club”* (note: only prints of the alleged video were provided, without translation into a FIFA language). The coach understood that the mutual termination had been agreed by the parties and considers the club’s claim as reasonless.
16. Finally, the coach states that his *“wife sadly passed away on the 3rd April 2022 as a result of her illness”* and that the club *“during this very tough period has shown no support or care to guaranty the wellbeing and protect the mental health of coach Dejan Arsov which was part of its duty. Instead the club management added more stress and did not manage the situation at all. Because how the fans would react to his departure from the club sadly mattered more to Mr Saiti than Mr Dejan Arsov’s wife life. As a professional Football coach Mr Dejan Arsov has been shocked by the behaviour of Al Ahly Benghazi FC President Mr Saiti, as he has shown absolutely zero compassion nor support”*.
17. Based on the foregoing, the coach entirely rejects the club’s claim.
18. In its replica, the club insists on its claim and points out that the coach merely referred to his version of the facts, without providing any supporting documentation.
19. The club confirms its request for relief made in the claim and reserves the right to claim the application for disciplinary sanctions against the coach for defamation and discrediting of the club’s image.
20. In his final comments, the coach insists on the arguments presented in his reply to the claim.
21. As to his subsequent contractual situation, he explains that *“after spending the summer by the side of his wife, [he] decided to take the offer of joining Al Khaleej FC in Saudi Arabia, as he need*

to resume earning his living to support his wife and family, and he had also discussed with Al Khaleej club and the doctors the possibility to have his wife following her medical treatment in Saudi Arabia (where the Medical care system and environment was a lot more suitable), unfortunately Mr Dejan Arsov wife medical condition, continued deteriorating and did not allow her to travel to Saudi Arabia. After just 8 games Mr Dejan Arsov was forced to leave his position in November 2021 as Head Coach from Al Khaleej FC, to fly back to Serbia to attend his wife as her situation became even more critical, and then passed away on the 3rd April 2022. Khaleej FC also agreed to mutually terminate Mr Dejan Arsov contract (although Mr Dejan Arsov had brought al Khaleej FC to the 1 st place of the Div1 KSA Championship against all the odds)".

22. In view of the foregoing, the coach insists that he in good faith believed that the club had agreed to the mutual termination of their employment contract and points out that the club lodged the present claim more than one year after his departure.

II. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

1. 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 7 June 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.
2. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. f) of the Regulations on the Status and Transfer of Players (June 2022 edition), she is competent to deal with the matter at stake, which concerns an employment-related dispute between a club and a coach of an international dimension.
3. Subsequently, 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 (June 2022 edition), and considering that the present claim was lodged on 7 June 2022, the June 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

4. 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

5. Her 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 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

6. The Single Judge first noted that, on 8 October 2020, the coach and the club concluded an employment contract, valid as from 1 November 2020 until 31 October 2023.
7. Thereafter, the Single Judge observed that the club lodged a claim against the coach before FIFA for breach of contract, arguing that the coach left the club on 8 June 2021 and did not return, *de facto* terminating the contract without just cause.

8. On the other hand, the Single Judge took note of the position of the Coach who, fundamentally, rejected the club's claim, while acknowledged that, that on 28 April 2021, after a match of the African Cup in Algeria, he requested the club to amicably terminate the contract, as he needed to accompany his wife, who was *"very sick in hospital and diagnosed with cancer"*. In particular, the coach claimed he could have believed in good faith that the contract had been mutually terminated.
9. In view of the above, the Single Judge first wished to recall the circumstances that led to the dispute between the parties.
10. In particular, the Single Judge observed, after duly reviewing the documentation gathered during the investigation, it does appear that, indeed, the coach left the club on 8 June 2021 and did not return.
11. Within this context, the Single Judge noted that, on 23 June 2021, the coach sent a WhatsApp message to the club, informing the latter that his wife was under a serious medical condition.
12. The Single Judge further highlighted that, on 3 July 2021, the coach sent the club an email in which he states the following:

*"As agreed I inform you that I agree with common and friendly cancellation from the 08.06.2021.
I wish you and the club the best and I was really happy to worked with you"*
13. The Single Judge noted that, apparently, the club never replied to said email.
14. At this stage, the Single Judge wished to note the following elements:
 - It remained undisputed that the club in principle agreed to the coach's departure due to severe health problems of his wife;
 - It is undisputed that on 23 June 2021 the coach informed the club of the severeness of the health condition of his wife and his need to accompany her.
15. In addition, the Single Judge also pointed-out that (1) no evidence of any communication from the club to the coach prior to 23 December 2021 has been provided and (2) the present claim was lodged on 7 June 2021, exactly one year after the departure of the coach's flight to Serbia.
16. Based on the foregoing, the Single Judge concluded that the coach indeed had a valid reason to believe in good faith that his contract with the club had been mutually terminated, as his last email to the club on 3 July 2021 confirmed the mutual termination and was never refuted by the club for almost 6 months (until the "default notice" of 23 December 2021).
17. The Single Judge further considered that the time elapsed between the coach's departure and the notice (almost 6 months) and the effective lodging of the present claim (1 year) reaffirm that the parties, in spite of not having concluded a formal, written termination agreement, *de facto* they did agree to mutually terminate their employment relationship. Indeed, by taking so long to react to the coach's departure (by means of the default notice and the claim), the club confirmed that it was no longer interested in retaining his services.

18. For the sake of completeness, the Single Judge pointed-out that the severity of the health state of the coach's wife was not contested by the club.
19. Thus, the Single Judge concluded that the contract was *de facto* considered as mutually terminated by the parties as from 3 July 2021 (i.e. the last letter of the coach, which remained uncontested) and consequently the club's claim had to be entirely rejected.

d. Costs

20. 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.
21. Furthermore, 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.
22. Lastly, the Single Judge concluded her deliberations by rejecting any other requests for relief made by any of the parties.

III. Decision of the Players Status Chamber

1. The claim of the Claimant, Al Ahly Benghazi, is rejected.
2. This decision is rendered without costs.

For the Football Tribunal:



Emilio Garcia 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

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