FIFA FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Lucas Espindola da Silva

COMPOSITION:

DE WEGER, Frans (The Netherlands), Chairperson
ATILIO TARABORELLI, Alejandro (Argentina), Member
VERMEER, Roy (The Netherlands), Member

CLAIMANT:

Lucas Espindola da Silva, Brazil
Represented by Mariju Maciel e Marina Maciel Advogados & Associados

RESPONDENT:

PSS Sleman, Indonesia

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I. Facts of the case

1. In June 2021, Mr Budi Liminto (hereinafter: *Mr Liminto*) and Mr Danilo Fernando (hereinafter: *Mr Fernando*) exchanged messages via electronic application WhatsApp regarding a potential employment relationship between the Brazilian player, Mr Lucas Espindola da Silva (hereinafter*: the player* or *the Claimant*), and the Indonesian club, PSS Sleman (hereinafter: *the club* or *the Respondent*), for the 2021/2022 season.

2. Mr Liminto was identified as the intermediary of the player, whereas Mr Fernando as the club's manager.

3. On 8 June 2021, Mr Fernando forwarded the player (via Mr Liminto) a first employment offer with the following conditions:

    a. Total contract value: USD 54,000;
    b. Salary per month: USD 5,400;
    c. Duration: from 1 July 2021 until 31 March 2022;
    d. "*Residence is regulated by the club with a maximum value of (Rp 70.000.000) seventy million rupiah until the end of the contract";*
    e. *"Tickets 3 person Brasil – Indonesia – Brasil";*
    f. *"The car will be chosen by the club";*
    g. *"The cost of obtaining a work permit is borne by the club";* and
    h. *"No individual bonus apply".*

4. The player was not in agreement with the accommodation allowance offered by the club. Therefore, on 9 June 2021, Mr Fernando sent the player a new employment offer (again via Mr Liminto) in which this concept was increased to IDR 80,000,000 instead of IDR 70,000,000 (hereinafter: *the employment offer*). The other financial conditions remained the same as in the document sent by the club on the previous day.

5. The employment offer was countersigned by the player and sent back to Mr Fernando.

6. On 8 June 2021, Mr Fernando contacted the player directly via WhatsApp regarding his employment relationship with the club. Mr Fernando *inter alia* acknowledged his acceptance of the employment offer and provided further information as to the administrative steps to be fulfilled (*i.e.* visa and official contract).

7. In parallel, the club's secretary, Mr Yudo, also reached out to the player via WhatsApp and requested information on his size, name, and number for the team's jersey.

8. On 16 June 2021, the player contacted the club's coach via WhatsApp and informed that he had already accepted the employment offer the week before.

9. Also on 16 June 2021 and during the remaining days of June and July 2021, the player, Mr Liminto and Mr Fernando exchanged messages via WhatsApp regarding their contractual situation. Accordingly, the club had decided to cancel the employment offer and compensate the player for an amount of USD 2,500.

10. On 23 June 2021, the player signed a new employment contract with the Brazilian club, Clube Esportivo Aimoré (hereinafter: *CE Aimoré*) valid as from the date of signature until 1 April 2022. Accordingly, the player would be entitled to a monthly remuneration of BRL 2,289.80.

11. On 22 July 2021, the club issued a letter addressed to the player, as follows: "*hereby the club officially [inform] that the offer sent true player of Player Negotiation Card (PNC) of the player of* ***Lucas Espindola da Silva, is cancelled****. We understand that there have been cost incurred previously by the player. We here provide a compensation fee of* ***USD 2,500 (Two Thousand Five Hundred US Dollars)****. This fee will be paid the latest by July 31st, 2021*". The letter was signed by the club's president.

12. On 13 August 2021, the player sent a default notice to the club. Accordingly, the player referred to the employment offer, confirmed his acceptance and requested compensation amounting to the entire value of the contract (instead of the USD 2,500 unilaterally stipulated by the club). The player granted the club with a 15 days' deadline to remedy the breach.

13. On 24 September 2021, the player served the club with a second default notice by means of which he *inter alia* reiterated his request for compensation and referred to the jurisprudence of the Court of Arbitration for Sport (CAS) on the matter. The player granted the club 15 additional days to comply with its obligation, to no avail.

14. On 7 February 2022, the player signed a new employment contract with the Brazilian club, Brusque Futebol Clube (hereinafter: *Brusque FC*) valid as from 8 February 2022 until 5 November 2022. Accordingly, the player would be entitled to a monthly remuneration of BRL 1,500.

II. Proceedings before FIFA

15. On 28 March 2022, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Claim of the player

16. According to the player, the parties entered into a valid and binding agreement (*i.e.* the employment offer), which was subsequently terminated by the club without just cause. In

particular, the player argued that the employment offer contained all the *essentialia negotti* and fulfilled all the necessary requirements to be treated as a contract, as well as it was duly accepted and signed.

17. In light of the above, the player recalled CAS jurisprudence on pre-contracts and offers and highlighted that a document such as the one at hand represents a binding agreement capable of triggering the consequences of an employment relationship. Alternatively, the player also argued that even if the FIFA DRC had a different understanding, the club's behaviour should be considered *culpa in contrahendo*.

18. As a consequence, the player requested to be awarded USD 51,500 as compensation for breach of contract, corresponding to the residual value of the employment offer (USD 54,000) minus the amount unilaterally paid by the club (USD 2,500). Likewise, he claimed that sporting sanctions should be imposed on the club in line with article 17, par. 4 of the FIFA Regulations on the Status and Transfer of Players (RSTP).

b. Reply of the club

19. On 24 April 2022, the club filed its reply to the player's claim.

20. The club initially challenged FIFA's jurisdiction to adjudicate on this matter. In this respect, it briefly argued that "*because an agreement has not been made, the FIFA Dispute Resolution Chamber – DRC is not authorized to hear this case*".

21. As to the substance, the club maintained that no contract was ever concluded between the parties. In this respect, the club made the following remarks:

    a. The employment offer was not signed by the club, therefore it cannot be considered as a valid agreement. Moreover, it does not meet the requirements of the Indonesian Law to be considered as binding to the parties;

    b. Mr Fernando was not competent to represent the club, and the employment offer was not signed by its president; and

    c. The compensation paid by the club was delivered as a proof of good faith to end the negotiations, therefore could not be negotiated. In addition, the amount should be mitigated because the player signed new employment contracts following their negotiations.

22. The requests for relief of the club were as follows:

    "*1. Refuse the Claimant's Application in its entirety.*

2. Recognize that the Respondent has not entered into an agreement and has not employment contract and has not legally enforceable and has not legally binding between the parties.

3. Recognize that the Respondent has not entered into an agreement and has not pre-contract and has not legally enforceable and has not legally binding between the parties.

4. Refuse the claim for compensation submitted by the Claimant in its entirety".

c. Rejoinder of the player

23. On 2 May 2022, the player submitted his rejoinder on this matter.

24. Initially, the player confirmed FIFA's competence to enter into the merits of the case *sub judice* on the basis of article 22, par. 1, lit. b) of the FIFA RSTP.

25. Subsequently and as to the substance, the player outlined that the club did not dispute the authenticity of the WhatsApp messages filed together with his claim. As such, he reiterated that he received a proper employment offer from the club (via Mr Fernando), which was unlawfully terminated without just cause.

26. Lastly, the player insisted in his request for compensation.

d. Final comments of the club

27. On 8 May 2022, the club filed its final comments, and *inter alia* reiterated its position as to the lack of competence of FIFA's deciding bodies.

28. In this respect, it confirmed that there was not a proper employment relationship between the parties. The club furthermore referred to the national law of Indonesia and held "*the relationship between the players is still in the stage of the relationship between the Agent (Budi) and Danilo, which is still in the early stages of negotiations. Since the employment contract between the club and the player has not yet been established, we remain in the opinion that FIFA has no jurisdiction to adjudicate*".

29. Subsequently, the club remarked that the employment offer does not fulfil the requirements set out in the Indonesian law as to the validity of a contract. In any event, Mr Liminto appeared to be satisfied with the payment of the compensation of USD 2,500, consequently the negotiations were concluded in good faith.

30. Based on the above, the club requested FIFA to decide that the relationship between the club and the player was not "*formally legal and binding under the Indonesian law*".

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

31. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 28 March 2022 and submitted for decision on 21 July 2022. Taking into account the wording of article 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.

32. Subsequently, the members of the Chamber referred to article 2, par. 1 of the Procedural Rules and observed that in accordance with article 23, par. 1 in combination with article 22, par. 1, lit. b) of the RSTP (July 2022 edition), the Dispute Resolution Chamber is in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Brazilian player and an Indonesian club.

33. At this point, the Chamber noted that the club challenged FIFA's competence to hear the case at hand, because there is no employment relationship between the parties, therefore it does not constitute an employment-related dispute under the scope of the FIFA RSTP.

34. In this context, the Chamber established that in spite of the parties disputing whether the employment offer was a valid employment contract, the case at stake unequivocally involves an employment-related matter of international dimension in accordance with article 22, par. 1, lit. b), of the FIFA RSTP. In fact, the Chamber clarified that the assessment as to the whether there was a valid and binding employment relationship between the parties pertains to the substance of the matter, hence it does not object the admissibility of the claim.

35. Additionally, the DRC remarked that one of the basic conditions that needs to be met for FIFA to decide that another deciding body is competent to settle a dispute is that the jurisdiction of such other body derives from a clear and exclusive reference in the employment contract. Therefore, as there is no such clause in the case at stake, the DRC was firm to determine that the argumentation of the club should be rejected.

36. Therefore, the DRC has jurisdiction to enter into the substance of this matter.

37. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with article 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 28 March 2022, the March 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

38. Lastly, and given the multiple arguments of the Club related to Indonesian law, the DRC preliminarily highlighted that when deciding a dispute before the FIFA DRC, the FIFA Regulations prevail over another national law chosen by the parties since the objective of the Regulations is to create a standard regulatory framework to which all actors within the football community are subject to and can rely on. This objective would not be achieved if the DRC would have to apply the national law of a specific country on each and every dispute brought to it. It follows that – conversely to the club's position – the content of the Indonesian law is not *per se* relevant to this dispute, which shall be entertained in light of *inter alia* the Regulations and the jurisprudence of the Football Tribunal alone.

b. Burden of proof

39. The Chamber recalled the basic principle of burden of proof, as stipulated in article 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 Chamber stressed the wording of article 13, par. 4 of the Procedural Rules, pursuant to which it 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

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

i. Main legal discussion and considerations

41. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly disputed whether there was an employment relationship between them and, if so, the consequences thereof.

42. In this context, the DRC acknowledged that its task was to determine the following:

a. Was the employment offer a valid and binding document, the acceptance of which resulted in the establishment of an employment relationship between the parties?

b. If affirmative, was the employment relationship terminated without just cause by the club?

c. What are the consequences that follow?

43. The Chamber proceeded then to analyse each matter in turn.

A. Was the employment offer a valid and binding document, the acceptance of which resulted in the establishment of an employment relationship between the parties?

44. The DRC initially recalled its well-established jurisprudence which dictates that, for an employment contract to be considered as valid and binding, it shall contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration payable by the employer to the employee, and their mutual consent.

45. *In casu*, the DRC promptly stressed that the document provides for the duration of the employment relationship and the payable remuneration to the player, as well as it relates to the player as being employed as a footballer with the club, and contains their proper identification.

46. At this point, the Chamber observed that the employment offer did not include the signature of the club's president – as in fact raised by the club. In this respect, the DRC outlined that the actual signature of the contract is not the sole element to determine whether there was an existing contractual relationship between the parties. Instead, the validity and the enforcement of the contract should be established on the basis of a comprehensive understanding of all the facts and actions taken by the parties within the context of their relationship. Put differently, the Chamber confirmed that the signature requirement is essentially the easiest way that a party has to prove that their counterparty has entered into a contract; however, in line with the jurisprudence of both the DRC and the CAS, an employment agreement can be materialised with the wish to be executed. As such, the signature can be understood as one way to prove a party's consent, but it is not the only possible evidence to this extent.

47. On this note and after a thorough analysis of the case file, the Chamber was convinced that the club consented to the terms and conditions established in the employment offer. The Chamber found it decisive, in this respect, that: *(i)* the employment offer contains the official header and footnote of the club, and was undisputedly sent via its manager (Mr

Fernando) to the player's intermediary (Mr Liminto); *(ii)* the same manager acknowledged the signature of the employment offer by the player via WhatsApp, which was also confirmed by the club's head coach; *(iii)* the player was contacted by the club in order to arrange the necessary administrative steps for his services in Indonesia, suggesting that the basis of their contractual relationship was no longer under discussion and in fact that their obligations started to be performed; and, most of all, to which the Chamber gave particular weight, *(iv)* the club itself issued a letter cancelling its previous offer and stipulating a compensation to the player, thereby confirming that the parties had indeed reached an agreement.

48. Consequently and due to the particularities of the case, the DRC considered that the fact that the employment offer was not signed by the president of the club – when entertained together with the other elements of the case – could not be considered as a sufficient reason to rule that no employment relationship had been entered into between the player and club. In contrast, taking into consideration Mr Fernando's role in the club's management, the DRC concurred that the player could assume in good faith that he was duly authorized to act on the club's behalf.

49. Against this background, the Chamber ascertained that, while considering the actions taken by the club towards the player, it could be concluded that the club effectively engaged the services of the player and subsequently departed from the execution of the contract. Thus, the DRC deemed that the club could not rely on the argument that a contract was formally never signed *vis-à-vis* its controversial behaviour.

50. Likewise, the DRC recalled its solid jurisprudence in the sense that the mere reference included in the employment offer to the subsequent signing of an official employment contract does not *per se* prevent the document from being valid and enforceable.

51. Based on the foregoing and in light of the overall developments of the case, the DRC concluded that the parties entered into a valid and binding employment agreement (*i.e.* the employment offer) valid from 1 July 2021 until 31 March 2022.

B. If affirmative, was the employment relationship terminated without just cause by the club?

52. Having established the above, the Chamber moved to the issue of the termination and concluded that the club departed from the execution of the employment contract.

53. Likewise, the DRC decided that the employment contract was *de facto* terminated by the club on 16 June 2021, precisely when Mr Fernando informed that the agreement was cancelled and started the negotiations of a compensation to be paid to the player. Such termination was furthermore confirmed by the club via its letter of cancellation dated 22 July 2021.

54. Therefore, due to the lack of any argumentation and/or evidence on the contrary, the Chamber decided that the termination took place without just cause, simply because the club unilaterally and without any justification informed the player that it was no longer interested in his services.

55. The club shall then be liable to the consequences that follow.

ii. Consequences

56. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.

57. In doing so, the Chamber 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 Chamber firstly recapitulated that, in accordance with article 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.

58. In application of the relevant provision, the Chamber 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 Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

59. As a consequence, the members of the Chamber 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 article 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

60. Bearing in mind the foregoing as well as the claim of the player, the Chamber 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 Chamber concluded that the amount of USD 51,500 (*i.e.* the entire remuneration due to the player from 1 July 2021 until 31 March 2022 *minus* the compensation of USD 2,500 unilaterally

paid by the club to the player) serves as the basis for the determination of the amount of compensation for breach of contract.

61. In continuation, the Chamber 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 article 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.

62. Indeed, the player found employment with:

    a. CE Aimoré, as from 23 June 2021 until 6 February 2022. In accordance with the pertinent employment contract, the player mitigated his damages in the approximate amount of USD 3,418.96; and

    b. Brusque FC, as from 7 February 2022 until 31 March 2022. In accordance with the pertinent employment contract, the player mitigated his damages in the approximate amount of USD 492.50.

63. Subsequently, the Chamber referred to article 17, par. 1, lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination did not take place due to said reason *i.e.* overdue payables by the club, and therefore decided that the player shall not be entitled to receive any additional compensation.

64. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of USD 47,588.54 to the player (*i.e.* USD 51,500 *minus* USD 3,418.96 *minus* USD 492.50), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

65. Lastly, the Chamber highlighted that the player would be in principle entitled to interest over the cited compensation as from the date of the claim until the date of the effective payment. Nevertheless, as the player has not filed any request in this respect, the DRC confirmed that under the principle *ne ultra petita* no amounts in this concept could be granted.

iii. Compliance with monetary decisions

66. Finally, taking into account the applicable Regulations, the Chamber referred to article 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.

67. In this regard, the DRC 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.

68. Therefore, bearing in mind the above, the DRC 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 club in accordance with article 24, par. 2, 4, and 7 of the Regulations.

69. 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.

70. The DRC 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

71. The Chamber referred to article 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 Chamber decided that no procedural costs were to be imposed on the parties.

72. Likewise and for the sake of completeness, the Chamber recalled the contents of article 25, par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

73. Lastly, the DRC 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, Lucas Espindola da Silva, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, PSS Sleman, has to pay to the Claimant, the following amount(s):

   - USD 47,588.54 as compensation for breach of contract.

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. 24 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 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.

7. 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.

8. 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

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