

Decision of the Dispute Resolution Chamber

passed on 4 April 2024

regarding an employment-related dispute concerning
the player Facundo Jesús Fernández

COMPOSITION:

Lívia SILVA KÄGI (Brazil/Switzerland), Deputy Chairwoman
Stella MARIS JUNCOS (Argentina), member
Jorge GUTIÉRREZ (Costa Rica), member

CLAIMANT:

Facundo Jesús Fernández, Argentina
Represented by Ricardo Daniel Omar Frega Navía

RESPONDENT:

Pasa Irodotos FC, Greece

I. Facts of the case

1. The parties to the case are:
 - The Argentinian player, Facundo Jesús Fernández (hereinafter: *the player* or *the Claimant*).
 - The Greek club, Pasa Irodotos FC (hereinafter: *the club* or *the Respondent*).
2. On 19 August 2022, the Claimant allegedly received from the Respondent the following offer (hereinafter: *the Offer*) regarding a potential employment agreement:

"[the club] would like to sign the player Facundo Fernandez, (D.O.B 14/02/2000). Our club is offering to the player 15.000 euros net for a contract started on 25.08.2022 and ends on 30.06.2023.

On top of the salary value the club will provide to the player accommodation, 2 meals per day, use of car, return flight ticket from Argentina. The player will receive an additional bonus of 2000 euros for every 10 goals/ assists he achieves.

Also if the player plays for 70% of the official games and the club finishes at the top 5 ranking list then he will receive an additional 2000 euros bonus.

Our offer is valid till 21.08.2022 and will be executed after the player passes successfully the medical exams.

I am looking forward to hearing from you."

3. The Offer appears to be signed by the Claimant and the Respondent. However, the date when the document was signed by the player cannot be established.
4. The Offer was sent via the application WhatsApp as per the documentation available on file, however, the persons to the said communication cannot be established.
5. On 28 August 2022, the player mutually terminated his employment contract with his former club, Atletico Tucuman.
6. Seemingly on 1 November 2022, a person named Norma Emmolo, sent the club the following e-mail (quoted *verbatim*). It is unclear under which capacity she was acting and what is her connection to the player:

"Subject: Carta

Buenos Aires, September 1, 2022

I intimate to the fulfillment of the contract entered into between the parties dated August 19, 2022 within 3 days of receipt of this.

As of August 19, 2022, the undersigned accepted the proposal and terminated his professional contract in Argentina, making himself available to the institution to travel to Greece. To date, the tickets have not been sent and communications have been cut off, which is why I intend to comply with the agreement under penalty of initiating before the FIFA dispute resolution chamber the claim for the full payment of the sums committed. YOU ARE NOTIFIED AND PLACED WITHOUT FURTHER I GREETINGS YOU CAREFULLY"

7. The player confirmed to FIFA that he remained unemployed during the relevant period.

II. Proceedings before FIFA

8. On 8 January 2024, the Claimant filed the claim at hand before FIFA.
9. In his claim, the Claimant argued that the club sent an employment contract on 19 August 2022, as it included the salary, the duration, and other benefits. The Claimant further argued that he accepted the Offer as (i) this can be retrieved in the WhatsApp communications, (ii) he concluded a mutual termination with his former club and (iii) the content of the correspondence of 1 November 2022.
10. By failing to respect the contract given rise to by the Offer, the Respondent is, according to the Claimant, liable to pay him compensation for breach of contract without just cause.
11. In view of the foregoing, the Claimant requested payment of EUR 15,000 plus interests.
12. The Respondent, for its part, failed to submit its position to the claim.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

13. 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 8 January 2024 and submitted for decision on 4 April 2024. Taking into account the wording of art. 34 of the March 2023 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.
14. Subsequently, the members of the Chamber referred to art. 2 par. 1 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 (February 2024 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Argentinian player and a Greek club.
15. Finally, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (February 2024 edition), and considering that the present claim was lodged on 8 January 2024, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

16. The Chamber 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 Chamber stressed the wording of art. 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

17. 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 he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

18. The foregoing having been established, the Chamber moved to the substance of the matter and took note that the present claim is related to the existence of an employment contract between the Claimant and the Respondent.
19. The Chamber took note that the Claimant considered that he had a valid and binding employment contract and that he is entitled to compensation for breach of contract. On the other hand, Respondent failed to present its reply to the claim within the deadline granted by the FIFA General Secretariat. Therefore, the decision would be made only on the basis of the argumentation and evidence filed by the Claimant, in line with article 14 par. 1 of the Procedural Rules.
20. In this context, the Chamber acknowledged that its task was to determine whether the Offer allegedly concluded between the parties can be considered a valid and binding employment contract.
21. In view of the foregoing, the Chamber started by recalling the well-established jurisprudence which dictates that, in order for an employment contract to be considered valid and binding, apart from the signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their alleged representatives role, capacities and authority, the duration of the employment relationship and the remuneration payable by the employer to the employee.
22. After thoroughly analysing the documentation on file, the Chamber first turned its attention to the factual framework involving the negotiations between the parties and, specifically, to the correspondence exchanged in the context of the acceptance of the Offer. In particular, the Chamber remarked that the evidence on file is insufficient to determine that he accepted the Offer (and made such acceptance clear to the club). The DRC underlined that the WhatsApp messages provided by the player only showed that the Offer was sent to him by the club, but did not demonstrate that he accepted it and returned it signed to the club.
23. The Chamber was of the opinion that in accordance with the scarce documentation provided by the player, the latter failed to corroborate that he in fact accepted of the Offer within the time limit established therein. Referring to art. 13 par. 5 of the Procedural Rules and the principle of the burden of proof, the Chamber concluded that the Claimant did not meet his burden of proof to demonstrate that a valid and binding employment contract had been concluded by the parties.

24. What is more, the Chamber pointed to the fact that the player neither reported for duty and/or demanded specific performance between 25 August 2022 and 1 November 2022 in terms of the alleged contract concluded on 25 August 2022. In fact, no documentation whatsoever was made available by the player to support his argument in this respect. Moreover, the alleged letter sent on 1 November 2022 was sent by a third person, Ms Norma Emmolo, for which no nexus can be found with the player. In addition, the e-mail in question did not contain any reference to the player and the date of sending (1 November 2022) is not the same than the mentioned in the e-mail (1 September 2022), which means that said document, had little probatory value, if any.
25. Based on the above, the Chamber decided to reject the claim of the Claimant due to its lack of a contractual basis.

d. Costs

26. The Chamber 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 Chamber decided that no procedural costs were to be imposed on the parties.
27. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
28. 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, Facundo Jesús Fernández, is rejected.
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 Governing the Football Tribunal).

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