

Decision of the Players' Status Chamber

passed on 23 April 2024

regarding an employment-related dispute concerning Nikola Buzadzic

BY:

Javier VIJANDE PENAS (Argentina), Chairperson
Luis KANONNIKOFF (Paraguay), member
Jesús ARROYO (Spain), member

CLAIMANT:

Nikola Buzadzic, Croatia
Represented by Kasalo & Raic

RESPONDENT:

Al Shabab, Saudi Arabia
Represented by Gustavo Koch Pinheiro

I. Facts of the case

1. On 15 October 2023, the Croatian national Nikola Buzadzic (hereinafter: *Claimant*) and the club Al Shabab from Saudi Arabia (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid as from the same date until 30 June 2026.
2. The Claimant was hired as a "Video Analysis" (sic).
3. According to the contract and its two annexes, the Respondent undertook to pay the Claimant the following amounts:
 - a. EUR 10,000 net of taxes in Saudi Arabia as monthly salary, with no corresponding due date.
 - b. Accommodation for the Claimant at a 5-star hotel, with 3 meals per day included.
 - c. A car, with maintenance and insurance.
 - d. 1 round-trip business plane tickets per season.
 - e. Medical insurance.
 - f. Bonuses for performance.
4. The following contractual clauses concern the Claimant's duties at the Respondent:

"4. The [Claimant] agrees to assist the head coach of the first team to the best of his ability in all football matches and tournaments to which the club has entered and to attend at any reasonable place for the purpose of training in accordance with Instructions given by concern party of the Club.

5. The [Claimant] shall submit a periodic report to the Coach.

6. The [Claimant] agrees to attend all matches in which the Club is engaged when directed by concern party.

7. The [Claimant] shall work solely for the Club or as authorized by the Club or as required under the Rules of the Saudi Arabian Football Federation (hereinafter referred to as "SAFF") and the competition in which the Club is engaged. The [Claimant] undertakes to adhere to the Laws of the Game of Association Football in all matches in which he participates. For these purposes the rules governing the players shall apply to the [Claimant] as well.

8. There should be a regular meeting between technical, management and medical teams to discuss the status of the football team and players minutes of meeting to be submitted to the board of directors.

9. *The [Claimant] should do his best to raise the performance of players, participating in the matches through friendly matches to raise up their abilities and readiness to play on the matches.*

10. *The [Claimant] should fully cooperate with the existing staff for the interest of the team.*

11. *The [Claimant] agrees to observe the Rules of the Club at all times. The Club and the [Claimant] shall observe and be subject to the Rules of the SAFF (or any competition the Club has registered for). In case of conflict, such Rules and Regulations shall take precedence over this Agreement and over Rules of the Club."*

5. Clause 7 of the Annexe 1 to the contract reads as follows:

"7.1 Notwithstanding anything to the contrary, the parties hereby expressly and irrevocably agree that in the event that the Video Analysis terminates the Contract without just cause (in accordance with the regulations of FIFA governing this matter), the Video Analysis shall promptly pay to the club the three monthly salaries as compensation for the breach ("Breach Compensation").

7.2 Notwithstanding anything to the contrary, the Parties hereby expressly and irrevocably agree that, in the event that the club terminates the contract unilaterally without just cause, the club shall promptly and immediately pay to the Video Analysis, all the overdue salaries and bonuses, plus the three monthly salaries (as compensation for the breach)."

6. Clauses 1 and 2 of the Annexe 2 to the contract reads as follows:

1- It's agreed between the two parties that the club shall pay to the [Claimant] advance payment the amount of Euro (10,000.00) to be paid on or before 15.11.2023

2- This advance payment will be deducted in eight equal installments from the [Claimant] monthly salaries, starting from 15.10.2023 until 30.06.2024."

7. On 25 December 2023, the Respondent terminated the contract unilaterally on account of "poor performance and results", and stated that per clause 7, Annexe 1 of the contract, it would pay a penalty equivalent to 3 salaries to the Claimant.

8. On 18 January 2024, the club wrote to the Claimant and requested him to inform them of his international banking details to make the necessary payments, failing which payments would be performed to the previous bank account, to which his first salary was paid.

9. On 20 January 2024, the Claimant wrote to the club, disagreed with its position and stated as follows:

- The Claimant claimed that the termination was without just cause and that the club acknowledged its obligation to pay compensation for breach of contract. The Claimant argued that the calculation of compensation for breach of contract should be made in accordance with the provisions of Annexe 2 article 6 of the FIFA Regulations on the Status and Transfer of Players (RSTP), and is equal to the full residual value of the contract, and not in accordance with clause 7.1 of the contract, which is null and void.
 - The Claimant requested the club to pay the total of net 315,160.98, broken-down as follows:
 - a) outstanding remuneration in net total of EUR 25.725,80
 - b) compensation for the breach of the Employment contract in the sense of Annexe 2 art. 6 of FIFA RSTP, in net total of EUR 289.435.18, as residual value.
 - The Claimant also stated that if the club failed to fulfil the financial request within 15 days, the Claimant would be forced to file a claim against the club before the FIFA Football Tribunal, seeking the payment of outstanding remuneration and compensation for the breach of the contract, as well as the imposition of sporting sanctions against the club.
10. The Claimant remained unemployed following the termination of the contract.
11. Upon request of the FIFA general secretariat, the Saudi Arabian Football Federation (SAFF) informed that the Claimant was registered in its system as video analyst, as well as provided two match reports according to which the Claimant attended matches on 31 October and 11 December 2023 in that capacity with "authorization to enter the dressing room". Contextually, said match reports do not list the Claimant as those under "team Leaders for Bench".

II. Proceedings before FIFA

12. On 21 February 2024, 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. The requests for relief of the Claimant were as follows:

I. to ascertain that the Respondent terminated the Employment contract signed with the Claimant without just cause; and

II. to condemn the Respondent to pay in favor of the Claimant outstanding remuneration of net EUR20,093.32 (twenty thousand and ninety-three euros and thirty-two cents), which matured on 15/11/2023, all within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

III. to condemn the Respondent to pay in favor of the Claimant compensation for breach of the Employment contract without just cause of net EUR 289,435.18 (two hundred and eighty-nine thousand, four hundred and thirty-five euros and eighteen cents), which matured on 26/12/2023, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

IV. to condemn the Respondent to pay all relevant taxes, state contributions and surcharges, on top of the above-mentioned net amounts, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent or alternatively

to condemn the Respondent to provide the Claimant with the corresponding tax certificates concerning the payment of all the above specified net amounts alongside all the net amounts already paid to the Claimant during the term of the Employment contract, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

V. to condemn the Respondent to pay in favor of the Claimant default interest of 5% per year on the aforementioned amounts starting from the respective date of maturity until the effective date of the payment, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

VI. to impose sporting sanctions against the Respondent, all in the light of FIFA RSTP”.

14. The Claimant advanced the following arguments in support of his claim.

15. As to the termination of the contract, the Claimant's argument is that the club's terminated the contract without a valid reason. The Claimant asserts that the club's cited reasons for termination, specifically unsatisfactory performance and bad results, do not constitute just cause according to the jurisprudence of both FIFA and the Court of Arbitration for Sport. The Claimant emphasizes that such reasons are purely unilateral and subjective evaluations made by the club without any objective criterion, thus failing to meet the standard for just cause termination.
16. As to the compensation clause inserted in the contract, the Claimant asserts that it is invalid, null, and void. The Claimant argues that this provision is disproportionate and potestative in line with the jurisprudence of FIFA and CAS, allowing the club to terminate the contract at any point in time without justification and for only a symbolic amount of compensation. According to the Claimant, this undermines the principle of contractual stability, as protected by the FIFA RSTP, and should be entirely disregarded. Consequently, the Claimant emphasizes that the club's unilateral termination without just cause entitles him to compensation equal to the full remaining value of the contract, in line with Annexe 2 RSTP.
17. In addition, the Claimant confirmed he was paid EUR 10,000 by the club as salary on 6 December 2023 plus SAR 22,758, equivalent to EUR 5,632.48 on 21 January 2024. As such, he provided the following breakdown of the amounts requested:
 - Outstanding remuneration in net total of 20,093.32, as the balance of the unpaid (deducted) salaries and advance payment (i.e. EUR 35,725.80 minus EUR 15,632.48 paid)
 - Compensation for the breach of the Employment contract in the sense of Annexe 2 art. 6 of FIFA RSTP, in net total of EUR 289,435.18, as residual value of the contract from 26 December 2023 to 30 June 2026.
18. Upon request of the FIFA general secretariat, the Claimant provided the following regarding his role at the Respondent:
 - He emphasizes that his employment duties, as defined by the RSTP, align with the definition of a coach. This includes training and coaching players, selecting players for matches and competitions, and making tactical choices during matches and competitions.
 - The Claimant points out that the contract explicitly states his role as a "professional football assistant coach" and outlines his responsibilities, such as assisting the head coach, raising the performance of players, and participating in training sessions and matches, as detailed under the contract.
 - He equally provides evidence that he has actively fulfilled his coaching duties by analyzing player movements, planning training sessions, actively participating in

training sessions, and engaging in conversations with players about their movements and positions.

- In the unlikely event that FIFA does not sustain his argumentation, the Claimant emphasizes that he holds a valid coaching license in accordance with AFC regulations, as confirmed in the contract.
- The Claimant also highlights that the parties agreed, through the employment contract, that FIFA Players' Status Chamber shall be competent to deal with any disputes, further confirming his position as an assistant coach in the sense of the RSTP.

b. Position of the Respondent

19. In its reply, the Respondent advanced the following arguments:

As to the advance payment and fees:

- The club asserts that the Claimant wrongly calculated the advanced payment as a sign-on fee. They argue that the advance payment, as stipulated in Annex 2 of the contract, was intended to be deducted from the monthly salaries over a specified period. The club emphasizes that this advance payment was not implemented, however. Equally, the club contends that the advance payment was simply an upfront payment related to the salaries for the performance of the Claimant's duties. They highlight that if he had received this payment, the club would have been entitled to file a counterclaim to recover it, as it would correspond to a period of months that the Claimant had yet to earn.
- The club clarifies that there was no agreement between the parties regarding sign-on fees. They emphasize that sign-on fees are distinct from advance payments and are not to be deducted from future salaries. The club points to clause 34 of the Contract, which states that Annex 1 includes the whole remuneration, further supporting their argument.
- The club references jurisprudence, specifically citing CAS 2014/A/3702, to differentiate between advanced payments and sign-on fees. They highlight the panel's determination that the payments labelled as 'deposits' were considered advances and were not to be treated differently from the remaining salaries.
- The club acknowledges that the Claimant is entitled to outstanding salaries for the period worked before the termination of the contract. Specifically, the Claimant is owed EUR 8,200.85, which is the difference between the total amount due for the period worked (EUR 23,833.33) and the payments already made by the club (EUR

10,000 in December 2023 and EUR 5,632.48 in January 2024. It is to be noted that the club presented evidence of payments in this respect.

As to the termination compensation:

- The club asserts that the compensation clause contained in Article 6 of the contract represents the true intent of the contracting parties and is valid. They emphasize that this clause should be applied to the calculation of the compensation due by the Respondent to the Claimant for the termination of the Contract without just cause.
- The club dismisses the argument that clause 7 is potestative, stating that it is a fair arrangement and does not create a disproportionate advantage to any party. They argue that the clause grants both parties the right to unilaterally terminate the contract with a predetermined compensation amount, in line with relevant laws and legal precedents.
- The club emphasizes that the parties agreed upon a reciprocal and fair clause, granting both parties the right to unilaterally terminate the contract with a predetermined compensation amount. They argue that this arrangement is perfectly in line with relevant laws, including the RSTP and Swiss law, as well as numerous FIFA and CAS cases. The club contends that the liquidated damages clause at hand could not be triggered by just one party and does not create a disproportionate advantage for any party.
- Furthermore, the club highlights that the compensation due to the Claimant is carefully determined to discourage arbitrary use while ensuring a fair resolution. They stress that the high amount of compensation offers stability to the contractual relationship while also affording the Claimant the flexibility to explore potential opportunities with other clubs or national teams should he receive higher offers. The club asserts that this clause serves the interests of both parties effectively.
- The club asserts that the conduct of the Claimant constitutes *venire contra factum proprium* by specifically claiming the nullity of the termination clause after settling during the negotiations into the contract, which is strictly prohibited by this principle. In this sense the club is of the view that the principle of estoppel or *non venire contra factum proprium* prohibits the Claimant from changing his course of action, which generated legitimate expectations, to the exclusive detriment of the club. They emphasize that even the Claimant himself did not claim the clause to be invalid after the termination took place, and via WhatsApp messages exchanged with his agent, the Claimant clearly limited the compensation to a three-monthly salary and nothing more, suggesting the clause was a true and accurate reflection of the intention of the parties before changing his course of action. Therefore, the club argues that the principle of *venire contra factum proprium* supports their position and should be considered in the case.

20. The Respondent requested *inter alia* the following relief:

“a) Recognize the payments made in benefit of the Claimant, and conclude that the outstanding salaries amount due by the Club is € 8,200.65.

b) The advanced payment is not due, as it was never implemented and if were, it would correspond to the outstanding salaries earned. Should this Tribunal reach a different understanding, it has to take into consideration the period not earned, to be deducted from the whole amount. It also changes the way of calculating the outstanding salaries, which shall consider the monthly deduction agreed in Annex 2.

c) The compensation for the termination of the Employment Contract should be limited to the three months' salary agreed, which represents €30,000. Nevertheless, should this Tribunal reach a conclusion that the full residual value of the contract should apply, the Respondent subsidiarily requests that Mitigated damages should be taken into consideration, regarding any new employment of the Claimant.”

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

21. First of all, the Players' Status Chamber (hereinafter also referred to as *Chamber* or *PSC*) 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 15 February 2023 and submitted for decision on 23 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.
22. Along these lines, 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).
23. 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. 2 in combination with art. 22 lit. c) of the RSTP, edition February 2024, it had to assess whether it was competent to rule upon this matter. On this note, the PSC remarked that the competence of FIFA is not disputed by the parties, yet there is an *ex officio* issue to be tackled regarding the Claimant's role with the Respondent.
24. In this respect, the PSC turned its attention to the Claimant's statement of claim and observed that it concerns an employment-related dispute between an alleged coach and a football club.
25. Against this background, the PSC recalled that on 1 January 2021 FIFA introduced a new regulatory framework governing the labour relations between coaches and clubs, and coaches and member associations. In particular, the amendment package included a proper definition of "*coach*" for the purposes of FIFA regulations (*cf.* definition item no. 28 of the RSTP).
26. In particular, the Chamber acknowledged that said definition identifies a coach as an individual employed in a "*football-specific occupation*". This means that a coach shall be engaged in activities inherent to football that do not exist in the same way in other sports. Consequently, individuals practising activities that are not inherent to football are excluded from FIFA jurisdiction, such as nutritionists, sports scientists, fitness coaches, video analysts, and the like.

27. On this note, the PSC then determined it had to examine the reality of the facts to assess what the real function exercised by the Claimant at the Respondent was. In doing so, it initially highlighted that the Claimant is identified as a "Video Analyst" in the contract, with duties of a rather general nature corresponding to aid and report to the head coach.
28. This was, in the Chamber's view, unequivocal proof that the Claimant had not being employed in a function which is recognized as that of a coach under the RSTP, especially because none of the activities listed under item no. 28 of the definitions of the RSTP was found therein.
29. However, the PSC remarked it could have been the case – as raised by the Claimant – that he effectively exercised the role of assistant coach, which would entail that he was employed in more than one function at the club. Yet, the PSC noted that the additional explanation and/or documentation concerning the Claimant's tasks at the Respondent are limited as they only show him participating in training activities without further elements which could to the required degree of satisfaction show that he effectively engaged in training and coaching players.
30. The evidence provided by the Claimant in this respect consisting of photos and video footage only show him in the field of play during training sessions, in which he is talking to players or the rest of the coaching staff. In some footage the coach is seen passing the ball to players to start a training routine. The PSC was nonetheless of the view that this is insufficient to confirm that the coach was engaging in training/coaching the players – it seems rather that he was present at occasions in training exercises.
31. Accordingly, the PSC found that the evidence in fact is not sufficient *per se* to overcome the issue at hand, especially considering the confirmation issued by the SAFF, according to which the role of the Claimant was that of video analyst, which even prohibited him from entering the field of play/bench during official matches.
32. What is more, the PSC highlighted that having an UEFA license in this respect is irrelevant, since the Claimant has not presented any evidence to demonstrate that his role of video analyst requires the holding of a license according to domestic or continental regulations.
33. Consequently, the Chamber concluded that the Claimant's occupation is not considered to be football-specific in accordance with the FIFA regulations and the well-established jurisprudence of the Players' Status Chamber, in that (a) the documentation on file confirms that he had been employed as a video analyst and (b) the Claimant was not able to discharge his burden of proof to the contrary under art. 13 par. 5 of the Procedural Rules.
34. Therefore, the PSC decided that the Football Tribunal does not have jurisdiction to hear the dispute at stake since it falls outside the scope of article 22, paragraph 1, lit. c) of the RSTP.

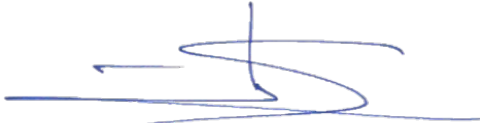
b. Costs

35. In continuation, 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”*. While confirming that the Claimant is not a coach under the Regulations, the Chamber recalled that the *mens legis* of the cited provision is directed at natural persons whom, unlike legal persons, do not have to bear any costs regarding proceedings before the Football Tribunal.
36. Lastly, the Chamber decided that no procedural costs were to be imposed on the Claimant, also because it would result unfair, in this specific case, that a party who is not subject to the jurisdiction of the Football Tribunal would have to pay any costs.

IV. Decision of the Players’ Status Chamber

1. The Football Tribunal does not have jurisdiction to hear the claim of the claimant, Nikola Buzadzic.
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

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