

Decision of the Dispute Resolution Chamber

passed on 12 August 2024

regarding an employment-related dispute concerning the player
Kevin Fernando Caicedo Carvajal

COMPOSITION:

Martín Auletta (Argentina), Deputy Chairperson
Alexandra Gomez Bruinewoud (Uruguay), Member
Jorge Gutiérrez (Costa Rica), Member

CLAIMANT:

Kevin Fernando Caicedo Carvajal, Colombia
Represented by Ms Melanie Schärer

RESPONDENT:

Lierse Kempenzonen, Belgium
Represented by Mr Jesse de Preter

I. Facts of the case

1. On 12 August 2023, the Belgian club Lierse Kempenzonen (hereinafter: *the Respondent* or *Club*) completed its first official match of the season.
2. At an unspecified date, the Respondent allegedly made an offer to the Colombian player Kevin Fernando Caicedo Carvajal (hereinafter: *the Claimant* or *Player*) through the “sponsorship and player acquisition” manager of the Respondent, who is allegedly also responsible for the Dutch club Roda JC and the Belgian club RAAL La Louvière.
3. On 9 September 2023, the Claimant travelled from Bogota to Frankfurt.
4. On 10 September 2023, the Claimant flew from Frankfurt to Paris.
5. On 12 September 2023, the Dutch club Roda JC submitted an application to the Belgian immigration service for a visa waiver, stating that the Claimant had been “hired as an international reinforcement”.
6. At an unspecified date, the Claimant was allegedly instructed by the Respondent (via WhatsApp message) to train with Roda JC for three days as there was nobody from the Club present, given that the pre-season was not due to start until the following week.
7. On 19 September 2023, the Claimant travelled from Kerkrade to Antwerp by train.
8. At an unspecified date, the Claimant and the Respondent allegedly signed a first employment contract, dated 30 September 2023 and with a monthly remuneration of EUR 2,800.
9. At an unspecified date, the Claimant visited the facilities of the Respondent.
10. On 22 September 2023, the Claimant allegedly signed a revised employment contract with the Respondent valid as from the date of signature until 30 June 2025 (hereinafter: *the Contract*).
11. In accordance with the Contract, the Respondent allegedly undertook to pay to the Claimant *inter alia* a monthly remuneration of EUR 4,850, amounting to a total value of the Contract of EUR 116,400, as well as to provide the Claimant with “*food, accommodation and extra expenses that the player may need during his stay*”.
12. Subject to art. 6 of the Contract, the parties agreed as follows:

“These are the responsibilities of THE CLUB 1) Pay for THE PROFESSIONAL FOOTBALLIST's tickets to Belgium, for his presentation to the discipline of THE CLUB, and must return him to his country of origin at the end of his contract. The obligations of THE PROFESSIONAL FOOTBALLER are: 1)

Request written authorization from THE CLUB to leave the country, 2) know and respect Belgian immigration regulations.”

13. Moreover, pursuant to art. 31 of the Contract, the parties agreed as follows:

“The acquisition of the player's sports rights will have a single value of 60,000 Euros to which the legal taxes of the country where this contract is signed must be applied.”

14. By correspondence dated 21 November 2023, the Claimant sent a letter to the Respondent with the following demands:

“- The immediate integration of Kevin Caicedo into all club activities and commitments, in accordance with the terms of the contract.

- The immediate provision of a suitable accommodation (cf. third clause of the employment contract).

- The payment of the amount of EUR 60,000 for the player's sports rights (i.e., the contract signing fee), which has been due since 3 October 2023, in accordance with clause thirty-one of the employment contract.

- The payment of the amount of EUR 9,700 for the two outstanding months of salary for the period of 22 September until 21 November 2023 (cf. third clause of the employment contract).

- The reimbursement of all travel expenses incurred by Kevin Caicedo in connection with his incorporation into the club of EUR 2,004.99 (COP 8,186,150 or EUR 1,895.99 plus EUR 109; cf. sixth clause of the employment contract; see attached payment receipts).”

15. On 8 December 2023, the Claimant flew back to Colombia.

16. On 4 January 2024, the Claimant terminated the Contract.

17. On 15 January 2024, the Claimant signed a new employment contract with a different club.

II. Proceedings before FIFA

18. On 4 January 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

19. According to the Claimant, the Respondent severely breached the Contract by withholding any remuneration for over three months and by excluding the Claimant from all club

activities, effectively preventing him from working. Notably, the Club allegedly did not properly execute the employment contract concluded on 22 September 2023.

20. Therefore, as the Respondent unlawfully failed to comply with the contractually agreed terms, the Claimant terminated the Contract with just cause in accordance with articles 14 and 14bis of the FIFA Regulations and is entitled to receive all outstanding remuneration and the reimbursement of his train and flight ticket costs, as well as compensation for breach of contract.
21. Based on the foregoing, the Player understands that the Club breached the Contract without just cause and requested for the following relief to be granted:

"1) The Respondent shall be ordered to pay the Claimant the amount of EUR 60,000 (two hundred thousand euros) net as outstanding signing fee, plus interest at the rate of 5% per year over said amount as of 10 October 2023 until the date of effective payment.

(2) The Respondent shall be ordered to pay the Claimant the amount of EUR 16,005 (sixteen thousand and five euros) net as outstanding salaries for the contractual period of 22 September until 31 December 2023, plus interest at the rate of 5% per year as follows:

- Over the amount of EUR 1,455, as of 1 October 2023 until the date of effective payment*
- Over the amount of EUR 4,850, as of 1 November 2023 until the date of effective payment,*
- Over the amount of EUR 4,850, as of 1 December 2023 until the date of effective payment and*
- Over the amount of EUR 4,850, as of 1 January 2024 until the date of effective payment.*

(3) The Respondent shall be ordered to reimburse the Claimant the amount of EUR 2,718.56 (two thousand seven hundred and eighteen euros and fifty-six cents) net for train and flight ticket costs, plus interest at the rate of 5% per year over said amount from the date of termination of the present employment contract, i.e., from 4 January 2024, until the date of effective payment.

(4) The Respondent shall be ordered to pay the Claimant the amount of EUR 100,395 (one hundred thousand three hundred and ninety-five euros) net as compensation for the breach of contract, plus interest at the rate of 5% per year over said amount from the date of termination of the present employment contract, i.e., from 4 January 2024, until the date of effective payment."

b. Position of the Respondent

22. In its reply, the Respondent argued that the identity of the Claimant has not been proven and mentioned that there is not an actual signature on the documents, only an abbreviated name.

23. The Club claims that the parties never signed an employment contract and that no offer was communicated by the Club to the Player, and that the Player failed to provide any proof of such offer.
24. The Club further argued that there has been no correspondence between the parties, mentioning that *“there would surely be at least a text message or some email(s) about the offer of such important contracts and there is not even the slightest evidence of any communication at all in the days and weeks preceding the alleged signing of the forged contracts.”*
25. According to the Club, the Player would have required a visa for his stay *“but [he did not] provide any evidence of such visa and any evidence of an exemption from work permit in Belgium.”*
26. Moreover, the Club mentioned that the story of the Claimant does not include any detail on his stay in Belgium from 11 September 2023 to early December 2023.
27. The Club argued that the Contract was forged based on the various discrepancies it highlighted.
28. Consequently, the Club requested the following relief:
 - *To declare the claimant’s claim inadmissible;*
 - *To declare the claimant’s claim unfounded;*
 - *To order the claimant to pay to the defendant 100,000.00 EUR in compensation for moral and material damages;*
 - *To order the claimant to pay any costs related to these proceedings.*

c. Replica of the Claimant

29. Upon request of the Dispute Resolution Chamber, the Claimant was invited to provide comments as to the Respondent’s position, as well as an original copy of the Contract at the basis of the present dispute.
30. The Claimant dismissed the argumentation that his identity was not duly proved, submitting a copy of his passport via email (for confidentiality purposes), as well as excerpts from the online platform *transfermarkt.de*.
31. As to the Claimant’s whereabouts prior to the commencement of the Contract, it was argued that he had trained with the Dutch club Roda JC to maintain his fitness level.
32. Thereafter, he had travelled to Antwerp to sign the Contract with the Respondent. The Claimant emphasized that he was advised to stay in Antwerp due to the city having more amenities, and upon signature of the Contract, he would receive an apartment in Lier.

33. The Claimant provided as part of his replica pictures of him visiting the facilities of Roda JC and train tickets between Kerkrade (where the latter club is based) and Antwerp.
34. Upon arrival in Antwerp, the Claimant outlined that he was lodged in a hotel for two days and presented with a draft employment contract via the email address of his previous club's president.
35. The Claimant emphasized that, during his time in Antwerp, he received a visit of the Respondent's facilities and stadium. At this stage, a first contract was allegedly signed between both parties.
36. The Claimant subsequently argued that he grew unsettled due to the prolonged wait for an integration into the squad and allegedly informed the Respondent of his intention to return home. Upon hearing this, the Respondent allegedly offered the Claimant a salary raise from EUR 2,800 to EUR 4,850 (which corresponds to the salary in the Contract laying at the basis of the present dispute).
37. Thus, the Contract, with revised terms, was allegedly signed on 22 September 2023.
38. According to the Claimant, in light of the continued failure of the Respondent to integrate him, a warning letter was sent in November 2023, given that the season had already started and the visa waiver period was coming to an end.
39. Thus, the Claimant argued that he had no other choice but to return home and terminate the Contract unilaterally.
40. In view of all the above, the Claimant insisted on his initial request for relief.

d. Duplica of the Respondent

41. In its duplica, the Respondent largely reiterated its previous arguments, emphasizing that the story of the Claimant bears no credibility.
42. In particular, the Respondent referred to the unrealistic travel itinerary of the Claimant, and that there is no explanation as to how or why he travelled to Paris first, and subsequently to the Netherlands and Belgium. Whilst there is a flight ticket to Paris on file and a train ticket between Kerkrade and Antwerp, there is no explanation as to why the Claimant did not directly travel to the Netherlands (or to Belgium), nor any proof as to how the commute from Paris to the Netherlands took place.
43. The Respondent equally reiterated its allegation of forgery, stating that not only the Contract is forged, but also the photographic evidence of the Claimant visiting the Respondent's stadium. The Respondent emphasized that there was no proof of any

invitation or communication between the parties, telling the Claimant to visit the premises in an official capacity.

44. Lastly, the Respondent stressed that it did not know the alleged “sponsorship and player acquisition” manager responsible for scouting the Claimant, and that there was no proof of his identity on file, due to which he should be invited to provide a witness statement to the present proceedings.
45. In conclusion, the Respondent insisted on the claim to be rejected and for moral damages to be paid by the Claimant.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

46. First of all, the Dispute Resolution Chamber (hereinafter: *the 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 4 January 2024 and submitted for decision on 12 August 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.
47. Furthermore, 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 (June 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 a Colombian player and a Belgian club.
48. 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 art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (June 2024 edition) and considering that the present claim was lodged on 4 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

49. 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

50. Having established the competence and the applicable regulations, 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 assessing the matter at hand.

i. Main legal discussion and considerations

51. As a preliminary remark, the Chamber wished to point out that, although the Respondent requested relief in its reply to the claim, it failed to complete its petition in accordance with art. 18 par. 1 of the Procedural Rules, leading the Chamber to understand that the counterclaim was withdrawn, and the Respondent's submission shall serve as an ordinary reply to the claim.
52. With this established, the Chamber then moved to the substance of the matter and took note of the fact that the parties strongly dispute the validity (and existence) of the Contract, and subject thereto, the lawfulness of the contractual termination that followed several months after the alleged conclusion of the Contract.
53. In this context, the Chamber acknowledged that it its task was to determine, firstly, whether or not the Contract was indeed validly concluded between the parties, based on the evidence of the Claimant and the countervailing submissions of the Respondent.
54. Prior to entering the analysis of the matter as to its merits, the Chamber briefly revisited the parties' submissions.
55. On one hand, the Chamber recalled that the Claimant argued that he had duly travelled to the Respondent's premises and followed the instructions he was given in order to be integrated into the squad. The Claimant emphasised that the authenticity of the Contract, based on the evidence on file, was undeniable. As a result of the Respondent's failure to give effect to the Contract, and the breach of trust suffered thereby, the Claimant argued that he had no choice but to prematurely terminate the employment relationship.
56. On the other hand, the Chamber noted that the Respondent outright rejected the arguments of the Claimant, stating that it was never in contact with the latter, that the allegations of visiting the Club's premises are fabricated, and that the Contract is merely a forgery. The Respondent equally emphasised that the Claimant's alleged travel itinerary is difficult to follow, and that it is unaware of any intermediary which may have facilitated a purported transfer.
57. At this point, the Chamber wished to refer to the wording of art. 13 par. 5 of the Procedural Rules, pursuant to which a party that alleges a certain fact also bears the burden of proving its veracity.
58. With this in mind, the Chamber went on to consider the submissions and the evidence adduced by the parties in order to firstly address the discussions concerning the validity of the Contract.

59. The Chamber recalled the timeline of the case for ease of reference. According to the Claimant, the Respondent allegedly made an offer to him to join in September 2023, which he purportedly duly accepted.
60. Thereafter, the Claimant travelled from Bogotá to Frankfurt, wherefrom he continued to Paris and finally, through various additional steps, to Belgium.
61. Finally, the Claimant and the Respondent allegedly concluded the Contract (on two occasions, under amended terms), whereafter he was purportedly ostracized from the Club's plans and driven to prematurely terminate the Contract.
62. In respect of the above, the Chamber found it noteworthy that, despite the numerous allegations made concerning an introduction of the Claimant to the Respondent through an intermediary and the complicated onboarding process he seemingly underwent, no evidence was found on file which could credibly link the Claimant to the Respondent in as far as tangible contact between the two parties was concerned.
63. In particular, the Chamber considered that, in the absence of any communication between the two parties (or any linked party to said negotiation), and in the absence of any concrete offer that could be traced back to the Respondent, it was difficult for the Chamber to reach the conclusion that the parties had indeed communicated expectations, negotiated, and thereupon concluded an employment agreement, as alleged.
64. Moreover, the Chamber was struck by the fact that, despite the involvement of such intermediary seemingly playing a crucial role in the conclusion of the purported Contract, no evidence identifying said party, and no written testimony from said party had been provided in order to elucidate the context of the disputed negotiations.
65. The Chamber took note of the purported invitation letter which the Claimant had provided to corroborate his narrative, however, observed that such invitation referred to an entirely different entity – namely Roda JC Kerkrade.
66. The Chamber was not satisfied that such letter be linked to the Respondent, based on the evidence on file, despite the argument that the Claimant *"would no longer be recruited by Roda JC, but rather by the club Lierse SK for their U23 team. The [Respondent] did not object to this change, as [he] had no preference as regards those clubs"*, particularly since such argument was not adequately corroborated with any correspondence to that effect or otherwise.
67. Furthermore, and importantly, the Chamber took note of the considerable inconsistency concerning the Claimant's travel itinerary, and the lack of evidence explaining the ramifications thereof.

68. From the initial submission of the Claimant, the Chamber understood that the Claimant travelled from Bogotá, to Paris, and subsequently to Belgium. However, as it was revealed in the Claimant's replica, the latter had, at an unspecified date, with unclear means of transportation, and in a very brief timeframe as from the arrival in Paris, travelled to the Netherlands, wherefrom he allegedly continued to Antwerp, where the Contract was seemingly concluded.
69. At this stage, the Chamber deemed it important to point out that the Claimant's allegation of having been invited to attend the premises of the Respondent remained – even after a second round of submissions – uncorroborated, in the sense that, although the images submitted to the file appeared to show the Claimant visiting the stadium, there was no proof to demonstrate that this was conducted in an official capacity, upon the Respondent's invitation.
70. In respect of the above, the lack of evidence bringing together the Claimant's itinerary and linking such itinerary to instructions by the Respondent made it difficult for the Chamber to follow the arguments presented before it.
71. What the Chamber was equally unsettled by was the fact that the Claimant had alleged that the Respondent had told him – in September 2023 – to train with another team because the pre-season had not started yet. At the same time, the Chamber was able to observe that the Respondent had already completed its first competitive match of the season more than a month prior.
72. The Chamber emphasised, in this regard, that this should have already raised doubts for the Claimant, given clear contradiction with easily accessible information such as the official playing schedule of the Respondent. The lack of communication or urgency of the Claimant in bringing this to the Respondent's attention in a written correspondence further underpinned the Chamber's view that contact between the parties was limited, and any concrete contractual negotiation unlikely.
73. Beyond what was already established above, the Chamber noted that the Claimant failed to adduce any evidence of having contacted the Respondent regarding any of its alleged breaches in a utile timeframe. Given the seriousness and untenable nature of the purported situation which the Respondent placed the Claimant in (i.e., unpaid salaries and complete exclusion from the squad), the Chamber was surprised by the fact that, only two months after the alleged signature of the Contract, the Claimant's concerns were first voiced.
74. Lastly, and most notably, the Chamber observed that, despite having been invited to do so, the Claimant failed to provide the original version of the Contract via post, which could have served to elucidate whether or not at least the signatures of the parties – amid the inconsistencies given rise to by the circumstantial evidence in the case at hand – were authentic.

75. All in all, the Chamber was unconvinced, based on the evidence on file, that the parties validly and bindingly concluded an employment agreement – i.e., the Contract.
76. It was the Chamber's firm and unanimous opinion that the Claimant fell short of meeting the burden of proving that he had a contractual entitlement or a legitimate expectation from the Respondent.
77. Thus, and in absence of any contractual basis upon which to claim the amounts in dispute, the Chamber saw no alternative but to reject the claim at hand in its entirety.

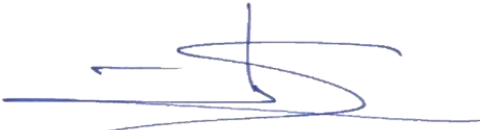
d. Costs

78. 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.
79. 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.
80. 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, Kevin Fernando Caicedo Carvajal, 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).

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