

Decision of the Dispute Resolution Chamber

passed on 1 July 2024

regarding an employment-related dispute concerning
the player Carlos Miguel Tavares de Oliveira

BY:

Michele Colucci (Italy), Single Judge

CLAIMANT:

Carlos Miguel Tavares de Oliveira, Portugal

Represented by José Duarte Reis

RESPONDENT:

AEPS Aiolikos, Greece

I. Facts of the case

1. The parties to this dispute are the Portuguese footballer Carlos Miguel Tavares de Oliveira (hereinafter: *the Player* or *the Claimant*), and the Greek club, AEPS Aiolikos (hereinafter: *the Club* or *the Respondent*).
2. By document dated 31 March 2023, the Claimant and the Respondent concluded a contract (hereinafter: *the contract*), valid as from 31 January 2023 until 31 May 2023.
3. The preamble to the contract reads as follows:

"In implementation of the exception foreseen in article 1 par. 1 of Appendix B of the RSTP, permitting the signing of a private agreement between a club and an amateur player, not for the payment of any remuneration to the latter for providing the services thereof, but solely for covering the accommodation, sustenance, travelling and insurance expenses thereof and in order to issue the special permit of residence stipulated in article 17 par. 1 case f of Greek Law 4251/2014 (A.2.7. Athletes - Coaches), the amateur club with name "AEPS AIOLIKOS .." states that they wish to include TAVARES DE OLIVEIRA CARLOS MIGUEL in their ranks and the other party stipulates and accepts with the following terms:"

4. Under the contract, the parties agreed as follows:

"Obligations of the amateur club

The amateur club is obligated to provide to the player all necessary conditions (access to sports facilities, training material, apparel, etc.) for their preparation in the most comprehensive possible way and their participation in training sessions and matches.

The amateur club undertakes to complete the registration/transfer procedure of the player covering the corresponding expenses, as well as any other financial obligation that it may arise from this agreement and which is not expressly stipulated.

The amateur club is obligated to pay to the player, on the last day of every month, the amount of THREE THOUSAND (3000.00) Euro, plus 3000€ for bonus relating exclusively to the accommodation, sustenance, travelling and insurance expenses of the player, which was determined following a calculation and the joint agreement of the contracting parties. The aforementioned monthly amount does not constitute, in any way whatsoever, a hidden employment contract nor does it constitute a remuneration for services provided by the player. It is expressly stipulated that in the event of travelling of the club to an away location the aforementioned accommodation, sustenance and travelling expenses shall be exclusively covered by the club, in addition to the aforementioned monthly remuneration."

5. The penultimate clause of the contract reads as follows:

"For any dispute arising from the signature hereof, the execution, interpretation or termination hereof or as a result hereof in any way whatsoever, the sole competent body is the Players' Status Committee of HFF (article 21 of the Regulations on the Status and Transfer of Players)."

6. In accordance with the information available in the FIFA Transfer Matching System (TMS), the Player was registered with the Club as an amateur without any distinctive issues. Such registration does not indicate the payment of any amounts to the Player as remuneration.
7. By correspondence dated 10 January 2024, the Claimant put the Respondent in default, stating as follows:

"According to the employment contract that I celebrated with your club, valid between 31/01/2023 and 30/05/2023, you should have paid me, on the last day of every month, the amount of 3.000 € (three thousand euros) plus 3.000 € as bonus for other expenses. However, Despite having fully fulfilled with my obligations and even stayed in the club beyond the contract duration, to participate in the champion play-offs, my monthly salary was not paid in full.

This way, the club paid me in different moments a total amount of 1.600 €, which means that remains overdue and in debt a part of my first salary (1.400 €) and the remaining salaries (9.000 €), being the club obliged to pay a global amount of 10.400 € (ten thousand and four hundred euros).

As a foreign player, without any other source of income and away from my family, this situation caused me serious damages and great difficulties in subsistence.

For those reasons, I'm notifying the club to, in a maximum period of 15 (fifteen) days, fully comply with the payment of the referred overdue salaries.

If there is no payment of the overdue salaries during the 15 days period, I'm informing that is my intention to start procedures on FIFA competent body, claiming the amounts in debt and asking for all the legal and sportive consequences associated."

II. Proceedings before FIFA

8. On 18 April 2024, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.
9. In his claim, the Player sought the following amounts:

*"– Part of February 2023 salary in the amount of 1,400 EUR;
– March 2023 salary, in the amount of 3,000.00 EUR;
– April 2023 salary in the amount of 3,000 EUR;
– May 2023 salary in the amount of 3,000 EUR."*

10. The Player filed the following request for relief:

*"a) Orders AEPS AIOLIKOS, Greece, to pay to Mr Carlos Miguel Tavares de Oliveira, Portugal, the salaries in debt,
in the amount of EUR 10,400.00 (ten thousand four hundred Euros).
b) As well as interests at a rate of 5% p.a. as from the day following the due date of each monthly payment until the date of effective payment."*

11. In its reply, the Respondent held as follows, while not presenting any documentation in support of its position argumentation.

- The Player was registered as an amateur player with the Club, not as a professional player, and the Club, as an amateur entity, was playing in the Greek 3rd Division.
- The contract executed between the Club and the Player was a private agreement, as required by the Hellenic Football Federation (HFF) for the purpose of the Player obtaining a special athletic visa and describing the responsibilities of housing and living accommodations and expenses of the Player while with the Club. It was not an employment contract. To this end, said contract clearly states that any disputes should be resolved through the Players' Status Committee of the HFF (hereinafter: *HFF PSC*).
- The Club fulfilled its obligations to the Player by providing accommodation, sustenance, traveling expenses, insurance coverage, and a car for transportation. The Club claims to have evidence of payments totalling over EUR 12,000 for the player's expenses during his stay in Greece.
- The Club also stated that the Player has not provided any receipts for reimbursement according to the contract, as all expenses were paid for by the Club.

12. The Club believes that the Player and his legal counsel have misrepresented the facts of the contract to FIFA. Accordingly, it requested that the claim be rejected.

13. In his rejoinder, the Player raised the following issues:

- The jurisdiction of the HFF PSC mentioned in the contract is null and void because said body does not have the competence to deal with financial disputes.
- In employment-related disputes between a player and a club that have an international dimension, both parties are entitled to refer the dispute to FIFA's bodies. Since the Player is a Portuguese citizen and the Club is registered with the HFF, the dispute has an international dimension, and FIFA therefore is competent.
- The contract should be considered an employment agreement based on its content, which includes the necessary elements such as the contracting parties, duration of the contract, parties' obligations, and remuneration for services provided.

- According to Article 2 of the Regulations on the Status and Transfer of Players (RSTP), a professional player is defined as someone who has a written contract with a club and is paid more for their footballing activity than the expenses they incur. The Player meets both conditions as the contract was executed, and the Club undertook to pay the Player a monthly remuneration of EUR 3,000, which exceeds the Player's expenses in his footballing activity.
 - The fact that the Club considers itself an amateur entity is irrelevant. What matters is that the Club participates in organized football under the regulations and organization of the HFF.
14. Based on the above arguments, the Player reiterated his request for relief as outlined in the statement of claim.
 15. The Club did not file any final comments in spite of being awarded the opportunity to do so by the FIFA general secretariat.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

16. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 18 April 2024 and submitted for decision on 1 July 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.
17. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 1 lit. a) 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 RSTP (June 2024 edition), he is in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Portuguese player and a Greek club.
18. The Single Judge further noted that the Respondent contested the competence of FIFA's deciding bodies in favour of the HFF PSC, alleging that the latter is competent to deal with any dispute deriving from the relevant contract.
19. The Single Judge also noted that the Claimant insisted on the competence of FIFA to adjudicate the present claim, sustaining that the HFF PSC is not an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.
20. Taking into account all the above, the Single Judge emphasised that in accordance with art. 22 par. 1 lit. b) of the RSTP, FIFA is, in principle, competent to hear an employment-related dispute between a club and a player of an international dimension. Nevertheless, the parties may

explicitly opt in writing for such dispute to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs.

21. In this respect, the Single Judge noted that the Respondent failed to provide any documentary evidence which could prove that the national arbitration bodies of the HFF meets the requirements established in art. 22 par. 1 lit. b) of the RSTP, detailed in the FIFA Circular no. 1010 as well as in art. 3 par. 1 of the NDRC Regulations. On account of the above, and referring to the principle of burden of proof contained in art. 13 par. 5 of the Procedural Rules, the Single Judge established that the Respondent's objection towards the competence of FIFA to deal with the present matter must be rejected, and FIFA is competent, on the basis of art. 22 par. 1 lit. b) of the Regulations, to consider the present matter as to the substance.
22. For the sake of completeness, the Single Judge outlined that the question as to whether the contract at the basis of the present dispute is an employment one or not is not important for the assessment of the admissibility of the matter, not only because art. 22 par. 1 lit. b) RSTP requires that a dispute be "employment-related", which is indeed the case, but also as this concerns the substance of the matter, which will be addressed below.
23. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the RSTP (June 2024 edition), and considering that the present claim was lodged on 18 April 2024, the February 2024 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

24. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, he stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within TMS.

c. Merits of the dispute

25. The competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, he started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, he emphasised that in the following considerations he 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

26. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that this is a claim for outstanding remuneration, in which the parties strongly dispute if the Player was hired as an amateur by the Club.
27. In this context, the Single Judge acknowledged that even if the Club tries to argue that the Player was an amateur player, and despite the contents of the contract, it remains clear that the player was entitled to a monthly payment of EUR 3,000 plus bonuses, not as reimbursement of expenses, but as remuneration. The Single Judge highlighted that this configuration is mentioned more than once in the contract.
28. In addition, the Single Judge underlined that the wording of the contract seems to indicate that the bonuses will be paid "*relating exclusively to the accommodation, sustenance, travelling and insurance expenses of the* [Claimant]". It seems therefore that these amounts were agreed as allowances on top of the payment of remuneration. In fact, the Single Judge was left with the impression on the basis of the documentation on file that the Club might have tried to disguise the Player's hiring of professional by registering him as an amateur.
29. Be it as it may, the Single Judge considered in any event on the basis of all evidence and submissions, that the elements provided by art. 2 par. 2 of the Regulations are met, and the Player has demonstrated his professional status, especially because his expenses would be reimbursed by way of the bonus payments.
30. For the sake of completeness, the Single Judge also remarked that the Club did not file any evidence in support of its position, nor responded to the Player's default notice, nor filed its final comments, and accordingly its position remained significantly unsubstantiated.
31. As such, the Single Judge concluded that the Player was indeed a professional and the reasons invoked by the Respondent for non-payment are not valid. Thus, the Respondent must pay the amount claimed to the Claimant.
32. The Single Judge observed that the outstanding remuneration at the time of expiry of the contract, coupled with the specific requests for relief of the Player, are equivalent to the exact amounts outlined in the statement of claim.
33. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract for a total of EUR 10,400.
34. In addition, taking into consideration the Claimant's request as well as the constant practice of the Football Tribunal in this regard, the Single Judge decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from their respective due dates until the date of effective payment.

ii. Article 12bis of the Regulations

35. In continuation, the Single Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
36. To this end, the Single Judge confirmed that the Player put the Club in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
37. Accordingly, the Single Judge confirmed that the Club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
38. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Club. Because of the above and bearing in mind that this is the first offense by the Club within the last two years, the Single Judge decided to impose a warning on the Club in accordance with art. 12bis par. 4 lit. a) of the Regulations.
39. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

40. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 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.
41. In this regard, the Single Judge 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.
42. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, 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 Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
43. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.

44. The Single Judge 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.

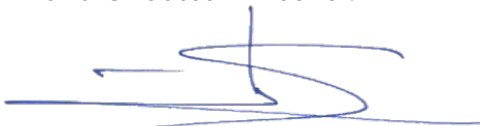
d. Costs

45. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *“Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent”*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
46. Likewise, and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
47. Lastly, the Single Judge concluded the deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The Football Tribunal is competent to hear the claim of the Claimant, Carlos Miguel Tavares de Oliveira.
2. The claim of the Claimant is accepted.
3. The Respondent, AEPS Aiolikos, must pay to the Claimant the following amount(s):
 - a. EUR 1,400 as outstanding remuneration plus 5% interest p.a. as from 1 March 2023 until the date of effective payment.
 - b. EUR 3,000 as outstanding remuneration plus 5% interest p.a. as from 1 April 2023 until the date of effective payment;
 - c. EUR 3,000 as outstanding remuneration plus 5% interest p.a. as from 1 May 2023 until the date of effective payment;
 - d. EUR 3,000 as outstanding remuneration plus 5% interest p.a. as from 31 May 2023 until the date of effective payment.
4. A warning is imposed on the Respondent.
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 Governing the Football Tribunal).

CONTACT INFORMATION

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