

Decision of the Dispute Resolution Chamber

passed on 7 August 2024

regarding an employment-related dispute concerning the player Fidelity
Ngoy Mudimbi

BY:

Jorge GUTIÉRREZ, Costa Rica

CLAIMANT:

Fidelity Ngoy Mudimbi, Congo DR
Represented by FIFPro Division Africa

RESPONDENT:

Amed Sportif Faaliyetler, Türkiye

I. Facts of the case

1. The Congolese player, Fideline Ngoy Mudimbi (hereinafter: **the Player** or **the Claimant**) and the Turkish club, Amed Sportif Faaliyetler (hereinafter: **the Club** or **the Respondent**) entered into an employment contract (hereinafter: **the Contract**) with the following terms and conditions, quoted *verbatim*:

"1- A contract has been made with the football player for the 2023-2024 season.

2- An agreement has been made with the football player or a monthly salary of 1400 S. Salary will be paid monthly during the season and at the end of the season. A monthly minimum wage agreement has been made for 3 football players and based on the 10-month minimum wage agreement, the minimum wage will be paid when the league starts or a lump sum payment will be made at the end of the season.

4- If the football player acts contrary to the Turkish Code of Obligations No. 6098 and the professional football player contract; He irrevocably accepts, declares and undertakes that he will not be able to benefit from the provisions of the protocol - especially the provisions that provide financial benefits - if he does not resolve the discrepancy within the time given by the club.

5- The player cannot visit the club doctor or the hospital with which the club has a contract without obtaining written permission from the club. He cannot receive treatment at any other hospital, and he undertakes that the health report he received at another hospital will not be valid. In case of contradiction, the provisions of the protocol will be invalid.

6- [The Club] Internal Disciplinary Directorate accepted by the football player it is a part of the protocol agreement and the football player must comply with it.

7- Parties shall notify the address shown in the protocol through a notary public in cases of behavior contrary to the protocol.

8- This protocol has been drawn up in the presence of the parties at [the Club] on 17.07.2023 as (8) articles (2) pages and (2) copies, and the parties have stated that they have read and understood the protocol clearly and loudly, and have signed this protocol without being subject to any influence and with their express will, has signed".

2. According to the Player, the Contract was signed on 2 August 2023 and backdated. However, the Club claims that it was actually signed on 17 July 2023.
3. On 22 May 2024, the Player put the Club in default and demanded payment of her salary for March 2024. In addition, the Player claimed that her salary for May 2024 was about to

become due, so she expected to be paid in a timely manner. She gave the Club 10 days to remedy the breach.

4. According to the information retrieved from the FIFA Transfer Matching System (**TMS**), the sporting season in Türkiye would run from 14 August 2023 to 30 June 2024.

II. Proceedings before FIFA

5. On 27 June 2024, the Player filed the claim at hand before FIFA. A brief summary of the parties' position is set out below.

a. Player's position

6. The Player claimed that the Contract was valid until May 2024, but that the Club had failed to pay her remuneration for March and May 2024. As a result, she requested to be awarded USD 2,800 plus 5% interest *p.a.* from 1 April 2024.
7. The Player's requests for relief were as follows, quoted *verbatim*:

"As a consequence of all of the above, the Player is requesting the FIFA DRC to apply the corresponding sanctions to the Club on the basis of art. 12bis of the FIFA RSTP and to order the Club to pay her the following outstanding amount:

- *USD 1400 plus 5% interests p.a. as of 1 April 2024 until the effective day of payment;*
- *USD 1400 plus 5% interests p.a. as of 1 April 2024 until the effective day of payment".*

b. Club's position

8. On 23 July 2024, the Club submitted its reply to the claim.
9. In its submission, the Club contended that the football season and the match calendar of the Turkish Football Federation (**TFF**) Women's Super League were changed on 11 August 2024 *i.e.*, after the signing of the Contract. As a result, the Club claimed that the Contract should be valid exclusively for the duration of the season (*i.e.*, 8 months) instead of the 10 months originally foreseen.
10. The Club concluded its submission as follows, quoted *verbatim*:

"Although the Player claimed that the contract with the Club was signed on August 8th 2023, the contract was signed on July 17, 2023. Moreover, the date of signing of the

contract can be understood from the contract submitted by the [Player] as an annex to the petition. At the time of signing the contract, the contract was made considering the old Play-Off practice and the 10-month playing period. Because the Federations procedure was like that. However, with the new decision taken by the Federation, the 10-month season duration has been reduced to 8 seasons. Since it was not possible for the Club to predict the new decision to be taken at the time of signing the contract, a possible playing period of 10 months was agreed in the contract. As a result of the new decision made by the Federation, the Club playing in the League played the first match of the 2023-2024 season against 1207 Antalya Spor Kulubu on 27 August 2023, and the last match against Karadeniz Ereğli Belediye Spor on 5 May 2024. As can be understood from the dates specified, the League lasted 8 months and 8 days.

In summary and conclusion the Player requested a monthly fee for the periods when the League ended. The Player only played for 8 months and 8 days depending on the Club. The Club made regular salary payments to the Player during the matches. In short, the player demands a fee for a period when she is not working and playing. The Club respected the contract with the Player. The request made by the Player regarding salary receivables and interest is unfair and this request should not be accepted.

We respectfully request that you reject the Player's request".

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

11. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter: *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 27 June 2024 and submitted for decision on 7 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.
12. Furthermore, the Single Judge 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 Congolese player and a Turkish club.
13. 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 Regulations on the Status and Transfer of Players (June 2024 edition), and considering that the present claim was lodged on 27 June 2024, the cited edition of said

regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

14. 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, the Single Judge 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 the TMS.

c. Merits of the dispute

15. Having established the competence and the applicable regulations, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for assessing the matter at hand.

i. Main legal discussion and considerations

16. The Single Judge then moved to the substance of the matter, noting that it concerned a claim for overdue payables.
17. In particular and having carefully analysed the parties' submissions, the Single Judge outlined that:
 - the Player requested the payment of her salaries for March and May 2023; and
 - the Club, on the other hand, confirmed that, due to the change in the calendar season and the reduction in the number of official matches played in the TFF Women's Super League, it had only paid 8 out of the 10 months originally provided for in the Contract. According to the Club, the Player should only be entitled to her remuneration for the competition season, as no services were rendered after this period.
18. The Single Judge then determined that his task was to establish whether the Player should indeed be entitled to any remuneration for the two last months on Contract (*i.e.*, April and May 2023) *vis-à-vis* the match calendar in Türkiye.

19. Having noted the above, the Single Judge turned his attention to the wording of the Contract and highlighted that it does not expressly address its duration. Indeed, the Single Judge acknowledged that the only reference in this regard is: "*for the 2023/2024 season, which is worth 10 months of compensation*". Against this outset, the Single Judge considered that there was no indication whatsoever that (i) the contractual term would be linked to the duration of the TFF Women's Super League, the official TFF season (amateur) and/or the match calendar *per se*; or, most important that (ii) the Player would only be entitled to her remuneration for said period.
20. Consequently, the Single Judge was firm to determine that if the Club intended to make the duration of the Contract dependent on the competition season, it should have done so in writing and in a clear fashion, for the avoidance of any doubt (*in dubio contra stipulatorem*). However, given the dubious wording and the direct reference in the Contract to the 10-month salary, the Single Judge decided that the Club's position could not succeed.
21. The Single Judge also found it noteworthy that, although the Club asserted that the Player ceased to render services during the first week of May 2024, it failed to provide any evidence in this regard. In particular, the Single Judge considered that the Club has not demonstrated that it reached an agreement with the Player for her early release, let alone provided any explanation as to why the March and May salaries (even if *pro rata*) were not paid at all. On the contrary, the Club merely submitted a copy of the TFF regulations, which -in the Single Judge's view- was not sufficient to justify a unilateral amendment of the contractual terms binding the two parties.
22. Therefore, the Single Judge decided that the Player be awarded the additional salaries in accordance with the general legal principle of *pacta sunt servanda*, i.e., USD 2,800.
23. In addition, taking into consideration the Player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Single Judge decided to award her interest at the rate of 5% *p.a.* on the outstanding amounts as from the respective due dates (i.e., 1 April 2024 and 1 June 2024, respectively) until the date of effective payment.

ii. Art. 12bis of the Regulations

24. Having established the above, 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.
25. 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 for more than 30 days, and granted the Club with 10 days to cure such breach of contract.

26. Accordingly, the Single Judge also 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 were met in the case at hand.
27. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations it has competence to impose sanctions on the club. On account 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.
28. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

29. 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.
30. 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.
31. Therefore, bearing in mind the above, the Single Judge 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 art. 24 par. 2, 4, and 7 of the Regulations.
32. 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.
33. 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

34. 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.
35. 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.
36. Lastly, the Single Judge 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, Fideline Ngoy Mudimbi, is partially accepted.
2. The Respondent, Amed Sportif Faaliyetler, must pay to the Claimant the following amount(s):
 - **USD 1,400 as outstanding remuneration** plus 5% interest *p.a.* as from 1 April 2024 until the date of effective payment; and
 - **USD 1,400 as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2024 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
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

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