

Decision of the Players' Status Chamber

passed on 2 July 2024

regarding an employment-related dispute concerning
the coach Khaled Hmani

BY:

Thulaganyo GAOSHUBELWE (South Africa)

CLAIMANT:

Khaled Hmani, Tunisia

Represented by Slim Boulasnem

RESPONDENT:

Bisha club, Saudi Arabia

Represented by Helio Henrique de Camargo

I. Facts of the case

1. The Tunisian coach Khaled Hmani, (hereinafter: the *Claimant*, the *Coach* or the *Second Party*), and the Saudi Arabian club, Bisha club (hereinafter: the *Respondent*, the *Club* or the *First Party*), signed an employment contract valid for the 2023-2024 season. Based on the information contained in the Transfer Matching System (hereinafter: the *TMS*), the 2023-2024 season started on 11 August 2023 and ended on 30 June 2024.

2. The Claimant was employed as Assistant Coach.

3. In accordance with the employment contract, the Respondent undertook to pay to the Claimant as follows:

"La deuxième partie travaille en tant qu'entraîneur Adjoint de l'équipe première de football chez la première partie, recevra uniquement un salaire mensuel de (6000 Riyals) et rien d'autre, conformément à ce qui indiqué à l'article (11) du règlement unifié pour les travailleurs et les contractuels avec les clubs approuvés par la résolution numéro 12857 du 7/10/1416 H, le contrat cout à partir de la date de début de l'entraînement jusqu'à la fin de la saison en date du 30/03/2024 en plus des primes de victoire avec l'équipe."

Free translation into English:

"The second party works as an Assistant Coach of the first football team at the first party, will only receive a monthly salary of (6000 Riyals) and nothing else, in accordance with what indicated in Article (11) of the unified regulations for workers and contractuels with clubs approved by resolution number 12857 of 7/10/1416 H, the contract runs from the date of commencement of training until the end of the season dated 30/03/2024 in addition to victory bonuses with the team."

4. Article 8 of the employment contract reads as follows:

"Si l'une des parties souhaite résilier le contrat sans aucune raison, elle doit verser (un mois de salaire) à l'autre partie."

Free translation into English:

"If one of the parties wishes to terminate the contract without any reason, it must pay (one month's salary) to the other party."

5. Article 9 of the employment contract reads as follows:

"La première partie fournit un logement convenable et voiture privée."

Free translation into English:

"The first party provides suitable accommodation and a private car."

6. Article 10 of the employment contract reads as follows:

"L'entraîneur a droit à un billet aller-retour pour Tunis."

Free translation into English:

"The coach is entitled to a return ticket to Tunis."

7. By correspondence dated 5 March 2024, the Claimant sent a default notice to the Respondent as follows:

"[...] In particular, we have come to give you formal notice to remedy the numerous breaches and violations currently being committed by your club.

Overdue payables

Since signing the contract, the coach has not received the following payments:

- *Salary of December 2023: SAR 6000*
- *Salary of January 2024: SAR 6000*
- *Salary of February 2024: SAR 6000*

Match bonuses

The coach did not receive the following match bonuses:

- *14/02(Hetten FC*Bisha) 0-1: SAR 1000*
- *19/02(Bisha*Arar)4-0: SAR 1000*
- *02/03(Bisha*Al Sadd) 3-0: SAR 2000*

This situation of violation of the essential conditions of the employment relationship can no longer continue. We therefore give you formal notice to pay the sum of SAR 22 000 in full within the next 15 (fifteen) days. [...]"

8. By correspondence dated 20 March 2024, the Claimant sent a second default notice to the Respondent as follows:

"[...] We note that your club has only made a partial payment of SAR 6000 instead of SAR 22000. You therefore failed to remedy the breach.

In summary, we are once again putting you on formal notice:

- *Proceed to all payment due to the Coach, within the next 48 hours i.e. SAR 24000 representing*
 - *Salaries SAR 12000:*
- *The salary of January 2024, SAR 6000*
- *The salary of February 2024, SAR 6000*
 - *Bonus SAR 8000:*
- *14/02(Hetten FC*Bisha) 0-1: SAR 1000*
- *19/02(Bisha*Arar)4-0: SAR 1000*
- *02/03(Bisha*Al Sadd) 3-0: SAR 2000*
- *09/03 (Al Saqr* Bisha) 1-2: SAR 4000*

[...]"

9. On 23 March 2024, due to the failure by the Respondent to comply with his default notices, the Claimant proceeded to terminate the employment contract.

II. Proceedings before FIFA

10. On 9 April 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

11. According to the Claimant, he terminated the employment contract with just cause as the Respondent has failed to comply with its contractual obligations, since the salaries of January, February, and March 2024, amounting to SAR 18,000 remain unpaid, as do the bonuses corresponding to SAR 11,000.
12. The requests for relief of the Claimant, were that the Respondent pay him:
- *"18000 SAR en tant qu'arriérés, plus 5% d'intérêts comme suit :*
 - *Le salaire du mois de janvier 2024 d'un montant de 6000 SAR+ 5% p.a à partir du 1 février 2024.*
 - *Le salaire du mois de février 2024 d'un montant de 6000 SAR + 5% p.a à partir du 1 mars 2024.*
 - *Le salaire du mois de mars 2024 d'un montant de 6000 SAR + 5% p.a à partir du 1 avril 2024.*
 - *6000 SAR de compensation pour la rupture sans juste cause par le Club, plus 5% d'intérêts p.a. à compter de la date de résiliation le 23 mars 2024*
 - *12000 SAR de compensation morale*
 - *12000 SAR de compensation à titre de spécificité du sport*
 - *11 000 SAR à titre de primes de matchs*
 - *3993,60SAR à titre de remboursement du billet d'avion*
 - *3000 EUR de frais de justice. "*

Free translation into English:

- *"SAR 18,000 in outstanding amounts, plus 5% interest as follows:*
 - *The salary for the month of January 2024 in the amount of 6000 SAR + 5% p.a. as from February 1, 2024.*
 - *The salary for the month of February 2024 in the amount of SAR 6,000 + 5% p.a. as from March 1, 2024.*
 - *The salary for the month of March 2024 in the amount of 6,000 SAR + 5% p.a. as from April 1, 2024.*
- *SAR 6,000 in compensation for termination without just cause by the Club, plus 5% interest p.a. as from the date of termination on March 23, 2024.*

- SAR 12,000 in moral compensation
- SAR 12,000 in sport-specific compensation
- SAR 11,000 in match bonuses
- SAR 3,993.60 in flight ticket reimbursement
- EUR 3,000 in legal fees."

b. Position of the Respondent

13. Despite being invited to do so, the Respondent failed to reply to the claim within the deadline.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge of the Players' Status Chamber (hereinafter: the *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 9 April 2024 and submitted for decision on 2 July 2024. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules, the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
15. Subsequently, the Single Judge 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 Regulations on the Status and Transfer of Players (February 2024 edition), the Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Tunisian coach and a Saudi Arabian club.
16. 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 (February 2024 edition) and considering that the present claim was lodged on 9 April 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

17. 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

18. The competence and the applicable regulations having been established, 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 the assessment of the matter at hand.

i. Main legal discussion and considerations

19. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the Claimant's position that it had terminated the employment contract with just cause since it had put the Respondent in default in writing and granted it a deadline of at least 15 days to fully comply with its financial obligations. Given that the Respondent failed to reply to the claim within the deadline, the Single Judge made a decision based on the file in accordance with article 21 par. 1 of the Procedural Rules.
20. In this context, the Single Judge acknowledged that his task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by the Respondent and, if so, whether the formal pre-requisites of art. 5 of Annexe 2 of the Regulations had in fact been fulfilled.
21. The Single Judge then referred to the wording of art. 5 par. 1 of Annexe 2 of the Regulations, in accordance with which, if a club or an association unlawfully fail to pay a coach at least two monthly salaries on their due dates, the coach will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club or association in default in writing and has granted a deadline of at least 15 days for the debtor club or association to fully comply with their financial obligation(s).
22. The Single Judge noted that the Claimant claims not having received his remuneration corresponding to more than two monthly salaries and bonuses payments. Furthermore, the Single Judge noted that the Claimant has provided written evidence of having put the Respondent in default on 5 March 2024 and 20 March 2024, i.e., at least 15 days before unilaterally terminating the employment contract on 23 March 2024.
23. The Single Judge also noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Given that the Respondent failed to present any evidence as it failed to reply

to the claim, the Single Judge concluded that the Claimant had a just cause to unilaterally terminate the employment contract, based on art. 5 par. 2 of Annexe 2 of the RSTP.

ii. Consequences

24. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
25. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the Claimant, are equivalent to the salaries of January, February, and March 2024 under the employment contract, amounting to SAR 18,000.
26. The Single Judge further noted that the Claimant requested outstanding bonuses and reimbursement of its flight ticket. The Single Judge rejected the claims as they are not supported with the necessary documentary evidence in accordance with art. 13 par. 5 of the Procedural Rules.
27. 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 at the moment of the termination, i.e., to SAR 18,000 (i.e., SAR 6,000 times 3 months). The other claims are rejected as the employment contract ended on 30 March 2024.
28. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts.
29. Finally, bearing in mind the longstanding jurisprudence of the Football Tribunal and that the employment contract ended on 30 March 2024, the Single Judge rejected the Claimant's request for compensation and moral damages.

iii. Compliance with monetary decisions

30. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 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.
31. 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.

32. 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. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
33. 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.
34. 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. 8 par. 8 of Annexe 2 of the Regulations.

d. Costs

35. 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 Chamber decided that no procedural costs were to be imposed on the parties.
36. 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.
37. Lastly, the Single Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Khaled Hmani, is partially accepted.
2. The Respondent, Bisha club, must pay to the Claimant the following amounts:
 - **SAR 6,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 February 2024 until the date of effective payment;
 - **SAR 6,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 March 2024 until the date of effective payment;
 - **SAR 6,000 as outstanding remuneration** plus 5% interest *p.a.* as from 24 March 2024 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. Pursuant to art. 8 of Annexe 2 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.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
7. 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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