

Decision of the Dispute Resolution Chamber

passed on 24 June 2024

regarding an employment-related dispute concerning
the player Michael Chukwuka Okolo

BY:

Andrés DOS SANTOS (Brazil)

CLAIMANT:

Michael Chukwuka Okolo, Nigeria

Represented by Chijioke Okpanku

RESPONDENT:

African Stars Football Club, Namibia

I. Facts of the case

1. On 10 July 2023, the Nigerian player, Michael Chukwuka Okolo (hereinafter: *the Claimant*), and the Namibian club, African Starts Football Club (hereinafter: *the Respondent*) signed an employment contract (hereinafter Contract) valid as from 15 July 2023 until 30 June 2025.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant *inter alia* the following remuneration:
 - Monthly salary of USD 800;
 - Sign-on fee USD 6,000 on 1 August 2023.
3. In addition, according to clause 3.3 of the Contract *“The Club undertakes to pay all salaries, allowances, and bonuses on the last day of the month”*.
4. By correspondence dated 20 March 2024, the Claimant put the Respondent in default of payment of the outstanding salaries of the months of January and February 2024 (totalling USD 1,600) as well as the sign-on fee of USD 6,000 setting a time limit expiring on 4 April 2024 in order to remedy the default.
5. On 5 April 2024, the Claimant notified in writing the Respondent that he terminated his Contract based on the provisions of the Regulations on the Status and Transfer of Players.

II. Proceedings before FIFA

6. On 26 April 2024, the Claimant filed the claim at hand before FIFA.
7. The Respondent failed to reply to the claim within the stipulated deadline. In particular, the deadline for the Respondent to provide its position was until 6 June 2024 and the latter filled its reply on 21 June 2024.
8. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

9. The Claimant requested the following relief:
 - Outstanding salaries for the months of January and February 2024 (USD 800 each), plus 5% interest per annum from the due date of payment.
 - Sign on fee (USD 6,000), plus 5% interest per annum from the due date of payment.
 - USD 12,800, for the residual value of the Contract.

10. In addition, the Claimant alleged that the Club did not provide him with a copy of the signed employment contract despite the multiple requests. Therefore, such copy was not available to the Single Judge.

b. Position of the Respondent

11. The Respondent replied to the claim after the expiration of the deadline. Therefore, in accordance with art. 23 par. 1 of the Procedural Rules Governing the Football Tribunal (edition March 2023), the Respondent's reply was disregarded.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

12. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *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 26 April 2024 and submitted for decision on 24 June 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.
13. Subsequently, 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 lit. b) of the Regulations on the Status and Transfer of Players (February 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 Nigerian player and a Namibian club.
14. Subsequently, the Single Judge 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 26 April 2024, the February 2024 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Admissibility of the late reply

15. At this point the Single Judge recalled that the Respondent failed to submit its reply to FIFA general secretariat within the time limit granted. In this respect, the Single Judge pointed

to art. 21 par. 1 of the Procedural Rules and concluded the said reply cannot be considered in the matter at hand.

c. Burden of proof

16. 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 Transfer Matching System (TMS).

d. Merits of the dispute

17. His 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

18. In view of the foregoing, the Single Judge moved to the substance of the matter, and took note of the main point of contention between the parties.
19. The Single Judge has noted that the Parties concluded an employment contract valid from 15 July 2023 until 30 June 2025.
20. In this context and as a preliminary remark, the Single Judge determined that even though the copy of the employment contract provided by the Claimant was not signed by both parties, the Claimant provided enough evidence to prove his employment relationship with the Club. In particular, the Claimant provided extracts of his bank account showing payments from the Club to the Player for the salaries of August, September, October and November 2023. Therefore, the Single Judge considers that the Claimant proved the employment relationship between the Parties.
21. Moreover, the Single Judge observed that on 5 April 2024, the Player terminated the employed contract for overdue payables.
22. In particular, the Player alleged that he had not received his remuneration corresponding to the months of January and February 2024, of a total of USD 1,600, and provided evidence

having put the Respondent in default on 20 March 2024 *i.e.* at least 15 days before unilaterally terminating the employment contract on 5 April 2024.

23. In this context, the Single Judge analysed the question whether the Player had just cause to terminate his employment contract with the Respondent.
24. In this regard, the Single Judge referred to the wording of art. 14bis par. 1 of the Regulations, in accordance with which, if a club unlawfully fails to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s).
25. In the case at hand, the Single Judge concluded that the formal requirements of art. 14bis par.1 of the Regulations have been fulfilled, meaning that (i) at least two monthly salaries were due on the date of termination and (ii) the Player had notified the Club in writing that it is in default and granted at least 15 days to fully comply with its financial obligations.
26. Furthermore, the Single Judge noted that in accordance with the principle of the burden of proof established in art. 13 par. 5 of the Procedural Rules, it is for the Club to demonstrate that it has complied with its financial obligations towards the Player, as the Player cannot be asked to prove that he did not receive the payment.
27. Consequently, the Single Judge concluded that, based on art. 14bis par. 1 of the Regulations, the Player had just cause to terminate his employment contract with the Club.

ii. Consequences

28. 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.
29. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to three salaries under the contract (*i.e.* January, February and March), amounting to USD 2,400 and the sign-on fee of USD 6,000 that, according to the employment contract, was due on 1 August 2023.
30. 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.* USD 8,400 (USD 800x 3 months plus USD 6,000).

31. 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. as follows:
- 5% interest p.a. over USD 6,000 as from 2 August 2023 until the date of the effective payment.
 - 5% interest p.a. over USD 800 as from 1 February 2024 until the date of the effective payment.
 - 5% interest p.a. over USD 800 as from 1 March 2024 until the date of the effective payment.
 - 5% interest p.a. over USD 800 as from 1 April 2024 until the date of the effective payment.
32. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
33. In application of the relevant provision, the Single Judge held that he first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
34. As a consequence, the Single Judge determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
35. Bearing in mind the foregoing as well as the claim of the player, the Single Judge proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Single Judge concluded that the amount of USD 12,000 (*i.e.* months of April 2024 until June 2025) serves as the basis for the determination of the amount of compensation for breach of contract.

36. In continuation, the Single Judge verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
37. However, the Single Judge verified that the player has not signed a new employment contract and therefore, the compensation due to the Player will not be reduced.
38. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of USD 12,000 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
39. Lastly, as per the Player's request for relief, the Single Judge noted that no interest had been requested. Therefore, taking into consideration the constant practice of the Single Judge in this regard and the principle of *ne ultra petita*, the latter decided not to award the player interest on said compensation.

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 his 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 his complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

e. 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 his 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, Michael Chukwuka Okolo, is accepted.
2. The Respondent, African Stars Football Club, must pay to the Claimant the following amount(s):
 - **USD 2,400 as outstanding remuneration** plus 5% interest as follows:
 - 5% interest p.a. over USD 800 as from 1 February 2024 until the date of the effective payment;
 - 5% interest p.a. over USD 800 as from 1 March 2024 until the date of the effective payment;
 - 5% interest p.a. over USD 800 as from 1 April 2024 until the date of the effective payment.
 - **USD 6,000 as outstanding remuneration** plus 5% interest as from 2 August 2023 until the date of effective payment.
 - **USD 12,000 as compensation for breach of contract without just cause.**
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. 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.
6. 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.

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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