FIFA FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 11 July 2024

regarding an employment-related dispute concerning the player Nabil Bahoui

BY:

Lívia SILVA KÄGI (Brazil), Deputy Chairperson
Mario FLORES CHEMOR (Mexico), member
Michele COLUCCI (Italy), member

CLAIMANT:

Nabil Bahoui, Sweden
Represented by Elite Law SA

RESPONDENT:

Persepolis Football Club, IR Iran

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I. Facts of the case

1. On 12 September 2023, the Swedish player Nabil Bahoui (hereinafter: the *Claimant* or the *Player*) and the Iranian club Persepolis Football Club (hereinafter: the *Respondent* or the *Club*) concluded an employment contract (hereinafter: the *Employment Contract*), valid from the date of signature until 14 June 2024.

2. Subsequently, on 26 February 2024, the parties entered into a Settlement Agreement (hereinafter: the *Settlement Agreement*) whereby they put an end to the Employment Contract and the Club undertook to pay the Player the amount of QAR 800,910 net (hereinafter: the *Settled Sum*), payable in the following instalments:

   - QAR 145,620 net no later than 7 March 2024;
   - QAR 655,290 net no later than 24 April 2024.

   The Settlement Agreement explicitly noted that the first amount is "*consideration for the early termination*" and the second amount is recognized as outstanding remuneration owed to the Player.

3. The Settlement Agreement further stated in Clause 4 that the Settled Sum shall be net and provided the following:

   "5. The Parties agree that upon signature of this Agreement, the Contract shall be immediately terminated, thus the CLUB can deregister the PLAYER and the latter can leave the CLUB's premises and Iran immediately and sign a new contract with any third club (for which the CLUB shall provide him any due document in case of request as agreed in clause 6.6 of the Contract. [...] *Then, upon full and timely payment of the Settled Sum by the CLUB to the PLAYER as per the terms set in clause 2, a) and b) above, this Agreement shall be a full, final, and satisfactory settlement of any and all obligations between the Parties in relation to the Contract. Therefore, in such case, the Parties agree to waive any right to each other in relation to the Contract. Therefore, in such case, the Parties agree to waive any right to each other in relation to the Contract and the employment relationship that occurred as well as the right to initiate any litigation or application for any judicial process before any administrative, sportive and/or judicial courts or arbitration or sporting institution domestic or abroad in relation to the Contract.*

   6. Conversely, in case the CLUB does not fully and timely pay any installment of the Settled Sum to the PLAYER as per terms of clause 2 a) and b) above, and still fails to pay within a grace period of 5 (five) further days from the original deadline, the CLUB shall be automatically liable to pay the PLAYER (i) the full Settled Sum immediately (less any advance payment received by the PLAYER), plus interests at 5% p.a. that shall accrue on the unpaid Settled Sum until the full and effective payment of the entire due amounts (Settled Sum and penalty).

   7 This Agreement has a novative effect and replaces in full the Contract."

4. On 11 March 2024, the Player sent a default notice to the Club (hereinafter: the *First Notice*), whereby it informed the Club that he had not yet received payment of the first instalment under the Settlement Agreement and reminded the Respondent of the contractually provided grace period of 5 days to comply, subject to the entire Settled Sum immediately falling due, plus interests.

5. On 18 March 2024, after not receiving any payment, the Player sent the Club another default notice (hereinafter: the *Second Notice*), whereby it requested payment on the QAR 800,910, plus interest of 5% p.a., within 10 days or it would lodge a claim before FIFA.

II. Proceedings before FIFA

6. On 4 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

7. In his claim, the Player recalls the context in which the Settlement Agreement was signed: the Club already owed the Player a substantial amount of money (QAR 655,290) in outstanding remuneration, and he agreed to withdraw his rights to claim such amount as well as future remuneration against the assurance from the Club that the Settlement Agreement would be respected in full.

8. According to the Claimant, the Club's behavior is a serious violation of the Settlement Agreement, the principle of *pacta sunt servanda*, and good faith. Moreover, the Respondent's serious breach – *i.e.*, not paying the first instalment when it committed to paying it just a few days after signing the Settlement Agreement – duly triggered the acceleration mechanism foreseen in Clause 6 of the Settlement Agreement, a mechanism which was mutually and voluntarily established by the parties in the Settlement Agreement as an essential condition for signature, in light of the Club's repeated failures to fulfil its payment obligations under the Employment Contract and to prevent a situation such as the one the Player now faced.

9. The requests for relief of the Claimant were the following:

"*I. The claim filed by Mr Nabil Bahoui before the FIFA DRC against Persepolis Cultural & Sports CO is upheld;*

II. Persepolis Cultural & Sports CO is condemned to pay Mr. Nabil Bahoui the sum of QAR 800,910 (eight hundred thousand nine hundred and ten Qatari Riyals) net plus 5% interest p.a. from 13 March 2024 until the date of full and effective payment;

III. Persepolis Cultural & Sports CO shall bear any and all the possible costs of this procedure."

b. Position of the Respondent

10. In its reply, the Respondent first pointed out that it had the right to terminate the Employment Contract by virtue of its Clause 3, which provided that "*in the case, six months after the start of the contract, the head coach is not satisfied with the performance of the player then the club can unilaterally terminate the contract.*" As such, the Club maintains that it terminated the Employment Contract mid-season and the Player was entitled to receive half the amount of the Employment Contract (AED 716,500, considering a total contract value of AED 1,433,000).

11. Furthermore, the Club highlighted that the Player had already received USD 80,000 from the Club.

12. In addition, the Club argued that the First and Second Notices were not sent by the Player's legal counsel, as the Player contended, because "*there were no Letters of Attorney signed by the player attached to the Emails and therefore the said Emails could not be considered legal notices.*" As a club with more than forty million fans in the country, the Respondent noted that it receives a great deal of spam, phishing, etc. and only considers official letters.

13. The Club also argued that the amounts agreed in the Employment Contract were gross amounts, and, after signing the Settlement Agreement, the Player was supposed to provide the Club with the tax settlement issued by the Iran Tax Organization. The Player had not done so and therefore had not fulfilled his obligation towards the Club.

14. Finally, the Club highlighted that the Settlement Agreement was signed at almost midnight on 26 February 2024, and had it not been signed, the Club would not have been able to remove the Player from its first squad and could not have registered the replacement player. The Club therefore maintains that it had to sign the agreement, "*even if there were unfair pointers in the context.*"

15. The requests for relief of the Respondent were the following:

"*1. to dismiss the claim of the claim*[sic] *of the claimant*

2. to ask the claimant to consider the principle of equity and fairly revise his requests in his claim

3. to invite and grant time to the parties to resolve the matter amicably."

c. Claimant's Rejoinder

16. In his replica, the Claimant reiterated his position and prayers for relief as expressed in his claim.

17. The Player argued that the Club's observations regarding the Club's right to terminate the Employment Contract are irrelevant: first, because the termination clause in Clause 3 of the Employment Contract was invalid, as per the well-established jurisprudence of FIFA and CAS and the FIFA RSTP; second, because the Settlement Agreement had a "*novative*" effect pursuant to its Clause 7, replacing in full any provision or obligation under the Employment Contract. Therefore, the Club could not invoke any clause or consequence of the Employment Contract.

18. In particular, the Claimant noted that the reference to the USD 80,000 paid prior to signing the Settlement Agreement had no bearing on and could not be deducted from the amounts overdue under the Settlement Agreement.

19. Additionally, the Player argued that the parties had agreed the acceleration clause was automatic, applying without the need for prior formal notices. Hence the two notices from the Player were not mandatory.

20. In any case, the Player sent both notices via his legal counsel, who also participated in the drafting of the Settlement Agreement, to the email addresses that the Club itself included in the Settlement Agreement and that the parties used when exchanging drafts of the Settlement Agreement. The legal representative even received confirmation that at least one of the emails was duly received.

21. Regarding the issue of taxes, the Player highlighted that the Settlement Agreement clearly stipulates in Clause 1 that the Settled Sum is net and that there is no clause in the Settlement Agreement that conditions payment to the Player providing an alleged tax certificate.

22. Finally, the Player denied the Club's allegations regarding the context in which the Settlement Agreement was signed, indicating that it was the Player who was pressured into terminating. Moreover, the Player remained unemployed in the middle of the season and was dependent upon the amounts to be paid by the Club.

d. Respondent's Final Comments

23. Despite being provided an opportunity to do so, the Respondent did not file any further comments.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

24. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *"the DRC"* or "*the Chamber*") 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 April 2024 and submitted for decision on 11 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.

25. Subsequently, the Chamber 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 Regulations on the Status and Transfer of Players (June 2024), it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Swedish player and an Iranian club.

26. 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 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

27. 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 (hereinafter: *TMS*).

c. Merits of the dispute

28. Its competence and the applicable regulations having been established, 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 the assessment of the matter at hand.

i. Main legal discussion and considerations

29. The foregoing having been established, the Chamber moved on to the substance of the matter and took note of the fact that it pertains to a claim for outstanding compensation pursuant to a Settlement Agreement signed by and between the parties, in addition to default interest.

30. In this respect, the Chamber took note of the fact that the Settlement Agreement contains a clear and explicit clause (Clause 7) whereby the parties stipulated that the Settlement Agreement had the effect of novating and replacing the Employment Contract in full. This is also reflected in Clause 5, which stipulated that upon signature of the Settlement Agreement, the Employment Contract was immediately terminated. Therefore, in the absence of any cogent, substantiated arguments that the Settlement Agreement was not entered into freely and willingly by the parties, the Chamber decided to accept the Settlement Agreement as the only valid and binding document between the parties, to the exclusion of any considerations deriving from the Employment Contract.

31. Thereafter, the Chamber acknowledged that, while the Respondent attempted to dispute the amount claimed by indicating that the Player had received a separate payment of USD 80,000, it was evident from the receipt provided in the file that this amount was paid long before the Settlement Agreement was negotiated or signed, thus detracting from any relevance it may have to the Respondent's position. Furthermore, the Chamber noted that the Club, who was in all likelihood the drafter of the Settlement Agreement, included an express recognition of the outstanding remuneration owed to the Player (*i.e.*, QAR 655,290 net) in more than one clause in the Agreement, with no discernible reservations or objections and no mention of offsetting this amount with the earlier payment for USD 80,000. As such, the Chamber rejected the Respondent's arguments in this sense.

32. Thereafter, the Chamber considered the Respondent's arguments concerning the First and Second Notice, concluding that they were also unconvincing as they remained unsubstantiated. In the Chamber's view, the evidence provided demonstrated that the First and Second Notice were sent to at least one of the emails that appear in both the Employment Contract and Settlement Agreement, thereby calling the Respondent's allegations further into question.

33. Moreover, the Chamber took note of the fact that the Settlement Agreement did not stipulate any formalities concerning notifications between the parties. In fact, the Chamber highlighted that Clause 8 stated that any notice given under the Settlement Agreement "*shall be in writing, in English language, and can be sent only via email to the addresses shown above for its legal validity.*"

34. In addition, the Chamber underscored that there did not appear to be any conditions whatsoever to the Club's payment obligation, noting that the Settlement Agreement was silent on matters pertaining to tax liability and tax certificates, which contrasted with the

Club's allegations. The Chamber further noted that the Settlement Agreement only established that the agreed amounts were net.

35. Finally, the Chamber considered that the wording of Clause 6 was clear in that, failure to pay by the time limit set forth in the Settlement Agreement, and subsequently failing to pay within a 5-day grace period, would automatically trigger the acceleration clause, with the entire Settled Sum plus 5% interest p.a. becoming due.

36. Therefore, in line with the well-established principle of *pacta sunt servanda*, the Chamber held that the Club was liable to pay QAR 800,910 net, in line with the explicit wording of the Settlement Agreement.

37. As far as the claimed interest is concerned, the Chamber decided to accept the Claimant's contention that the full amount under the Settlement Agreement effectively became due on 13 March 2024 (*i.e.*, the day after the 5-day grace period to pay the overdue first instalment expired). Therefore, in line with the wording of the Settlement Agreement, the Chamber decided to award 5% interest p.a. over the amount of QAR 800,910 net as of 13 March 2024 until the date of effective payment.

38. The Claimant's claim is therefore accepted vis-à-vis the outstanding compensation and interest claimed.

ii. Compliance with monetary decisions

39. Finally, taking into account the applicable Regulations, the Chamber 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.

40. In this regard, the Chamber 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.

41. Therefore, bearing in mind the above, the Chamber 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 creditor, 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.

42. 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.

43. The Chamber 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

44. 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.

45. Furthermore, 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.

46. Lastly, the Chamber 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, Mr. Nabil Bahoui, is accepted.

2. The Respondent, Persepolis Football Club, must pay to the Claimant the following amount(s):

   - QAR 800,910 net as outstanding amount plus 5% interest *p.a.* as of 13 March 2024 until the date of effective payment.

3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.

4. 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.

5. 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.

6. 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).

CONTACT INFORMATION

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