

# Decision of the Dispute Resolution Chamber

passed on 18 July 2024

regarding an employment-related dispute concerning the player Njiva Rakotoharimalala

**BY:**

**Frans DE WEGER (The Netherlands)**, Chairperson

**Tomislav KASALO (Croatia)**, member

**Tarek BRAUER (Germany)**, member

**CLAIMANT/COUNTER-RESPONDENT:**

**Al Jandal Club, Saudi Arabia**

Represented by Ahmad Alami

**RESPONDENT/COUNTER-CLAIMANT:**

**Njiva Rakotoharimalala, Madagascar**

Represented by Christophe Larrouilh

**INTERVENING PARTY:**

**RBFC, Thailand**

## I. Facts of the case

1. On 1 August 2022, the Saudi club, Al Jandal Club (hereinafter: *Claimant/Counter-Respondent* or club) and the Malagasy player, Njiva Rakotoharimalala (hereinafter: *Respondent/Counter-Claimant or player*) concluded an employment contract (hereinafter: *contract*) valid as from 1 August 2022 until 1 May 2023.
2. According to the contract, the club undertook to pay the player a monthly salary of USD 3,500, a sign-on fee of USD 25,000 to be paid 1 August 2022 and to provide housing to the player.
3. On 7 March 2023, the club received a letter from the Fédération Malagasy de Football (FMF), calling up the player to be among the Malagasy national team for a campaign that was held from 16 to 28 March 2023.
4. On 19 March 2023, the player travelled to Madagascar to join the national team.
5. On 28 March 2023, the club opened internal disciplinary procedures against the player and imposed a fine of SAR 1,312.50 due his absence and the *“disregard of telephone communications from the technical and administrative staff”*.
6. On 30 March 2023, the club requested the player to return to the club, but he failed to return.
7. On 2 April 2023, the club sent a letter to the player enquiring about the grounds for his continued absence from 28 March until 1 April 2023, but the player did not respond.
8. On the same date the club sent a letter to the Saudi Football Federation, *inter alia*, stipulating the following:

*“After receiving an official email, we notify you that the Malagasy professional player (Rakoto Harmala Nijva) has joined his country’s national team. He was called to participate in two official African qualifiers. He is expected to appear after completing his work. His national mission was dated 02/28/2023, and we were surprised that he sent a letter of apology for completing the season for no reason and without any delay in salaries from the club to the player, and his one of the team’s most influential players, and his absence contributed to the loss of our match, our draw in the other and our loss of the direct promotion card. The team is currently at a critical and difficult stage, and he is aware of this therefore we want to do whatever you think is suitable with the player and alert us of it, and his Football Association in his country will be informed of what transpired.”*

9. On 10 April 2023, the club sent a letter to the FMF, stating the following:

*“After your letter on 07/03/2023*

*We would like to inform you that the player has been allowed to go on duty with the national team*

*We would also like to inform you that the player RAKOTOHARI MALALA NJIVA TSILAVINA MARTIN*

*After completing the national mission with the national team, he ignored our calls and messages, and then on the date (03/31/2023) he informed us that he would not return to our team without any legitimate reason (the contract is still valid until now)*

*We regret this behaviour and ask you to take the appropriate action as you see it*

*And communicate with the player and surround us with justifications*

*We will take all legal measures that protect the rights of the club, and this will be reported to FIFA."*

10. From 14 April until 20 April 2023, the club, inter alia, informed the player *"that his failure to answer might lead to the claimant's termination of the employment contract for just cause"*
11. The player concluded a new employment contract with the Thai club RBFC, valid as from 15 June 2023 until 14 May 2024, for a monthly salary of USD 5,000.

## **II. Proceedings before FIFA**

12. On 26 November 2023, the club filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### **a. Position of the Club**

13. According to the club, it terminated the contract with just cause as the player *"refused to continue his duties due to his ongoing absence."*
14. The requests for relief of the club, were the following:
  - *"Establish that the Respondent has seriously breached the contract without just cause*
  - *Condemn the Respondent to pay to the claimant a financial compensation for breaching the contract*
  - *Sanction the respondent in accordance with Art. 17, Par. 3 of the RSTP"*.

### b. Position of the Player

15. In its reply, the player confirmed leaving Saudi Arabia on 19 March 2023 to play for the national team.
16. The player indicated that the reason he did not return on time was because he was suffering from an injury, indicating that *“this injury gave him time to think, and he thought it was very unfair that he was systematically paid late, which is understandable”*.
17. Moreover, mentioning that the club was in arrears of his salary as they only paid him until end of January 2023.
18. Additionally, that the termination of the employment contract is attributable to the club as throughout the during of his contract with the club he suffered numerous late salary payments which caused undeniable damages to the player in terms of cash flow.
19. Accordingly, the player instituted a counterclaim against the club, requesting the following relief:
  - *“3,500 USD as salaries overdue for February 2023,*
  - *3,161 USD as salaries overdue for the period from 1st to 28th of March 2023,*
  - *3,839 USD of damages equivalent to salaries for the period from 28 March to 30 April 2023,*
  - *5,000 USD as reward promotion plus 5% interest per annum*

### a. Club reply to the counterclaim

20. In its reply to the counterclaim of the player, the club mentioned the following:
  - *“The allegation of the player lacks foundation and is unfounded.*
  - *The Club incurred incalculable injury when it lost a historic opportunity to win the Second Saudi League Championship; such an opportunity cannot be restored. The Club, however, was deprived of the monetary reward equivalent to one million Saudi Riyals (1,000,000.00 SR) that would have been awarded for winning the championship. In order to qualify for the first division, the respondent also increased the number of games played, which resulted in greater consumption than had been anticipated in the club's financial statements. Thus, it is indisputable that the club incurred losses that were directly attributable to the player's unjustified contract termination.*
  - *With respect to the salary of February 2023, the Club suspended that particular salary due to the player's continued absence. Thus, the Club took procedural actions by suspending the player's monthly salaries for the months of February, March, and April, which is consistent with the DRC's jurisprudence and case law.*
  - *With respect to the Respondent's assertion that the player's contract can be terminated for a valid reason namely the delay in salary delivery. We wish to assure you that the Player has never defaulted on a payment to the club. However, he has stated that none of the salary delay cases*

*are covered by article 14 bis. If we accept his statement as accurate and valid, we would like to bring to your attention that article 12 of the RSTP "overdue payment" pertains to all salary delay incidents; however, he has never utilized or applied this provision."*

21. In conclusion the club reiterated its claim to be compensated in accordance with art.17. of the Regulations.

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

22. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 26 November 2023 and submitted for decision on 18 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.
23. Subsequently, the members of the Chamber 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 Malagasy player and a Saudi club.
24. 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 (February 2024 edition), and considering that the present claim was lodged on 26 November 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### b. Burden of proof

25. 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 (TMS).

#### c. Merits of the dispute

26. 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

27. The foregoing having been established, the Chamber moved to the substance of the matter, and noted that the case at hand pertains to a claim of the club for compensation for breach of contract against the player following the departure of the player from the club and a claim for outstanding financial obligations of the player against the club.
28. The Chamber took note that the club argued that it had just cause to terminate the contract due to the unauthorised absence of the player following his national team call-up.
29. The DRC further noted that the player argued that the termination of the employment contract was attributable to the actions of the club as throughout the period of his contract he suffered numerous late salary payments which caused him undeniable damages, moreover he was injured.
30. In this context, the Chamber acknowledged that its task was to determine whether or not the club, under the said circumstances, could validly terminate the contract with the player due to his absence.
31. On analysis of the documentation on file, the Chamber took into account that the player was indeed called-up to join the Malagasy national team for a campaign that was held from 16 until 28 March 2023 as per the authorization granted by the club, however after these duties it is evident that the player failed to return to the club.
32. The Chamber noted that the club started disciplinary proceedings against the player on 28 March 2023, however the DRC remarked that the player was authorised to be with the Malagasy national team up until this date as the national campaign only ended on 28 March 2023, hence the commencement of disciplinary proceedings at this stage was non-sensical.
33. Following the above, it makes sense to the DRC that the club would then also have explicitly requested the player to come back to Saudi Arabia, which the club failed to do. In fact, in none of the club's letters that were sent to the player from 2 April until 20 April 2023, the club explicitly requested the player to return.
34. The Chamber highlighted that a club considering the option of terminating a contract with a player due to its failure to return to the club after authorised absence, should also respect the *ultima ratio* principle; in that less stringent disciplinary measures should be considered and applied first. In this regard, the club must first of all request the player to return to the club and set a reasonable deadline to do so. In *casu*, the Chamber noted that a deadline for the player return was never provided by the club, moreover the player was in Madagascar and the travel arrangements for his return to Saudi Arabia were not established between the parties.

35. Moreover, the Chamber highlighted that on account of the player's behaviour it seems that he was not motivated to return to Saudi Arabia as he made it clear that he it was very unfair that he was systematically paid late by the club, though he never claimed for outstanding salaries, in the opinion of the Chamber it in fact seem that the player was no longer willing to continue with his employment services at the club.
36. In view of the above, the Chamber wished to emphasize that the actions of both parties led the members of the Chamber to conclude that from the player's behaviour, it can be determined that he was not interested in resuming his duties with the club; likewise, the club was also not genuinely interested in the player's services after he left Saudi Arabia. As such, the Chamber is of the opinion that the parties therefore mutually departed from the contract, ultimately as from 28 March 2023.
37. Following the above line of reasoning, the members of the Chamber concluded that, since none of the parties were sincerely interested in continuing the employment relationship, no compensation for breach of contract to any of the parties should be awarded except for any outstanding amounts due to the player up until 28 March 2023.

## ii. Consequences

38. Having stated the above the Chamber concluded that the claim of the club is rejected and the counterclaim of the player is partially accepted.
39. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the player the amount of USD 6,766.66 corresponding to his salary for February and partial salary for March 2023, as follows:
  - USD 3,500 as salary for February 2023
  - USD 3,266.66 as pro rata salary of March 2023
40. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.
41. The Chamber wish to highlight that the club did not have any justifiable reason to suspend any of the player's salaries, specifically for February up until 28 March 2023, during this period he was still at the club specifically authorized to be on national team duty.
42. As to the promotional bonuses, the Chamber mentioned that the player failed to substantiate his claim relating to any promotional bonuses.



### iii. Compliance with monetary decisions

43. 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.
44. In this regard, the DRC 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.
45. Therefore, bearing in mind the above, the DRC 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.
46. 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.
47. The DRC 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.

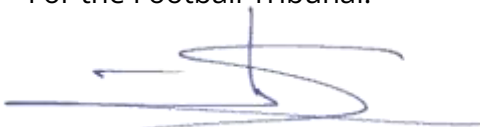
### d. Costs

48. 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.
49. Likewise, and for the sake of completeness, 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.
50. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

## Decision of the Dispute Resolution Chamber

1. The claim of the Claimant/Counter-Respondent, Al Jandal Club, is rejected.
2. The claim of the Respondent/Counter-Claimant, **Njiva Rakotoharimalala**, is partially accepted.
3. The Claimant/Counter-Respondent, Al Jandal Club, must pay to the Respondent/Counter-Claimant the following amount(s):
  - **USD 6,766.66 as outstanding remuneration** plus 5% interest *p.a.* as from the respective due dates until the date of effective payment as follows:
    - On the amount of USD 3,500 as from 1 March 2023
    - On the amount of USD 3,266.66 as from 28 March 2023
4. Any further claims of the Respondent/Counter-Claimant are rejected.
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 Claimant/Counter-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 Respondent/Counter-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

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**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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