

Decision of the Players' Status Chamber

passed on 2 July 2024

regarding an employment-related dispute concerning
the coach Omar Najhi

BY:

Thulaganyo GAOSHUBELWE (South Africa), Single Judge

CLAIMANT:

Omar Najhi, England

Represented by Swagath Chanila Ramachandra

RESPONDENT:

Club Ittihad de Tanger, Morocco

I. Facts of the case

1. On 8 September 2023, the Moroccan club Ittihad de Tanger (hereinafter: *the Respondent* or *club*) and the British and Moroccan coach Omar Najhi (hereinafter: *the Claimant* or *coach*) signed an employment agreement titled '*Contrat Type Liant un a Cadre Sportif Professionnel*' (hereinafter: *the Contract*) valid from the same date until 30 June 2024.

2. Under clause 2 of the Contract, the coach was identified as follows:

"(...)
Nationality: British
Identity document: Passport
Passport number: 510907770
Address: 123 Hitching Way Reigate RH28EP
(...)"

3. In accordance with the employment contract, the club undertook to pay to the coach *inter alia* a monthly remuneration of MAD 150,000.
4. Finally, a literal translation from French of art. 10 of the Contract would read as follows:

"ARTICLE 10: TERMINATION OF THE CONTRACT
This contract may be terminated before its end:
- *in the even of agreement between the parties ;*
- *in case of force majeure;*
- *in case of serious misconduct by either party or for just cause within the meaning of the Regulations on the Statutes and Transfer of FRMF and FIFA players.*
- *This contract may be terminated early by mutual agreement between the parties or at the initiative of one of the parties (expressly by mutual agreement without causing prejudice);*
- *If the club requests unilateral termination of the contract, it must compensate Mr. NAJHI OMAR with one month's salary equal to MAD 150,000;*
- *If Mr. NAJHI OMAR requests the unilateral termination of the contract, he must compensate the IRT club for two months of salary equal to MAD 300,000."*

5. On 7 January 2024, the club issued a termination letter to the coach stating that the club was unilaterally terminating the Contract due to "*the negative results achieved by the first team under your leadership during the first half of the first professional national championship for the 2023-24 sports season*".
6. Contextually, the club made an announcement on their official Facebook account stating "*Ittihad Tangier Club dispenses with coach Mr. Omar Najhi*".
7. By correspondence dated 9 February 2024, the coach put the club in default of payment of MAD 490,000.

II. Proceedings before FIFA

8. On 21 March 2024, the coach filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the coach

9. According to the coach, the club failed to comply with its financial obligations under the Contract, in particular part of the salary due for September 2023 in the amount of MAD 40,000 plus all the relevant salaries for October 2023, November 2023, and December 2023.
10. In continuation, the coach stated that the club terminated the Contract prematurely on 7 January 2024 without just cause, namely as the express reason for such termination was the alleged series of negative sporting results by the team.
11. In this respect, the coach argued that art. 10 of the Contract would not be applicable as it did not foresee a premature termination for sporting results, and the standard principles adopted by FIFA shall apply instead.
12. The coach therefore claimed compensation in addition to the outstanding salaries, corresponding to the residual value of the Contract.
13. Accordingly, the Claimant's requests for relief were the following:

- "MAD 490,000 as outstanding remuneration;
- MAD 900,000 as compensation or MAD 150,000 in case of application of art. 10 of the Contract;
- 5% on each amount".

b. Position of the club

14. In its reply, the club first challenged FIFA's jurisdiction alleging that the coach also possesses Moroccan nationality, hence the present dispute would not have the necessary international dimension to be heard by FIFA.
15. In the club's view, it would be irrelevant whether the coach had signed the Contract as a British citizen because in any case he could not withdraw from his original nationality as Moroccan.

16. In this context, the club held that the Contract was not subject to the relevant conditions typically required by the Moroccan Ministry of Labour, *i.e.*, the obtainment of a working permit by the coach, thus proving that the latter had been hired as a national.
17. In support of its position, the club submitted a screenshot from the web platform named “Connect” used by the Football Federation of Morocco (FRMF) in the context of registering players and coaches, whereby it appears that in 2021 the Claimant had been registered at his former clubs in Morocco as Moroccan citizen.
18. Subsidiarily, as to the substance, the club alleged having already paid the coach the amounts of MAD 330,000 in cash on 19 September 2023 and MAD 140,000 on 9 October 2023.
19. Accordingly, the club argued that the amount outstanding in favour of the coach would correspond to MAD 15,650 only.
20. As to the compensation claimed by the coach for contractual breach, the Club did not dispute having terminated prematurely the employment agreement without a just cause but pleaded that the amount of compensation payable to the coach shall be calculated in line with art. 10 of the Contract, thus entitling the coach to one month salary only.

III. Considerations of the Players’ Status Chamber

a. Competence and applicable legal framework

21. First of all, the Single Judge of the Players’ Status Chamber (hereinafter also referred to as *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 21 March 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 Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
22. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (edition June 2024), the Single Judge is – **in principle** - competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a British coach and a Moroccan club.

23. Notwithstanding the above, the Single Judge observed that the Respondent disputes the competence of FIFA on the premises that the coach, although in possession of British nationality, signed the Contract as a Moroccan citizen only,
24. Accordingly, in the Respondent's view, the present dispute would lack the required international dimension in order to be adjudicated by FIFA.
25. In this respect, the Single Judge underlined that the wording of the article 22 lit. c) of the Regulations clearly establishes that the first condition which needs to be compulsorily fulfilled in order for the FIFA judicial bodies to be competent to hear an employment-related dispute between an association and a coach is that said dispute has an international dimension. The Single Judge emphasized, in other words, that this means that FIFA is only competent to hear an employment-related dispute between an association and a coach when the parties have different nationalities, without which the international element of the dispute is not fulfilled. To this end, the Single Judge recalled that the jurisprudence of the Players' Status Chamber, as well as the Dispute Resolution Chamber confirms that in cases where a party has dual citizenship, and the party who alleged that an international dimension does exist however fails to submit any conclusive evidence and factors in support of the citizenship it is relying on, the case will lack international dimension.
26. In this respect, the Commentary on the Regulations (2023 ed.) provides further clarifications, confirming the jurisprudence of the Players' Status Chamber (page. 445 et seq.) as follows:

"In summary, a dispute between a player and a club is deemed to be international whenever the player and the club are of different nationalities. If the player holds dual nationality, the dispute will be deemed to have an international dimension if the player is registered by their club under their "foreign" nationality (e.g. a Brazilian/Italian player playing for a Brazilian club is registered to play as an Italian). This is because players registered as locals as a result of their "shared" nationality with the club cannot be deemed to be international players. By the same token, the DRC has established that, for independent countries which have more than one member association of FIFA incorporated within their territory, there was no international element for players who were nationals of those countries.

The same principles apply, in principle, to disputes between clubs/member associations and coaches (albeit coaches are not registered in the same manner as players). To establish the international dimension of a dispute, the coach will need to hold a nationality other than that of the country where the club/association is based (e.g. a dispute between a Spanish coach and a Mexican club or a dispute between a Moroccan coach and the Saudi Arabian Football Federation (SAFF) would be covered). In cases where a coach holds dual nationality and one of those nationalities is the same as the nationality of their counterparty (club or association) in a dispute before FIFA, the decisive element in determining whether the dispute has an international dimension will be the nationality mentioned in the employment contract.

Accordingly, had the parties entered into the employment contract as nationals of the same country, the dispute would not have met the international dimension requirement and FIFA would have had no jurisdiction to hear it”.

27. Consequently, the Single Judge was firm in determining that, in case the parties share a common nationality, the relevant dispute has to be considered a purely internal (national) matter to be decided by the competent authorities in the respective country, save in the event the party relying on the international dimension submits conclusive and substantial evidence to prove the contrary.
28. Having established the foregoing, the Single Judge also 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, he stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties.
29. The Single Judge turned then to the parties’ submissions as well as the evidence on file, and observed that, from the documentation at his disposal, it was undisputed that that the coach was born in Morocco and that he acquired his British nationality at a later stage.
30. The Single Judge therefore emphasized that the underlying question is whether the coach was hired as a British citizen or not.
31. With the above in mind, the Single Judge turned his attention to the wording of the Contract and observed that under clause 2 the said document identifies the coach by referring to his British nationality only.
32. In particular, the Single Judge noted that the Contract expressly refers to the coach’s British passport number, the coach’s residence address in UK and even his email address with British suffix (i.e., “omar.najhi@hotmail.co.uk”).
33. The Single Judge therefore acknowledged that, in order to identify himself within the employment relationship with the Respondent, the coach expressly opted to rely on documents that were issued to him as a British citizen.
34. In this context, the Single Judge did not disregard that the relevant digital platform adopted by the Moroccan Football Federation, “Connect”, refers to the coach as a citizen of Morocco. However, in the Single Judge’s view, such registration would not *per se* exclude that in his employment relationship with the Respondent the coach had indeed been hired as a British citizen.
35. In fact, in the aforementioned page, there are no direct references to the coach’s employment contract with the Respondent, but rather to his previous jobs in Morocco. Indeed, the Single Judge observed that the last update of said platform dates back to 19

August 2021, whereas the parties entered the labour relationship at stake on 8 September 2023.

36. Accordingly, in the Single Judge's view, the information contained in the registration platform used by the Moroccan Football Federation cannot be used as evidence of the coach having signed the employment contract with the Respondent as a Moroccan citizen.
37. In view of the foregoing, Single Judge determined that the Respondent, who carried the burden of the proof in line with aforementioned art. 13 par. 5 of the Procedural Rules, failed to demonstrate that the coach was hired as a Moroccan citizen; a circumstance which may have led to the Single Judge declaring his lack of competence to hear the present dispute, in that it would have established the absence of an international dimension. Accordingly, the Single Judge determined that the coach was both hired and rendered his services as a British citizen, and that hence the Single Judge is competent to hear the present claim.
38. 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 21 March 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

39. The Single Judge once again 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).

c. Merits of the dispute

40. 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 she will refer only to the facts, arguments, and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

41. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute the amounts that the club shall pay to the coach in connection with their employment relationship. In particular, the Single Judge noted that the club argues having paid most of the outstanding remuneration claimed by the coach prior to the unilateral termination of the Contract, while the latter claims to not have fully received his salaries for the months of September, October, November, and December 2023. Furthermore, the Single Judge observed that the club does not contest having prematurely terminated the employment contract based solely on the coach's alleged poor sporting performance, but rather challenges the quantum payable to the latter as compensation, alleging that the parties agreed on a different amount under the Contract.
42. 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 club and, if so, whether the latter had a valid justification for not having complied with its financial obligations.
43. As such, the Single Judge observed that the club argued having paid the coach a total of MAD 470,000 between 19 September 2023 and 19 October 2023, however it failed to produce evidence that the said amounts have ever been paid. In this respect, the Single Judge wished to emphasize that the fact that the said payments had been allegedly executed in cash, would not exonerate the club from keeping official records of the relevant transactions.
44. The Single Judge therefore remarked that in the case at hand the club bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Nonetheless, absent such evidence and any reasonable justification by the club for not having complied with the terms of the contract, the Single Judge decided that its position could not be upheld.
45. Accordingly, the Single Judge concluded that the total amount of MAD 490,000 remains outstanding in favour of the coach.
46. 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 the Claimant the amounts which were outstanding under the contract at the moment of the termination, *i.e.*, MAD 490,000.
47. 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 as from the relevant due dates until the date of effective payment.

48. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the coach by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 par. 2 of Annexe 2 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 remuneration and other benefits due to the coach under the existing contract and/or the new contract and the time remaining on the existing contract.
49. In application of the relevant provision, the Single Judge held that he first of all had to clarify whether the pertinent employment contract contained a provision by means of which the parties had agreed beforehand upon an amount of compensation payable by the contractual parties in the event of breach of contract.
50. In this regard, the Single Judge took note of the wording of art. 10 of the contract, which established that *"If the club requests unilateral termination of the contract, it must compensate Mr. NAJHI OMAR with one month's salary equal to 150 000 dhs...If Mr. NAJHI OMAR requests the unilateral termination of the contract, he must compensate the IRT club for two months of salary equal to 300 000 dhs."*
51. After analysing the content of the aforementioned clause, the Single Judge concluded that it did not fulfil the criteria of reciprocity and proportionality, in line with the Single Judge's longstanding jurisprudence, and therefore could not be taken into account for establishing the amount of compensation payable to the Claimant. In particular, the Single Judge noted that (i) the amount payable by the club differs notably from the one potentially due by the coach in case of premature termination and that (ii) at the time of the termination, the coach would be still entitled to 6 salaries under the Contract (*i.e.*, from January 24 to June 2024).
52. As a consequence, the Single Judge determined that the amount of compensation payable to the Claimant had to be assessed in application of the other parameters set out in art. 6 par. 2 of Annexe 2 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.
53. Bearing in mind the foregoing as well as the coach's claim, the Single Judge proceeded with the calculation of the monies payable to the coach under the terms of the contract until its term. Consequently, the Single Judge concluded that the amount of MAD 900,000 (*i.e.* the residual value) serves as the basis for the determination of the amount of compensation for breach of contract.
54. In continuation, the Single Judge verified whether the coach 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 Single Judge as well as art. 6 par. 2 lit. b) of Annex 2 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 coach's general obligation to mitigate his damages.

55. In this respect, the Single Judge noted that the coach remained unemployed since the unilateral termination of the contract.
56. The Single Judge referred to art. 6 par. 2 lit. a) of Annex 2 of the Regulations, according to which, in case the coach did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.
57. In this respect, the Single Judge decided to award the coach compensation for breach of contract in the amount of MAD 900,000, i.e., 6 times MAD 150,000, as the residual value of the Contract.
58. Lastly, taking into consideration the coach's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the coach interest on said compensation at the rate of 5% p.a. as of the date of the termination until the date of effective payment.

ii. Compliance with monetary decisions

59. 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.
60. 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.
61. 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.

62. 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.
63. 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.

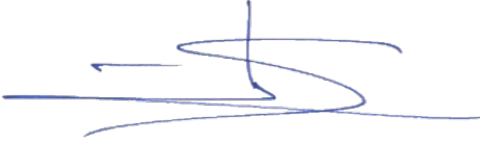
d. Costs

64. 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.
65. 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.
66. Lastly, the Single Judge concluded her deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players' Status Chamber

1. The Football Tribunal has jurisdiction to hear the claim of the claimant, Omar Najhi.
2. The claim of the Claimant, Omar Najhi, is accepted.
3. The Respondent, Ittihad de Tanger, must pay to the Claimant the following amount(s):
 - **MAD 490,000 as outstanding remuneration** plus interest *p.a.* as follows:
 - 5% interest *p.a.* over the amount MAD 40,000 as from 1 October 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount MAD 150,000 as from 1 November 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount MAD 150,000 as from 1 December 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount MAD 150,000 as from 1 January 2024 until the date of effective payment;
 - **MAD 900,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 7 January 2024 until the date of effective payment.
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).

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