

# Decision of the Dispute Resolution Chamber

passed on 11 July 2024

regarding an employment-related dispute concerning  
the player Rafik Kamerji

## COMPOSITION:

**Livia SILVA KÄGI (Brazil & Switzerland)**, Deputy Chairwoman  
**Mario FLORES CHEMOR (Mexico)**, member  
**Michele COLUCCI (Italy)**, member

## CLAIMANT/COUNTER-RESPONDENT 1:

**Rafik Kamerji, Tunisia**  
Represented by Slim Boulasnem

## RESPONDENT/COUNTERCLAIMANT:

**Al Faisaly, Jordan**

## COUNTER-RESPONDENT 2:

**Avenir Sp. De La Marsa, Tunisia**

## I. Facts of the case

1. On 20 July 2023, the Tunisian player, Rafik Kamerji (hereinafter: **the Claimant/Counter-Respondent 1 or the Player**) and the Jordanian club, Al Faisaly (hereinafter: **the Respondent /Counter-Claimant or the Club**) concluded an employment contract valid as from the date of signature until the end of the season 2023/2024 (hereinafter: **the contract**).
2. According to the contract, the Club undertook to pay the Player the following:
  - A total salary of USD 170,000
    - USD 30,000: 48 hours after the arrival of the Player and the arrival of the Player's International Transfer Certificate (hereinafter: **ITC**).
    - USD 4,650 on 31 July 2023.
    - USD 13,535 on 31 August 2023.
    - USD 13,535 on 30 September 2023.
    - USD 13,535 on 31 October 2023.
    - USD 13,535 on 30 November 2023.
    - USD 13,535 on 31 December 2023.
    - USD 13,535 on 31 January 2024.
    - USD 13,535 on 28 February 2024.
    - USD 13,535 on 31 March 2024.
    - USD 13,535 on 30 April 2024.
    - USD 13,535 on 31 May 2024.
  - Housing and car.
  - 4 flight tickets during the 2023/2024 season.
3. On 26 July 2023, the Club paid the Player JOD 21,240.

4. On 23 August 2023, the Club paid the Player JOD 9,582.
5. On 19 October 2023, the Club paid the Player JOD 3,292
6. On 5 December 2023, the Player put the Club in default requesting the payment of USD 41,605 corresponding to the balance of the first salary (USD 1,000) and the salaries of September, October and November 2023 (USD 13,535 each); setting a time limit of 15 days in order to remedy the default. The correspondence also mentioned the following *"you will find the player's bank details in the attachment"*, however no information as to the bank details was found. (hereinafter: **the first default notice**)
7. On 9 December 2023, the Player sent the Club the following *"Please find attached the formal notice sent by the player Rafik Kamerji on 5.12.2023 to the club's email address on FIFA TMS"*. The Club contested the receipt of this letter.
8. On 14 December 2023, the Club paid September 2023 salary (USD 13,535) to the Player.
9. On 20 December 2023, the Player informed the Club that the payment was only a partial payment and that a remaining balance of USD 28,070 was still due, for which the Player set an additional deadline of 5 days.
10. On 26 December 2023, the Player sent a termination notice to the Club indicating that the salaries requested remained unpaid.
11. On 30 December 2023, the Club sent a letter to the Player mentioning that the Player left Jordan without any notice, coordination, or approval of the Club. The Club requested the Player to take the appropriate measures.
12. On 2 January 2024, the Player signed an employment contract with Avenir Sp. De La Marsa (hereinafter: **the Counter-respondent 2**) valid as from the date of signature until 30 June 2025, including a monthly salary of TND 1,500/ USD 485.84 for the first season (until 30 June 2024) and TND 2,000 for the second season.

## II. Proceedings before FIFA

13. On 6 February 2024, the Player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.
  - a. **Position of the Player**
14. The Player lodged a claim against the Club for breach of contract. In his claim, the Player argued that he had just cause to terminate the contract, as his salaries were not fully paid

following his default notice. Consequently, he is entitled to compensation in accordance with art. 17 of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) P.

15. It is to be noted that the Player mentioned that he was “harassed” by the landlord as he was not able to pay his rent.

16. The Player requested the following relief:

- Outstanding remuneration
  - USD 1,000 as balance of the payment of 31 July 2023.
  - USD 13,535 as salary due on 31 October 2023.
  - USD 13,535 as salary due on 31 November 2023.
  - USD 13,535 as salary due on 31 December 2023.
  - The Player requested 5 % interest p.a as from the due dates.
- Compensation
  - USD 67,675 plus 5 % p.a. interest as from the date of termination.
- Flight tickets
  - TUN 3,180 on 3 November 2023 plus 5 % interest p.a. as from 4 November 2023.
  - TUN 2,900 on 3 January 2024 plus 5 % interest p.a. as from 4 January 2024.
  - 2 tickets round trip Tunisia – Jordan calculated as per FIFA travel plus 5% as from the date of termination.
- Additional compensation
  - In case the Player concludes a new contract to provide an additional compensation of 3 months’ salary.

#### **b. Position of the Club / Counterclaim**

17. In its reply, the Club filed a counterclaim.

18. In accordance with the Club:

- The default notice of 5 December 2023 did not contain the bank details, as mentioned in the first default notice.
- The Club did not receive any notification on 9 December 2023.
- On 14 December 2023, the management of the Club handled the Player's September salary in cash. Moreover, the Player was asked for his bank account in order to send his dues, for which the Player responded that *"he will check with his agent regarding the details of the bank account and that since the promise has been fulfilled, the salary has been paid, and the bank account details have been requested, he is proud that he plays for Al-Faisaly Club and that he promises the club to achieve the best achievement it can achieve. Regarding the notification sent on 5/12/2023, it is considered canceled because the club was late in paying 3 consecutive salaries and that today, 14/12/2023, a salary was paid. The notification is considered canceled, and he belongs to a club in Jordan with the greatest achievements in the region, and according to records, the player is entitled to an amount of 27,070 US dollars to date, according to the club's records."*
- In view of the point above, the Player cancelled the first default notice.
- The Player's legal representative sent another notice dated 20 December 2023, requesting the disbursement of two salaries (October and November 2023) within 5 days without mentioning the Player's bank account details, in violation of Article 14 bis of the RSTP.
- On 26 December 2023, the Club was informed by email that the Player had unilaterally terminated the contract, and on the same day, the Player left the Club and travelled outside Jordan.

19. In view of the above circumstances, the Player terminated the contract without just cause. *"The first notification was canceled according to what was stated in the testimony (memo) of the club employees on December 14, 2023. The player did not commit to informing the club of his bank account details in the second notice (20 December 2023), moreover, the player did not deal with the club in good faith and Al Faisaly club was not given a 15-day period."*

20. The Club requested the following relief:

*"According to the above the club asking the Player and his new Club Mostakbal Almarsa (L'Avenir sportif de La Marsa) of Tunisia jointly and severally to pay the following*

*The amount of 94,745 USD which is the remained amount of the contract.*

- A legal interest of 5% from the due date.

- To apply sanctions against the Player and his new Club Mostakbal Almarsa of Tunisia."

### **c. Player's response to the counterclaim**

21. In his reply to the counterclaim, the Player indicated that art. 14bis of the RSTP only requires 2 conditions *i.e.*, 2 monthly salaries due and a default notice with a 15 days' deadline, and no further condition is required. The fact that the letter mentioned that the bank details were added, did not affect the validity of the letter as both parties have already agreed and implemented a different means of payment.
22. Moreover, the Player mentioned that:
- the Club's position is contradictory as it recognises that the usual means of payment was hand-delivered, and that after receiving the formal notice, the Club only paid one of the missing salaries.
  - the Club has made no effort and therefore showed no willingness to honour its obligation.
  - The counterclaim is unfounded and is to be rejected.
23. As to the cancelation of the first default notice, the Player indicated that this was not correct, and the memo provided by one of the Club's employees could not have any value. The Player sent 3 default notices and its position was clear, he was requesting his salaries.
24. The Player also mentioned that *"at the time of the first notice of default, the Club owed more than 3 months' salaries. One month later, at the time of termination, the Club had only paid one month's salary of these 3 salaries. This is clearly stated in the letters in question. Thus, the Player terminated with just cause"*.
25. Finally, the Player concluded a new contract, and submitted that he should be entitled to an additional compensation of 6 months.

### **d. Final comments of the Club**

26. In its final comments, the Club indicated that:
- The Player accepted that he did not provide his bank details.
  - It questioned why it must find alternative means of payment, given that the Player was aware of the FIFA-approved method of payment.

- As to the cancelation of the first default notice, the Club mentioned that *"the legal representative could have provided testimony from the player, but he forced the player to exclude this important factual incident and contented himself with denying this incident."*
- *"After the player cancelled the first notification, the legal representative had to inform the club of the bank account number because the first notification lacked this important element, and the club had to be given a second period of 15 days to pay the player's dues. This did not happen at all, and he decided to give the club only 5 days to show good faith as stated in the player's response."*

#### **e. Position of the Counter-Respondent 2**

27. Despite being invited the Counter-Respondent 2 did not provide its position to counterclaim.

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

28. 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 6 February 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.
29. 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 par. 1. lit. b) of the RSTP (June 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 Tunisian player and a Jordanian club, with the involvement of a Tunisian club.
30. Finally, 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 RSTP (June 2024 edition), and considering that the present claim was lodged on 6 February 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

31. 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

32. 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**

33. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the legality of the Player's early termination of the contract based on the alleged non-payment of certain financial obligations by the Club as per the contract, in accordance with art. 14bis of the Regulations.
34. In this context, the Chamber acknowledged that its 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 formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled.
35. The Chamber then 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).
36. In continuation the Chamber observed the following:
  - The Player sent the first default notice on 5 December 2023 of USD 41,605 requesting the balance of the first salary (USD 1,000) and the salaries of September, October and November 2023 (USD 13,535 each)
  - Following the first default notice, one 1 salary was paid, USD 13,535, and two salaries were still due.
  - With respect to the balance of the first payment of USD 1,000 claimed by the Player, the Chamber observed that the Club paid the amount of JOD 3,292 / USD 4,643.17 on 19 October 2023, which was not contested by the Player. Consequently, the only amount due in respect of this request is USD 6, which appears to be an exchange rate difference. Therefore, the Chamber considered that this amount had been settled in full.
  - On 20 December 2023 another default notice was sent.
  - The Player sent the termination on 26 December 2023.
37. In view of the above, the Chamber concluded that two salaries were still due at the time of the termination.

38. Then, the Chamber recalled the Respondent's argument that the first default notice was cancelled or invalid, as such default did not contain the bank information it made reference to and, in any event, the Player had allegedly cancelled it.
39. In this regard, the Chamber observed that there was no evidence other than the memo prepared by the Club mentioning such fact, therefore the Chamber considered that the Club did not carry its burden of proving this allegation.
40. Moreover, the Chamber mentioned that the bank details information does not constitute a requirement under art. 14bis of the Regulations, moreover, as per the evidence on file the Chamber observed that (i) the Club did not request such information from the Player since the sending of the first default notice, thus the Club did not proactively seek to pay the amounts due; (ii) following the partial payment, an additional letter was sent by the Player, and no reply or request for bank details was provided by the Club; and (iii) the Club was able to pay such amounts, as it performed a partial payment prior the termination of the contract, but it nevertheless did not fulfil its financial obligations as requested in the first default notice.
41. Consequently, the Chamber was of the opinion that the first default notice was valid.
42. In continuation, the Chamber noted that the Player claimed not having received his remuneration corresponding to September, October and November 2023 at the moment of the first default notice. Furthermore, the Chamber noted that (i) the Player has provided written evidence of having put the Club in default on 5 December 2023, i.e., at least 15 days before unilaterally terminating the contract on 26 December 2023 and (ii) at the moment of termination only September salary was paid, and two salaries (October and November 2023) were still due
43. The Chamber also noted 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, no evidence was provided.
44. Thus, the Chamber concluded that the Player had just cause to unilaterally terminate the contract, based on art. 14bis of the Regulations.
45. Finally, on account of the above, the Chamber decided to reject the Club's counterclaim.

## ii. Consequences

46. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Club.

47. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the Player, are equivalent to 3 salaries under the contract, amounting to USD 40,605 (October, November and December 2023).
48. 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 amounts which were outstanding under the contract at the moment of the termination, i.e., USD 40,605 (i.e., 3 times USD 13,535).
49. Moreover, the Chamber also concluded that the Player is entitled to the reimbursement of the flight tickets as it was contractually agreed and as per the evidence provided. Consequently, the Player is entitled to TUN 6,080.
50. In addition, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Player interest at the rate of 5% p.a. as follows:
  - On USD 13,535 as from 1 November 2023 until the date of effective payment;
  - On USD 13,535 as from 1 December 2023 until the date of effective payment;
  - On USD 13,535 as from 1 January 2024 until the date of effective payment;
  - On TND 3,180 as from 4 November 2023 until the date of effective payment;
  - On TND 2,900 as from 4 January 2024 until the date of effective payment;
51. Having stated the above, the Chamber 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 Chamber 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.
52. In application of the relevant provision, the Chamber held that it 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 Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

53. As a consequence, the members of the Chamber 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 Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
54. Bearing in mind the foregoing as well as the claim of the Player, the Chamber 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 Chamber concluded that the amount of USD 67,675 (i.e., 5 times USD 13,535) serves as the basis for the determination of the amount of compensation for breach of contract.
55. In continuation, the Chamber 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.
56. Indeed, the player found employment with Avenir Sp. De La Marsa. In accordance with the pertinent employment contract, the Player was entitled to approximately TND 1,500/ USD 485.84 per month. Therefore, the Chamber concluded that the Player mitigated his damages in the total amount of USD 2,429.20.
57. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason *i.e.*, overdue payables by the Club, and therefore decided that the Player shall receive additional compensation.
58. In this respect, the DRC decided to award the amount of additional compensation of USD 40,605, *i.e.*, three times the monthly remuneration of the Player. However, the Chamber reminded the parties that, as per the last sentence of art. 17 par. 1 lit. ii) of the Regulations, the overall compensation may never exceed the rest value of the prematurely terminated contract.
59. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Club must pay the amount of USD 67,675, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

60. In addition, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Player interest on said compensation at the rate of 5% p.a. as of 26 December 2023 until the date of effective payment.
61. Lastly, the Chamber recalled that it already granted the Player the reimbursement of the flight tickets, therefore, the Chamber rejected the Player's request as to the additional flight tickets.

### iii. Compliance with monetary decisions

62. 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.
63. 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.
64. Therefore, bearing in mind the above, the DRC 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 Player, 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.
65. The Club 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.
66. 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

67. 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.

68. 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.
69. Lastly, the DRC 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/Counter-Respondent 1, Rafik Kamerji, is partially accepted.
2. The Respondent/Counter-Claimant, Al Faisaly, must pay to the Claimant/Counter-Respondent 1 the following amounts:
  - a. **USD 13,535 as outstanding remuneration** plus 5% interest *p.a.* as from 1 November 2023 until the date of effective payment;
  - b. **USD 13,535 as outstanding remuneration** plus 5% interest *p.a.* as from 1 December 2023 until the date of effective payment;
  - c. **USD 13,535 as outstanding remuneration** plus 5% interest *p.a.* as from 1 January 2024 until the date of effective payment;
  - d. **TND 3,180 as outstanding remuneration** plus 5% interest *p.a.* as from 4 November 2023 until the date of effective payment;
  - e. **TND 2,900 as outstanding remuneration** plus 5% interest *p.a.* as from 4 January 2024 until the date of effective payment;
  - f. **USD 67,675 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 26 December 2023 until the date of effective payment;
3. Any further claims of the Claimant/Counter-Respondent 1 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/Counter-Claimant 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/Counter-Respondent 1** 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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