

Decision of the Players' Status Chamber

passed on 2 July 2024

regarding an employment-related dispute concerning
the coach Rodrigo Andres Venegas Perez

BY:

Thulaganyo GAOSHUBELWE (South Africa), Single Judge

CLAIMANT:

Rodrigo Andres Venegas Perez, Chile

Represented by Rodrigo Marrubia

RESPONDENT:

CD Oriente Petrolero, Bolivia

I. Facts of the case

1. On **9 November 2023**, the Chilean coach Rodrigo Andrés Venegas Pérez (hereinafter: *the coach* or *Claimant*) and the Bolivian club Deportivo y Cultural Oriente Petrolero (hereinafter: *the club* or *Respondent*) entered into an employment agreement, valid from 9 November 2023 until 30 June 2024 (hereinafter: *the Contract*).
2. Pursuant to clause 5 of the Contract, the club undertook to pay the coach a monthly remuneration of USD 17,000 from December 2023 until May 2024, each due by the end of each relevant month.
3. Furthermore, clause 12 of the Contract reads as follows:

“DÉCIMA SEGUNDA: (RESCISION UNILATERAL DE CONTRATO CON CAUSA JUSTIFICADA).

Serán consideradas como causales de rescisión unilateral sin lugar a indemnización o imposición de sanciones deportivas las siguientes:

- A. *El incumplimiento por parte del CLUB de los términos expresadamente establecidos en el presente contrato que no puedan ser enmendados previo a una intimación/notificación de diez (10) días, conminando a cumplir con el mencionado incumplimiento”.*

A free translation from Spanish would read:

“TWELFTH: (UNILATERAL TERMINATION OF CONTRACT WITH JUST CAUSE). - The following shall be considered as grounds for unilateral termination without compensation or imposition of sporting sanctions:

- A. *Failure by the CLUB to comply with the terms expressly set forth in this contract that cannot be remedied upon ten (10) days' notice, requiring the CLUB to comply with such non-compliance”.*

4. Lastly, clause 14 of the Contract reads:

“DÉCIMA CUARTA: (RESOLUCIÓN DE CONTROVERSIAS). - En caso de suscitarse controversias respecto a la interpretación, aplicación y vigencia del presente contrato deportivo de trabajo: ambas partes establecen someter el litigio ante el Tribunal de Resolución de Disputas (TRD) de la Federación Boliviana de Fútbol (FBF). así mismo de acuerdo al estatuto y reglamento vigente de la F.B.F. se reconoce y las partes aceptan al Tribunal de Arbitraje Deportivo (TAS/CAS) situado en Lausana-Suiza siendo aplicable para dicho caso las normativas vigentes del Estado Plurinacional de Bolivia”.

A free translation from Spanish would read:

“In the event of disputes arising regarding the interpretation, application and validity of this sport employment contract, both parties agree to submit the dispute to the Dispute Resolution Tribunal (TRD) of the Bolivian Football Federation (FBF). Likewise, in accordance with the statute

and regulations in force of the F.B.F., the parties recognise and accept the Court of Arbitration for Sport (TAS/CAS) situated in Lausanne-Switzerland being applicable for this case the current regulations of the Plurinational State of Bolivia”.

5. On 23 February 2024, the club publicly communicated the dismissal of the coach and his technical staff via its official social media.
6. By correspondence dated 6 March 2024, the coach put the club in default of payment of USD 85,000 setting a time limit expiring on 16 March 2024 in order to remedy the default.

II. Proceedings before FIFA

7. On 18 March 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 coach

8. According to the coach, the club failed to comply with its contractual obligations, first by not paying his salary for the month of January 2024 and, mostly important, by prematurely terminating the Contract without just cause on 24 February 2024.
9. In this respect, the coach stated that no notice has been sent prior to the dismissal of his entire technical staff.
10. Accordingly, the coach's requests for relief were the following:

“Accept the present claim and determine the Respondent to pay the total amount of USD 85,000 (eighty-five thousand US Dollars), plus 5% interest per year as of 25 February 2024, one day after the employment contract was unilaterally breached by the Respondent”.

b. Position of the club

11. In its reply, the club first object to FIFA's competence to hear the matter at stake, arguing that the parties have expressly opted for a different jurisdiction under the Contract.
12. In particular, the club held that the Dispute Resolution Tribunal of the Bolivian Football Federation (hereinafter: *NDRC of the FBF*) shall be deemed as the only competent forum based on clause 14 of the Contract.
13. In this context, the club submitted various documents in support of its position, holding that the NDRC of the FBF is an independent national dispute resolution chamber validly

established in accordance with the Statutes of the Bolivian Football Federation (“FBF”) and that fully respects the criteria set by FIFA under its Recognition Principles and Regulations.

14. In this respect, the club also produced copy of the correspondence exchanged with the FBF between March and April 2024, from which it appears that the club requested confirmation from the FBF about the functioning of the NDRC of the FBF, in particular with regard to:
 - 1.- Date of existence and/or creation of the NDRC of the FBF;
 - 2.- Composition of the NDRC of the FBF;
 - 3.- Name of the magistrates and/or members of the NDRC of the FBF;
 - 4.- Date of the last election of the judges and/or members of the NDRC of the FBF.
15. As to the substance, the club stated that at the time of the claim, the coach was entitled to the salaries of January 2024 and February 2024 only, hence he could not claim any further amounts as they would be not yet collectible.
16. Furthermore, the club argued having already paid the equivalent of USD 14,367 to the coach prior to the receipt of said notice, thus having reduced the outstanding amount in favour of the latter to the sum of USD 19,633.
17. In conclusion, the club pleaded to reduce amount due to the coach to the sum of USD 19,633 only or, subsidiarily to a maximum of USD 34,000, *i.e.*, the salaries of January 2024 and February 2024.

c. Rejoinder of the coach

18. In response to the club’s challenge to FIFA’s jurisdiction, the coach first argued that clause 14 of the Contract does not foresee the exclusive competence of the NDRC of the FBF, hence FIFA’s competence shall be preserved. In this respect, the coach also referred to the absence of terms such as “exclusively” or “solely” within the relevant arbitration clause.
19. Furthermore, in the coach’s view, the fact that the abovementioned clause does refer to CAS as further competent deciding body in case of disputes would also exclude the reserved competence of the NDRC of the FBF.
20. As to the substance, the coach denied having ever received any payment by the club except for the salary due by the end of December 2023.
21. Accordingly, the coach upheld his former request for outstanding remuneration but amended the running date of interest on the claimed sums to 24 February 2024.

d. Club's final comments

22. In its final statement, the club insisted on the alleged lack of competence by FIFA to hear the matter, arguing that the absence of the term "exclusive" within the relevant arbitration clause would not *per se* imply FIFA's competence.
23. Furthermore, the club produced copy of several decisions passed by the FIFA PSC as these would allegedly confirm the club's position in the case at stake.
24. As to the substance, the club added that the coach failed to comply with the terms for the notification established under clause 12 of the Contract.
25. In particular, in the club's view, the coach should have first addressed the exact reasons for his default notice and subsequently granted the club an opportunity to remedy the alleged breach.
26. The club therefore alleged that the coach breached the Contract without a just cause, hence his claim for compensation shall be rejected.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

27. 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 18 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.
28. 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. 2 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (June 2024 edition), he is - **in principle** - competent to deal with the matter at stake, which concerns an employment-related dispute between a Bolivian club and a Chilean coach.
29. Notwithstanding the above, the Single Judge took note of the Respondent's objection, according to which, the NDRC of the FBF shall be recognized as the competent judicial body per clause 14 of the Contract.

30. The Single Judge also noted that the Claimant conversely insists on FIFA's competence to adjudicate the present claim, sustaining that the Contract does not explicitly exclude it.
31. In this context, the Single Judge emphasised that, in accordance with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players, FIFA is, in principle, competent to hear an employment-related dispute between a club and a coach of an international dimension. Nevertheless, the parties may explicitly opt in writing for such dispute to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs. Equally, the Single Judge referred to the principles contained in the FIFA National Dispute Resolution Chamber Standard Regulations (hereinafter: *the Standard Regulations*), which came into force on 1 January 2008.
32. In this respect, and prior to delving into any assessment of the relevant NDRC 's compliance with the abovementioned principles, the Single Judge wished to remark that all submissions and evidence produced before the Football Tribunal must abide by the mandatory formalities established under the Procedural Rules. In particular, the Single Judge wished to refer to art. 13 par. 4 of the Procedural Rules, according to which all the evidence upon which a party intends to rely must be filed in the original language and, if applicable, translated into English, Spanish or French. The Single Judge also wished to recall the core principle stressed under art. 13 par. 5 of the Procedural Rules, according to which a party that asserts a fact has the burden of proving it.
33. With the foregoing in mind, the Single Judge noted that in spite of having been granted two rounds for the submission of the relevant documents, the Respondent failed to comply with art. 13 par. 4 of the Procedural Rules by not providing copy of the "*Reglamento Nacional de Transferencia y Habilitación de Jugadores*" (literally "National Regulations for the Transfer and Clearance of Players"), which indeed appear to be the rules governing the functioning of the NDRC of the FBF, as also referred to by the latter in their exchange of correspondence with the club.
34. By doing so, the Single Judge was of the opinion that the Respondent has *de facto* prevented him from verifying that the national arbitration bodies of the FBF meet the requirements established in art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players, detailed in the FIFA Circular no. 1010 as well as in art. 3 par. 1 of the NDRC Regulations.
35. On account of the above, and referring to the principle of burden of proof contained in art. 13 par. 5 of the Procedural Rules, the Single Judge established that the Respondent's objection towards the competence of FIFA to deal with the present matter must be rejected, and FIFA is competent, on the basis of art. 22 par. 1 lit. c) of the Regulations, to consider the present matter as to the substance.

36. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (June 2024), and considering that the present claim was lodged on 18 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

37. 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

38. His competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

39. 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 quantum of monies payable to the coach after the premature termination of the Contract.

40. In particular, the Single Judge noted that according to the club, the outstanding amounts owed to the coach at the time of the termination would be lower than what he claimed and that, in any event, the coach would not be entitled to any compensation as he did not grant the club an actual opportunity to remedy the alleged default, thus failing to comply with the terms established under clause 12 of the Contract and breaching the same without just cause.

41. In this context, the Single Judge first wished to remark 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.

42. Nonetheless, the Single Judge noted that the club failed to submit any evidence of the alleged payments to the coach. Furthermore, no reasonable justification was presented by the club for not having complied with the terms of the Contract.
43. In view of the foregoing and bearing in mind the basic legal principle of *pact sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the club is held liable to pay the coach the outstanding amounts deriving from the contract concluded between the parties, namely the salaries of January 2024 and February 2024.
44. In continuation, Single Judge turned his attention to the club's alleged termination of the Contract and noted that the club *de facto* communicated the coach's dismissal via a public Instagram post dated 23 February 2024. This communication did not include any clarification or prior notice regarding the reasons for the dismissal.
45. In this context, the Single Judge wished to emphasize that, in light of the fact that the termination by the club's hand occurred prior to the coach's alleged breach, the Single Judge's task would be to establish whether the club had just cause to terminate the abovementioned contract and, subsequently, to determine the relevant consequences.
46. In this scenario, the Single Judge also recalled the PSC's long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.
47. With the above in mind and after having carefully analysed the parties' submissions, the Single Judge concluded that the club could not meet its burden of proof to demonstrate having a valid justification for the premature end of the employment relationship.
48. Based on the foregoing, the Single Judge concluded that club unilaterally terminated the Contract without just cause on 23 February 2024, hence it must be held liable to pay compensation to the coach.

ii. Consequences

49. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.

50. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the coach's specific requests for relief, are equivalent to 2 salaries under the Contract, amounting to USD 34,000.
51. 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.*, USD 34,000.
52. 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 24 February 2024 until the date of effective payment.
53. 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.
54. In application of the relevant provision, the Single Judge 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.
55. In this regard, the Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
56. As a consequence, the Single Judge determined that the amount of compensation payable by the club to the coach had to be assessed in application of the parameters set out in art. 6 par. 2 of Annexe 2 of the Regulations.
57. 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 USD 51,000 (*i.e.*, the residual value) serves as the basis for the determination of the amount of compensation for breach of contract.
58. 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.

59. In this respect, the Single Judge noted that the coach remained unemployed since the unilateral termination of the contract.
60. 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.
61. In this respect, the Single Judge decided to award the coach compensation for breach of contract in the amount of USD 51,000, *i.e.*, 3 times USD 17,000, as the residual value of the contract.
62. 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 24 February 2024 until the date of effective payment.

iii. Compliance with monetary decisions

63. 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.
64. 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.
65. 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.

66. 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.
67. 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.

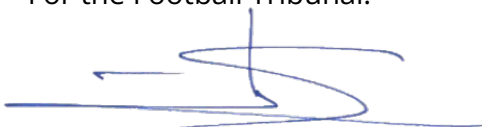
d. Costs

68. 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.
69. 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.
70. Lastly, the Single Judge concluded his 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, Rodrigo Andres Venegas Perez.
2. The claim of the Claimant, Rodrigo Andres Venegas Perez, is accepted.
3. The Respondent, CD Oriente Petrolero, must pay to the Claimant the following amount(s):
 - **USD 34,000 as outstanding remuneration** plus 5% interest *p.a.* as from 24 February 2024 until the date of effective payment;
 - **USD 51,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 24 February 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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