Decision of the Single Judge of the Players' Status Committee

Passed on 28 July 2020,

regarding a contractual dispute concerning the coach Mr Bouziane Cheikh

BY:

Stefano La Porta (Italy), Single Judge of the PSC

CLAIMANT:

BOUZIANE CHEIKH, FRANCE

Represented by Mr René Furrer

RESPONDENT:

ZAMALEK SC, EGYPT

I. FACTS OF THE CASE

1. On 27 April 2020, Mr Bouziane Cheikh (hereinafter: *the Claimant*) and the Egyptian club, Zamalek Egypt SC (hereinafter: *the Respondent*) concluded an employment contract (hereinafter: *the contract*), valid as from 1 July 2018 until 31 May 2019.

2. In accordance with the contract, the Claimant was employed by the Respondent as a "*physical trainer*". In particular, the preamble of the contract reads as follows: "[The Claimant] *is a professional football physical trainer and has a good experience in this field. Since* [the Respondent] *wants to make an agreement with a physical trainer with those qualifications to be a physical coach in first football team, and since the second party has no objections, then two parties have agreed upon the following*".

3. Clause 4 of the contract provides the Claimant's remuneration as follows:

   "The total amount of the contract is EUR 100,000 (one hundred and ten thousand Euro) net for the contract period to be paid on 11 monthly instalments, each instalment with total amount EUR 10,000 (ten thousand Euro) net to be paid within 5 days after the end of the calendar month.

   All amounts are net of taxes.

   […]*".*

4. Clause 8 of the contract states that: "[The Respondent] *agreed to pay the following bonuses to* [the Claimant]: *1 - Three months net for achieving the Egyptian league title; 2 - One month and half net for achieving the Egyptian cup title; 3 - Three months net for achieving the African Confederations league title; 4 - Three months net for achieving the Arab cup title; 5 – Winning games bonus will be according to team regulations*".

5. On 8 May 2019, the Claimant allegedly requested the payment of his outstanding salaries, being assured that the April 2019 and May 2019 salaries are were going to be paid to him simultaneously.

6. On 31 May 2018, the Respondent "*openly admitted that the club still owes the head coach salaries and a bonus payment for winning the "African Cup"*".

7. On 16 July 2019 and 19 July 2019, the Claimant sent various e-mails and a letter to the Respondent, requesting the outstanding remuneration; however, to no avail.

II. PROCEEDINGS BEFORE FIFA

8. On 27 April 2020, the Claimant lodged a claim against the Respondent before FIFA. A brief summary of the parties' positions is detailed in continuation.

a. Position of the Claimant

9. The Claimant lodged a claim against the Respondent for overdue payables, and requested that the Respondent be ordered to pay EUR 36,800 plus interest of 15% interest p.a., broken down by the Claimant as follows:
   - EUR 20,000 corresponding to the salaries of April and May 2019 in the amount of EUR 10,000 each;
   - EUR 30,000 corresponding to the "owed bonus payment for winning the "African Confederations Cup" which amounts to Euro 30,000 net plus 5% default interest;
   - EUR 800 corresponding to bonuses for having won 2 championship matches, which results in the payment of 2 bonuses of EUR 400 each;
   - EUR 6,000 net corresponding to a bonus for having won the Egyptian Cup Title, calculated by the Claimant as follows: 40% of 15,000 equals to 6,000.

10. In his claim, the Claimant maintained that the amount of EUR 20,000, corresponding to the salaries of April 2019 and May 2019 remained outstanding.

11. Moreover, the Claimant sustained that the Respondent won the "African Confederations Cup" and, hence, the Claimant shall be entitled to EUR 30,000.

12. The Claimant continued arguing that he is entitled to a bonus payment of EUR 800 for two matches won, in light of the contractual provision: "winning games bonus will be according to team regulations".

13. On 8 September 2019, the Respondent won "*Egyptian Cup Title*". In this regard, the Claimant maintained that, since he "*has been acting as a member of the coaching team in two out of five games*", i.e. on 11 October 2018 against Minyat Samanoud and on 23 October 2018 against Entag el Harby. Consequently, the Claimant is of the opinion that "*he has to receive 40% of the stipulated and contractually agreed bonus payment",* i.e. EUR 6,000.

14. As to the competence, the Claimant insists on the jurisdiction of PSC based on Art. 22 lit. c RSTP as this article "*only contains the term "coaches", but beyond does not specify at all which exact coaching activities are to be included*." In this regard, the Claimant is of the opinion that such term "*should be understood as a generic term, that must also include "physical coaches"".*

15. Moreover, the Claimant points at the wording of the description of his profession in the contract. In this sense, he claims that as he was employed as a "*"professional football physical trainer" clearly illustrates the fact that the defendant's motivation to conclude an employment contract with the claimant especially existed in being able to benefit from his special football coaching qualifications and/ or experience* […] *that he has been contracted in particular for the management of football-specific training units".*

16. In support of his statement above, the Claimant submitted an enumeration of his functions within the Respondent's club from, allegedly provided by the head coach of the team, Mr Christian Gross:

- *"Game-oriented improving of the physical shape of the players;*
- *Planning and Realisation of drill-exercises regarding technical skills;*
- *Improvement of/ elimination of weaknesses regarding technical skills;*
- *Improvement of resilience and quality of ball-handling in stress situations;*
- *Coaching of tactical exercises regarding orientation, changeover situations (perception);*
- *Coaching (smaller) teams in internal games during the training sessions;*
- *Consulting regarding taking decisions for composing the squad on match days;*
- *Coaching and arbitrating of internal games during training sessions (after match day);*
- *Individual tactical coaching of players during the matches;*
- *Individual improvement of physical shape of players;*
- *Individual communication with players"*.

17. Furthermore, the Claimant expressed his opinion that *"training sessions in modern football can no longer be rigidly divided into individual categories and that the training areas of athletics and technical skills are increasingly blurred"*. In this respect, the Claimant maintained that *"coaching regularly refers to athletic and technical aspects at the same time·"*.

18. In conclusion, the Claimant concluded that *"the modern understanding of football in general no longer allows a formalistic separation of the "physical coaches""*. Consequently, according to the Claimant, FIFA shall accept its jurisdiction over the matter.

b. Position of the Respondent

19. The Respondent, for its part, despite having been invited to do so, did not reply to the claim.

III. CONSIDERATIONS OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

A. Competence and applicable legal framework

20. First of all, the Single Judge of the Players' Status Committee (hereinafter: *the Single Judge*) analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 27 April 2020. Consequently, the June 2020 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

21. Subsequently, the Single Judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 23 par. 1 and par. 4 in conjunction with art. 22 lit. c of the Regulations on the Status and Transfer of Players (edition June 2020) he is competent to deal with the present matter, which concerns a dispute between a club and a coach of an international dimension, i.e. a French coach and an Egyptian club.

22. Furthermore, the Single Judge recalled that, as established in art. 6 par. 1 of the Procedural Rules, edition June 2020, only members of FIFA, clubs, players, coaches or licensed match agents are admitted as parties in front of the relevant decision-making bodies of FIFA. Thus, in neither art. 6 par. 1 of the Procedural Rules nor art. 22 lit. c) of the Regulations or any other provision in any of FIFA's regulations is there a basis to establish FIFA's competence to hear disputes involving physical trainers.

23. With the aforementioned considerations in mind, the Single Judge turned his attention to the content of the employment contract concluded between the Claimant and the Respondent on 10 August 2018 and noticed that in accordance with the document in question, the Claimant had been hired as "*physical trainer*" of the Respondent.

24. At this stage, the Single Judge paid close attention to the argumentation of the Claimant, who argued that training areas of athletics and technical skills are activities performed indistinctly by coaches and physical coaches, as well as to the enumeration made by the Claimant as to the specific activities performed by the Claimant within the scope of his professional relationship with the Respondent club (cf. point 16 *supra*).

25. In this regard, the Single Judge determined that in accordance with the rule of burden of proof mentioned under art. 12 par. 3 of the Procedural Rules which provides that "*any party claiming a right on the basis of an alleged fact shall carry the burden of proof*", it undoubtedly fell upon the Claimant to prove that he was in fact exercising duties of a coach and that he could thus be considered as a party in front of FIFA in the sense of art. 6 par. 1 of the Procedural Rules. However, after a thorough analysis of the arguments as well as the documentation submitted by the Claimant, the Single Judge found that the Claimant had not provided any conclusive evidence proving that he was working as a coach for the Respondent.

26. Therefore, the Single Judge had no other alternative than to rely on the content of the contract, which clearly stated that the Claimant was hired by the Respondent to perform duties as physical coach; extreme that was also confirmed by the Claimant. In particular, the Single Judge made reference to the preamble of the contract (cf. point 2 *supra*), as well as to clause 2 of the contract, which states that: "[The Respondent] *appointed* [the Claimant] *the physical coach for the First Football Team".*

27. In this regard, the Single Judge noted that, the parties not having specified any concrete obligations to be performed by the Claimant, its duties must be understood as the corresponding tasks of a physical trainer or coach, which differ from the functions of a coach in the sense of art. 6 of the Procedural Rules and rather refer to the position of fitness trainer with solely physical tasks to enhance the players' physical condition.

28. In light of the above, the Single Judge had no doubt that the contract at the basis of the present dispute was concluded in order to acquire the services of the Claimant as a physical coach and not as a coach.

29. In view of all of the above, the Single Judge, referring once again to art. 6 par. 1 of the Procedural Rules in combination with art. 22 c) of the Regulations, decided that the claim of the Claimant is not admissible in view of the fact that the latter, being a physical coach, cannot be viewed as a party who is entitled to seek redress in front of the decision-making bodies of FIFA, in accordance with art. 6 par. 1 of the Procedural Rules. In any case, the dispute is based on an employment contract signed by and between a physical coach and the Respondent and also therefore does not fall within the competence of the decision-making bodies of FIFA.

30. In view of the above, the Single Judge concluded that the claim of the Claimant is not admissible in view of the fact that the latter was not a party admitted in front of FIFA decision-making bodies at the time he lodged his claim, i.e. on 27 April 2020.

31. Therefore, the Single Judge decided that the Claimant is not entitled to seek redress in front of the decision-making bodies of FIFA in accordance with art. 6 par. 1 of the Procedural Rules.

B. Costs

32. Lastly, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the Players' Status Committee including its Single Judge, costs in the maximum amount of CHF 25,000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties' degree of success in the proceedings.

33. In this respect, the Single Judge reiterated that the claim of the Claimant is inadmissible. Therefore, the Single Judge decided that the Claimant has to bear all the costs of the current proceedings in front of FIFA.

34. The Single Judge further observed the temporary amendments outlined in art. 18 par. 2 lit. ii) of the Procedural Rules, which entered in force in 10 June 2020, according to which the maximum amount of procedural costs levied for any claim lodged prior to 10 June 2020, which was yet to be decided at the time of such temporary amendment, shall be equivalent to any advance of costs paid.

35. Accordingly, the Single Judge observed that the Claimant paid the amount of CHF 2,000 as advance of costs, and therefore decided that the maximum amount of costs of the proceedings corresponds to CHF 2,000.

36. Consequently, the Single Judge determined that the Respondent shall pay the amount of CHF 2,000 in order to cover the costs of the present proceedings.

IV. DECISION OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

1. The claim of the Claimant, Bouziane Cheikh, is inadmissible.

2. The final costs of the proceedings in the amount of CHF 2,000 are to be paid by the Claimant to FIFA (cf. note relating to the payment of the procedural costs below).

For the Players' Status Committee:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 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 20 of the Procedural Rules).

CONTACT INFORMATION:

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DIRECTIONS WITH RESPECT TO THE APPEALS PROCEDURE BEFORE CAS
(Code of Sports-related Arbitration, 2017 edition)

The CAS appeals arbitration procedure is provided by articles R47 *et seq.* of the Code of Sports-related Arbitration (2017 edition, hereafter: the Code). This procedure can be summarised as follows:

1. Any party intending to challenge a final motivated decision issued by a FIFA legal body, in accordance with the FIFA Statutes, must file a statement of appeal with CAS within a twenty-one-day time limit starting from the receipt of the decision challenged (article 58 of the FIFA Statutes). In order to file an appeal at CAS, it is necessary to have first requested that a full decision with the grounds be issued by FIFA. An appeal against the operative part of a FIFA decision only is not admissible.

   The exact address of the Court of Arbitration for Sport is:

   Court of Arbitration for Sport
   Château de Béthusy
   Avenue de Beaumont 2
   CH-1012 Lausanne
   Tel. (41.21) 613 50 00
   Fax (41.21) 613 50 01
   procedures@tas-cas.org
   www.tas-cas.org

2. To be admissible, the statement of appeal shall be drafted imperatively in English or in French (article R29 of the Code) and contain the following elements :

   - the name and full address of the Respondent(s);
   - a copy of the decision appealed against;
   - the Appellant's request for relief;
   - the appointment of the arbitrator chosen by the Appellant from the CAS list, unless the Appellant requests the appointment of a sole arbitrator (clause 3 below); the list of CAS members is published on www.tas-cas.org;
   - if applicable, an application to stay the execution of the decision appealed against, together with reasons (the statement of appeal filed with CAS does not stay automatically the execution of the decision challenged, save for decisions which are exclusively of a financial nature);
   - a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to the CAS;
   - the evidence of the payment of the Court Office fee of CHF 1'000 (Crédit Suisse, Rue du Lion d'Or 5-7, C.P. 2468, 1002 Lausanne; account n°: 0425-384033-71).

3. The arbitration procedure is allocated to a Panel composed of three arbitrators and constituted pursuant to the rules provided by article R54 of the Code. The Appellant may however request that a sole arbitrator be appointed by the President of the CAS Appeals Arbitration Division.

4. Within ten days following the expiry of the time limit for the filing of the statement of appeal, the Appellant shall file with the CAS an appeal brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specifications of other evidence upon which it intends to rely, failing which the appeal shall be deemed withdrawn (article R51 of the Code). Furthermore, in its written submissions, the Appellant shall specify any witnesses, including a brief summary of their

expected testimony, and experts, stating their area of expertise, whom it intends to call at the hearing and state any other evidentiary measure which it requests.

5. Within twenty days from the receipt of the appeal brief, the Respondent shall submit to the CAS an answer containing the following elements :

   - a statement of defence;
   - any defence of lack of jurisdiction;
   - any exhibits or specification of other evidence upon which the Respondent intends to rely, including the names of the witnesses, including a brief summary of their expected testimony, and experts, stating their area of expertise, whom it intends to call at the hearing.

6. The statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier within the first subsequent business day of the relevant time limit (article R31 of the Code).

   The time limits fixed under the Code shall begin from the day after that on which notification by the CAS is received. Official holidays and non-working days are included in the calculation of time limits. The time limits fixed under the Code are respected if the communications by the parties are sent before midnight, time of the location of their own domicile or, if represented, of the domicile of their main legal representative, on the last day on which such time limits expire. If the last day of the time limit is an official holiday or a non-business day in the location from where the document is to be sent, the time limit shall expire at the end of the first subsequent business day (article R32 of the Code).

7. In accordance with articles R64 and R65 of the Code, the CAS determines the possible advance of costs that the parties must pay to the CAS within a certain time limit. In the absence of payment of such advance of costs, the appeal shall be deemed withdrawn and the CAS shall terminate the arbitration.

8. For individuals, the CAS has created a legal aid fund. The form and the legal aid guidelines are available on www.tas-cas.org. However, the payment of the Court Office fee of article R64.1 or R65.2 of the Code remains mandatory before any procedure may be initiated even though a request for legal aid has been filed.

9. At the end of the written proceedings, the CAS summons the parties to a hearing, without prejudice to article R57 §2 of the Code.

10. The CAS shall have full power to hear the case *de novo*. It may issue a new decision which replaces the decision challenged or annul the decision and/or refer the case back to the competent authority for a new decision.

11. The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by the CAS, unless both parties agree that they should remain confidential. A copy of the award is notified to FIFA if the latter is not a party to the proceedings.

In case of discrepancy between the present document and the Code, the provisions of the Code shall prevail.

Schedule of arbitration costs in force as of 1 January 2017 (extract)

Administrative costs

The CAS fixes the administrative costs for each case of arbitration subject to Article R64 of the Code in accordance with the table below, or at its discretion when the amount disputed is not declared or there is no value in dispute. The value in dispute taken into consideration is the one indicated in the statement of claim/appeal brief or in the counterclaim, if any, if it is higher. If the circumstances of a given case make this necessary, the CAS may fix administrative costs at an amount above or below that shown on the table below.

For a disputed sum (in Swiss francs)	*Administrative costs*
up to 50'000	CHF 100.- to CHF 2'000.-
From 50'001 to 100'000	CHF 2'000.- + 1.50% of amount in excess of 50'000.-
From 100'001 to 500'000	CHF 2'750.- + 1.00% of amount in excess of 100'000.-
From 500'001 to 1'000'000	CHF 6'750.- + 0.60% of amount in excess of 500'000.-
From 1'000'001 to 2'500'000	CHF 9'750.- + 0.30% of amount in excess of 1'000'000.-
From 2'500'001 to 5'000'000	CHF 14'250.- + 0.20% of amount in excess of 2'500'000.-
From 5'000'001 to 10'000'000	CHF 19'250.- + 0.10% of amount in excess of 5'000'000.-
Above 10'000'000	CHF 25'000.-

Arbitrators' costs and fees

The amount of fees to be paid to each arbitrator is fixed by the Secretary General of the CAS on the basis of the work provided by each arbitrator and on the basis of time reasonably devoted to their task by the members of each Panel. In principle, the following hourly fees are taken into account:

For a disputed sum (in Swiss Francs)	*Fees*
Up to 2'500'000	CHF 300.-
From 2'500'001 to 5'000'000	CHF 350.-
From 5'000'001 to 10'000'000	CHF 400.-
From 10'000'001 to 15'000'000	CHF 450.-
Above 15'000'000	CHF 500.-