

Decision of the Dispute Resolution Chamber

passed via videoconference, on 2 July 2020,

regarding an employment-related dispute concerning the player Miguel Angel LONDERO

COMPOSITION:

Clifford J. Hendel (USA & France), Deputy Chairman
Michelle Colucci (Italy), member
Todd Durbin (USA), member

CLAIMANT:

MIGUEL ANGEL LONDERO, Argentina

RESPONDENT:

MONS CALPE SC, Gibraltar
Represented by Mr. Horacio Reinoso Lancia

I. FACTS

1. On 15 September 2018, the Argentinean player Miguel Angel Londero (hereinafter: "*the player*" of "*the Claimant*") and the Gibraltar club, Mons Calpe SC (hereinafter: "*the club*" or "*the Respondent*") concluded an "image rights agreement" (hereinafter: "*the agreement*"), which stipulates *inter alia* that it should follow the same terms and conditions as the "pro Agreement" allegedly signed on 15 September 2018 by the parties.
2. Point (1) of the agreement provides: "*This Agreement shall be construed and enforced in accordance with, and governed by, the laws of Gibraltar, without reference to the conflicts of laws principles. The parties agree that venue for any action brought hereunder shall be Gibraltar*".
3. Clause 1 of the agreement states that: "*This Agreement shall be co terminus with Talent's professional football player agreement with Agent [i.e. the Respondent] dated 15 September 2018 (the "Pro-Agreement") This Agreement shall follow the same terms and conditions stated in the Pro Agreement with regards to term therein, unless Agent decides to continue with the terms herein beyond the term of the Pro Agreement (the "Term")*".
4. Exhibit A of the agreement provides: "*1. Talent shall be paid as advances (if any) and at all times subject and co terminus with the terms and conditions of the Pro Agreement, specially subject to paragraph 1.3 of the Pro Agreement, and subject and advance in the GROSS amount of be the equivalent in (£) (GIBRALTAR POUNDS) to EUR 1,400 per calendar month for each month in which the Pro Agreement is in full force and effect Season. This advance amount shall be GROSS, which clearly means subject TO ANY AND ALL DEDUCTIONS applicable under this Agreement the pro Agreement, this Exhibit and under Gibraltar law. This amount is NOT what you will get paid after such deductions and the same will vary depending on each case and taxes. 2. ... (b) All the payments herein shall be GROSS, which clearly means subject TO ANY AND ALL DEDUCTIONS applicable under this Agreement, this Exhibit, the Pro Agreement and under Gibraltar law.*"
5. On 14 January 2020, the player lodged the present claim before FIFA against the Respondent requesting to determine that, on 9 August 2019, the club unilaterally terminated the employment relationship without just cause and to order the club to pay him the following amounts:
 - EUR 7,406 net as outstanding salaries plus 5% interest per annum as from the relevant payment dates until the date of effective payment, specified as follows:
 - EUR 1,400 as salary of October 2018 + 5% interest as from 1 November 2018;
 - EUR 1,400 as salary of April 2019 + 5% interest as from 1 May 2019;

- EUR 1,400 as salary of May 2019 + 5% interest as from 1 June 2019;
 - EUR 1,400 as salary of June 2019 + 5% interest as from 1 July 2019;
 - EUR 1,400 as salary of July 2019 + 5% interest as from 1 August 2019;
 - EUR 406 as salary of 9 days of August 2019 + 5% interest as from 10 August 2019.
- EUR 68,894 net as the amount due as compensation for breach of contract plus 5% interest per annum as from 10 August 2019 until the date of effective payment. Said amount is composed by EUR 994 for 22 days of August 2019; EUR 67,200 for the monthly payments from September 2019 until August 2023 and EUR 700 for the 15 days of September 2023;
- EUR 5,000 as legal costs and
- Imposition of sporting sanctions to the club for having breached the contract without just cause within the protected period.
6. The Claimant maintains that a Pro Agreement was actually never signed between him and the Respondent, in spite of the reference in the agreement (cf. clause 1 of the agreement).
 7. Moreover, the player argued that the agreement is accompanied by an "Exhibit A - Advances", which refers to the Pro agreement and establishes the financial obligations (cf. point 4 above).
 8. The player, however, claims that in spite of the seemingly commercial nature of the agreement he actually rendered his services to the club as a football player and was paid a monthly fee higher than the minimum wage as a salary. In this respect, he provides a copy of his player profile in a website, indicating that he played matches with the club between August 2018 and April 2019. He also claims that, in view of the absence of any specification regarding the end date of the agreement, the latter was valid until 15 September 2023, based on art. 18 of the RSTP.
 9. The player claims to have received his salaries for September, November and December 2018 in cash (EUR 1,400 per month) and have been forced to sign a promissory note, a copy of which he never received. His salaries for January, February and March 2019 were allegedly paid with delay.
 10. The player alleges that the club without any reason decided not to pay him his salary for October 2018 and from April 2019 onwards. As from 31 May 2019, the club allegedly stopped communicating with the player, who did not receive any information regarding the following season or any payments.
 11. The player added that on 7 August 2019, the player contacted the Gibraltar Football Federation (GFF), with a view to obtain the payment of his outstanding salaries.

12. The player further argues that on 9 August 2019, he received a letter from the club, in which the latter stated *inter alia* that: *"On May 4 2019, you and several other players participated in a "sit-down" on the pitch in the first minutes of Mons Calpe's match vs. Gibraltar United. In addition, you displayed anti-competitive attitude and behaviour in both training and official matches throughout the 2018-2019 season, including unexcused absences and insubordination both individually and in conjunction with other players. The Club investigated these matters, with several staffers and coaches discussing with you and multiple other players and staff. As a result, the Club determined the sanctions set forth below were applicable due to your illegal and unjustified actions ... Therefore, in addition to the termination or non-renewal of your player contract, the Club determined that it was justified in filing for damages of three (3) months' salary for economic, sporting and reputational losses and for applicable additional charges (such as accommodation and air travel) that were not in your contract, but which the Club may have furnished as a positive gesture to you. Despite these potential actions against you, the Club has paid the FULL and ENTIRE salary you are due, as set forth in your ETB contract and you'll see every payment due, and perhaps more, has been made to you. If you insist on making false and damaging claims and making slanderous statements in public, the Club may be forced to file suit against you to recover all damages caused by your intentional and illegal actions. The Club hereby DEMANDS that you CEASE and DESIST in your conduct and false complaints. Upon receipt of this letter, you have ten (10) days to respond and appeal the Club's findings. You may be accompanied/represented by a third party of your choice. Once these 10 days have elapsed, we will once again determine the matter to be closed"*.
13. The player explains never having participated in any disciplinary proceedings against him and claims the fine imposed to be arbitrary. He also deems that the club terminated his contract without just cause with its letter of 9 August 2019.
14. On 16 August 2019, the player sent a letter to the club contesting all the accusations of the club. Such letter allegedly remained unanswered.
15. The player thus claims that he had a valid employment contract with the club and that such contract was terminated without just cause by the latter. Thus he requests the payment of outstanding salaries and compensation from the club.
16. The Respondent claimed that FIFA is not competent to decide this dispute.
17. Alternatively, the Respondent maintains that a labour relationship never existed between the parties and that it does not owe the player any amounts as he was overpaid GBP 7,000 due to a mistake by the club's administration. It evidences such submission by filing an unsigned declaration by the player allegedly sent to the club's audit and bank statements.

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

1. 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 submitted to FIFA on 14 January 2020. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: "*the Procedural Rules*"), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players the Dispute Resolution Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Argentinean player and a Gibraltarian club.
3. However, the Chamber acknowledged that the Respondent contested the competence of FIFA's deciding bodies on the basis of point (1) of the agreement, stating that any disputes between the parties will be submitted to the courts of Gibraltar.
4. With the aforementioned considerations in mind, and prior entering into the analysis of its competence, the Chamber wished to recall that in accordance with art. 22 lit. b) of the Regulations on the Status and Transfer of Players, without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement.
5. In relation to the above, the Chamber also deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that a deciding body other than the DRC is competent to settle an employment-related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant derives from a clear reference in the employment contract.
6. Therefore, while analysing whether it was competent to hear the present matter, the Dispute Resolution Chamber considered that it should, first and foremost, analyse whether the employment contract at the basis of the present dispute contained a clear jurisdiction clause.
7. In this respect, the Chamber first of all referred to point (1) of the agreement, according to which "*This Agreement shall be construed and enforced in accordance with, and governed by, the laws of Gibraltar, without reference to the conflicts of laws principles. The parties agree that venue for any action brought hereunder shall be Gibraltar*".

8. In this regard, the members of the Chamber outlined that the language used in the provision, particularly the part which refers to “*venue for any action brought hereunder shall be Gibraltar*” reinforces the idea that the parties were referring clearly to a Gibraltar court chosen to solve their employment-related issues.
9. As such, the DRC concluded that, by means of point (1) of the agreement, and taking into account the principle of contractual autonomy, the preference of the parties in favor of the courts of Gibraltar was clearly expressed.
10. Taking into account all the foregoing considerations, the Chamber concluded that it was not competent to deal with the claim lodged by the Claimant in front of FIFA. As a consequence, the claim of the Claimant is inadmissible.

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, MIGUEL ANGEL LONDERO, is inadmissible.

For the Dispute Resolution Chamber:



Emilio Garcia 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 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:

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777