



Arbitration CAS 2006/A/1037 Chiapas Fútbol Club, S.A. de C.V. v. Ulsan Hyundai Football Club, award of 12 February 2007

Panel: Mr José Axtmayer (Puerto Rico), President; Mr Ricardo De Buen Rodríguez (Mexico); Mr Manfred Nan (The Netherlands)

Football

Termination of a contract of employment with just cause by the player

Just cause of termination

The termination of an employment contract with a club is valid and for just cause if the club does not dispute that it did not fulfil its payment obligations to the player under the contract, accepts that it had cancelled the player's return airline ticket and does not dispute that it had notified that it had no further interest in the player's services.

The present appeal was brought by Chiapas Fútbol Club, S.A. de C.V. ("Appellant"), a company operating the Mexican first division soccer team known as "Jaguars de Chiapas," seeking a review and reversal of the decision taken by the Single Judge of the Players' Status Committee (the "Single Judge") of the Federation Internationale de Football Association ("FIFA") on 21 November 2005, on the claim presented by the Appellant seeking compensation from Ulsan Hyundai Football Club of South Korea (the "Respondent") for the player Reinaldo de Souza from Brasil (the "Player").

Appellant and the Player entered into an employment contract on August 9, 2004, to be in effect until the end of the 2006-2007 season (the "Employment Contract").

On 5 February 2005, the Player informed FIFA that he considered his contractual relations with Appellant to be terminated by reason of Appellant's failure to make payments to the Player under their Employment Contract, including failure to pay the signing bonus and the salaries due thereunder from the middle of October 2004 through the end of January 2005, and Appellant's cancellation of the Player's return airline ticket from Brasil to Mexico. The Player further informed FIFA that he had repeatedly attempted to contact Appellant to resolve the outstanding matters under the Employment Contract and had received no response from Appellant. As a result, the Player terminated the Employment Contract with Appellant.

On 21 February 2005, the Player signed a new employment agreement with Respondent, the South Korean club Ulsan Hyundai FC. Upon the latter's request for assistance from FIFA to obtain the Player's International Transfer Certificate ("ITC") from the Mexican Football Association, Appellant confirmed on 23 February 2005 that it had notified the player's former club on 7 December 2004 that it was no longer interested in the player's services allegedly due to his bad results caused by a hidden

injury, and the Single Judge of FIFA's Players' Status Committee authorized the South Korea Football Association to provisionally register the Player with Respondent.

On 5 April 2005, Appellant alleged that the Player was contractually bound to two clubs, and that Respondent had never contacted Appellant to negotiate the Player's contractual rights, for which Appellant paid the sum of USD\$400,000 to the Player's former club, Criciuma Esporte Club in Brasil. As a result, Appellant claimed that Respondent should pay Appellant the invested amount of USD\$400,000 and all of the outstanding salaries owed to the Player by Appellant.

Respondent answered Appellant's claims by arguing that it signed an employment agreement with the Player after having been informed by Brasil International Sporting and the Player's representative that the Player was no longer bound by its contract with Appellant, and also argued that the decision of the Single Judge allowing the provisional registration of the Player validated the legality of Respondent's contract with the Player.

In reply, Appellant lodged a new claim against Respondent requesting the payment of USD\$3,000,000 pursuant to a provision contained in the annex to Appellant's Employment Contract with the Player allowing such compensation in the event of the Player's unilateral termination of the Employment Contract without cause. Alleging that Respondent had enticed the Player to terminate his Employment Agreement with Appellant without just cause, Appellant claimed the additional sum of USD\$3,000,000 from Respondent.

Respondent, in turn, replied that the Player's contractual relation with Appellant under their Employment Agreement had terminated by 5 February 2005, when the Player terminated his Employment Agreement with Appellant for just cause.

The Single Judge of FIFA's Players' Status Committee rejected all of Appellant's claims, namely the claim for compensation of any salaries due by Appellant to the Player during such time as the Player was already under contract with Respondent; the claim for compensation paid by Appellant to the Player's previous club in Brasil; and the claim for the penalty or fine provided in the annex to the Player's Employment Contract with Appellant for Respondent's alleged enticement of the Player to unilaterally terminate such contract with Appellant without just cause.

LAW

Jurisdiction

1. Neither party raised any objection to the composition of the Arbitration Panel or to the jurisdiction of the CAS at any time prior to or during the Hearing.

2. The jurisdiction of the CAS derives from R47 of the Code and Art. 59 of the FIFA Statutes and Regulations. It is further confirmed by the Order of Procedure duly signed by the parties. Accordingly, it follows that the CAS has jurisdiction to decide the present dispute.
3. Under R57 of the Code, the Arbitration Panel has full power to review the facts and the law. The Panel has exercised its rights under this provision.

Applicable law

4. The parties stipulated that the FIFA Statutes and Regulations were the law applicable to these proceedings. R58 of the Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
5. Art. 59 § 2 of the FIFA Statutes and Regulations, in turn, further provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and Clubs, and, additionally, Swiss law. Therefore, the Rules and Regulations of FIFA shall govern primarily, whereby Swiss law shall apply in the event the interpretation or construction of the FIFA Rules and Regulations is required.

Conclusion

6. The Arbitration Panel reached the following conclusions:
7. The testimony and arguments presented at the Hearing and the documentary record submitted by the parties reveal that Appellant did not dispute that it did not fulfill its payment obligations to the Player under their Employment Contract, and accepted that it had cancelled the Player’s return airline ticket from Brasil to Mexico. In addition, Appellant did not dispute that it had notified the Player’s prior club that it had no further interest in the Player’s services.
8. The Player’s termination of his Employment Contract with Appellant in February 2005 was valid and for just cause.
9. Any payment obligations to the Player under his Employment Contract with Appellant are the sole responsibility of Appellant.
10. The Respondent’s execution of an employment contract with the Player was valid and legitimate given the Player’s prior termination of his Employment Contract with Appellant for cause, and Respondent is under no obligation to reimburse Appellant for any amounts paid or due to the Player’s prior club in Brasil.

11. Respondent is not liable for the penalty contemplated in the annex to the Player's Employment Contract with Appellant, since there was no evidence presented supporting Respondent's alleged enticement of the Player to terminate such contract and the Player's termination thereof was justified.

The Court of Arbitration for Sport rules:

1. The appeal filed by Chiapas Futbol Club S.A. de C.V. (Club Jaguares de Chiapas) on 20 January 2006 against the decision issued on 21 November 2005 by the Single Judge of FIFA's Players' Status Committee is dismissed.
2. The decision of the Single Judge of FIFA's Players' Status Committee, dated 21 November 2005, is confirmed.

(...).