Arbitration CAS 2006/A/1084 Zamalek SC v. Carlos Roberto Ferreira Cabral, award of 13 October 2006

Panel: Mr Bernard Hanotiau (Belgium), President; Mr Stuart McInnes (United Kingdom); Mr Peter Dirk Siemsen (Brazil)

Football
Termination of the employment contract without just cause by the club
Absence of evidence of the coach's failure to comply with his obligations
Compensation due by the club for the early termination of the contract

1. **If no evidence shows that a coach did not comply with his obligations under the contract as professional coach and that he missed some training sessions or otherwise breached the contract and if the alleged breaches are disputed by the coach, the club's position is without merit.**

2. **The terms of a contract between a coach and a club have to be complied with. Therefore, if a coach is considered to have performed his obligations, he is entitled to compensation for the early termination of the contract.**

Zamalek Sporting Club ("the Appellant" or "the Club") is a professional football club, with its registered office in Giza, Egypt. It is a member of the Egyptian Football Association, which has been affiliated with the Fédération Internationale de Football Association (hereinafter "FIFA") since 1923. It is assisted and represented in this arbitration by Avv. Ettore Mazzilli.

Mr Carlos Roberto Ferreira Cabral (the "Respondent") is a Brazilian citizen who is domiciled in Jaguariuna, Brazil. He acted as a professional football coach with the Appellant under a first contract, from 18 July 2002 to 2 June 2003, and under a second contract (the one in dispute in this arbitration) from 20 November 2004 until June 2006.

On 20 November 2004, Mr Carlos Roberto Ferreira Cabral and the Appellant signed an employment agreement ("the Contract"). This agreement was drafted both in English and Arabic. It was entered into for a fixed period of time extending from 20 November 2004 to 30 June 2006. It reads in pertinent part as follows:

> *"Effective this Saturday dated 20/11/2004 this contract took place between the following two parties:*
>
> *Zamalek sporting Club represented by Pro. Dr. Kamal Darwish chairman of the Board. (First Party)*
>
> *Carlos Roberto Ferreira Cabral Brazilian Nationality holding Passport No. M 445124. (Second Party)*

Introduction

Based on Zamalek Sporting Club Board No. 34 dated 13/11/2004 and the negotiation exited between above two parties it has been agreed to hire the second party as technical director coach football first team (soccer management) of Zamalek Sporting Club according to the terms and conditions here under indicated:

(…)

Article No. (3) Obligations and duties of the second party assignments

The first party hire the second party in job of technical director Coach football first team (soccer management) of Zamalek sporting Club and his responsibility in general leading to assistant trainers as well.

The legal responsibility for the second party only with the Chairman of the Board.

Article No. (4) The first party assignments:

The first party certify and oblige to provide all the necessary capabilities and facilities to support the second party for highly effective performance.

The first party obliges with the official care for the players of first team including reserved players.

Article No. (5) Financial Conditions:

1- The first party committed to pay the following amounts as tax free.

From 20/11/2004 to 31/05/2005:

$ 50.000.00 (only Fifty thousands U.S. Dollars) as contract signature payment to be paid as soon as contract signed.

$ 16.000.00 (only sixteen thousands U.S. Dollars as monthly salary start from 20/11/2004 to 31/05/2005.

From 1/6/2005 to 30/6/2006:

$ 100.000.00 (only one hundred thousands U.S. Dollars) contract signature payment to be paid as follows:

$ 50.000.00 (only fifty thousands U.S. Dollars) on 1/6/2005.

$ 50.000.00 (only fifty thousands U.S. Dollars) on 1/7/2005.

$ 20.000.00 (only twenty thousands U.S. Dollars) as monthly salary start from 1/6/2005 to 30/6/2006

(…)

Article No. (7) Termination of the Contract:

If the first party desires to terminate this contract before the expiry date of the contract the second party deserves the rest of contract signature payment. (The contract signature payment is U$ 150.000).

If the second party desires to terminate this contract before this contract expiry date the second party will be subject to refund the contract signature payment which has been already received for the rest period (for example if the second party terminate the contract after three months he has to refund an amount equal to the remaining period).

Article No. (8) Termination of the Contract:

The Two parties respect FIFA regulations for any discussing concern this contract.

(…)".

Following the signature of the Contract, the Respondent started his functions, and pursuant to Article 5 (1) (a) of the Contract, received from the Appellant the sum of US$ 50,000 as a signing-on fee plus the sum of US$ 16,000 on a monthly basis as his salary from 20 November 2004 until February 2005.

The Appellant alleges that after he started his functions, the Respondent adopted a negative behaviour towards the Appellant and the players, which gave rise to complaints about him.

According to the Appellant, as from March 2005, the Respondent missed several training sessions but this is disputed by the latter. The Appellant further alleges that, as a consequence, the players did not receive the required support supposed to be displayed by a professional coach during the match season, and started to lose confidence in him. The atmosphere in the Club deteriorated and the Club's results seriously suffered. The Appellant considers that by not attending the training sessions, the Respondent was in breach of his obligations arising under the Contract.

In March 2005, the Appellant suspended the salary payments of the Respondent and urged him to comply with the terms and provisions of the employment contract.

It is the Appellant's position that at the end of April 2005, noticing that the Respondent was not showing any good will to comply with his contractual obligations and was persisting in failing to attend several training sessions, the Appellant required the Police to note and report officially the said infringements.

On 28 April 2005, the Appellant notified the Respondent with a termination notice in order to inform him of its will not to renew the Contract for the second season starting on 1 June 2005, and this, due to his behaviour.

On 14 June 2005, the Respondent submitted to the FIFA Players' Status Committee a claim against the Appellant alleging that the latter did not fulfil its obligations under the Contract, since it has not paid him any salary since March 2005.

Referring to the Contract, the Respondent submitted that the Appellant had agreed to pay him US$ 50,000 for the first year (20 November 2004 until 31 May 2005) as a signing-on fee and a monthly salary amounting to US$ 16,000, and for the second year (1 June 2005 until 30 June 2006) a US $ 100,000 signing-on fee (US$ 50,000 on 1 June 2005 and US$ 50,000 on 1 July) and a monthly salary of US$ 20,000. He added that he was entitled to receive two business class tickets per year for himself, his wife and his daughter. Finally, he recalled the terms of Article 7 of the Contract stipulating that on the one hand, if the Appellant prematurely terminates the Contract, it should pay the rest of the signing-on fee to the Respondent, and that on the other hand, if it is the Respondent that prematurely terminates the contract, he has to refund the received signing-on fee that he had already received on a pro rata basis.

Accordingly, the Respondent requested the payment of three monthly salaries (March, April and May 2005) amounting to US$ 48,000, six airplanes tickets amounting to US$ 30,000, the remaining salaries amounting to US$ 240,000, US$ 100,000 as the signing-on fee for the second year and the sum of LF 14,000 for car rental. The Respondent's claim amounted to US$ 420,000 plus compensation for damages caused by false information communicated by the Appellant to several newspapers.

To the allegation raised in the defence by the Appellant that the team did not achieve good results, the Respondent answered that it was because the players were tired. He further insisted that he had never been absent from any training session but that the Appellant did not allow him to enter the Club's facilities. He submitted that the Contract does not stipulate that it should be divided in two terms and that Article 7 clearly provides that if the Appellant prematurely terminates the Contract, it should pay him the remaining signing-on fee. Finally, with regard to the official notification sent by the Appellant, the Respondent pointed out that according to the Contract, both parties agreed to submit any dispute to FIFA, therefore the said notification was not binding.

On 15 February 2006, the Single Judge of the FIFA Players' Status Committee issued a decision ("the Single Judge's Decision") on the claim presented by the Respondent, setting forth the following considerations:

> *"1. First of all, taking into consideration that the claim was lodged in front of FIFA prior to the entering into force of the current Regulations for the Status and Transfer of Players on 1 July 2005, the Single Judge established that the September 2001 edition of the FIFA Regulations for the Status and Transfer of Players (hereinafter referred to as the "Regulations") applies to the case at hand.*
>
> *2. Furthermore, on the basis of article 42 par. 1, and in particular lit. (b) (vi), of the said Regulations the Single Judge confirmed that he was competent to deal with the present matter.*
>
> *(…)*
>
> *5. Furthermore, the Single Judge observed that, on the one hand, the Claimant affirmed that the Respondent has not paid him his salaries as from March 2005. As a result, the Claimant requests the payment of 3 monthly salaries (March, April and May 2005) amounting to USD 48,000 and the 6 airplane tickets amounting to USD 30,000. Furthermore, the Claimant argues that the Respondent acted in breach of its contractual obligations and therefore, the Claimant claims the remaining salaries amounting to USD 240,000, the signing-on fee amounting to USD 100,000 for the second year and the reimbursement of the car rental in the amount of LF 14,000, i.e. the total amount of USD 420,000 plus compensation for damages caused by the untrue information communicated by the Respondent to several newspapers.*
>
> *6. On the other hand, the Single Judge took due note that the Respondent argued that the coach had not rendered his services in accordance with the contract and that therefore he was officially notified by the end of April 2005 that the employment contract was not to be renewed for the second season starting on 1 June 2005.*
>
> *7. Moreover, the Single Judge observed that the Claimant contested the position of the Respondent explaining that he had never been absent from any training but that the Respondent did not allow him to enter into the club's facilities. Furthermore, the Claimant explained that the team did not achieve good results, since the players were tired. In continuation, the Claimant pointed out that the relevant employment contract does not stipulate that the contract would be divided in two terms and that art. 7 of the relevant contract clearly stipulates that if the club early terminates the contract it should pay him the remaining signature payment. Finally, and with*

regard to the official notification sent by the Respondent, the Claimant pointed out that according to the contract both parties agreed to submit any dispute to FIFA and therefore the said official notification is not binding.

8. Then, the Single Judge pointed out that the Respondent did not contest that the salaries as from March 2005 until May 2005 were outstanding. Therefore, and in view of the lack of any evidence carried to the file by the Respondent to demonstrate the contrary, the Single Judge had to conclude that the Respondent had failed to pay to the Claimant the outstanding salaries for the months as from March 2005 until May 2005 in the amount of USD 48,000.

9. In continuation, the Single Judge analysed all documentation and information submitted by both parties and reached the conclusion that the Respondent breached the employment contract signed with the Claimant without just cause, by failing to comply with its financial obligations as from March 2005. Moreover, the Single Judge took into account that the Respondent actually confirmed its intentions to prematurely terminate the contract arguing that due to the Claimant's behaviour the employment contract was not to be renewed for the second season starting on 1 June 2005. The factual circumstances described by the Respondent are not however, supported in any way by satisfactory corroborate evidence.

10. In this respect, the Single Judge pointed out that in order to calculate and establish any possible financial compensation due to the breach of contract art. 7 of the relevant employment contract, which stipulates that if the Respondent prematurely terminates the contract it should pay to the Claimant the remaining signing-on fee, should be taken into account.

11. In view of the above, the Single Judge concluded that the Respondent is liable to pay compensation to the Claimant in the amount of USD 100,000 corresponding to the signing-on fee for the second year. For the sake of good order, the Single Judge emphasised that the Claimant requested, inter alias, the said signing fee and that the Respondent did not provide any evidence in order to corroborate that the signing-on fee due for the second year was paid.

12. Art. 7 of the employment contract having been applied in order to establish the amount of compensation, the Single Judge rejected any further claim of the Claimant for compensation, in particular, the Claimant's claim for compensation corresponding to the salaries of the second contractual year.

11. Then, the Single Judge turned his attention to the Claimant's claim with regard to the 6 airplane tickets amounting to USD 30,000 and the compensation for the alleged damages caused by the untrue information communicated by the Respondent to several newspapers.

(…)

12. Due to the lack of proof of the Claimant's allegation, and in particular in application of the above-mentioned principle, the Single Judge decided that the Claimant's request with regard to the airplane tickets and compensation for the alleged suffered damaged cannot be upheld.

14. Taking into account all of the above and based on all documentation at his disposal, the Single Judge came to the conclusion that the Respondent has to pay the total amount of USD 148,000 to the Claimant".

For the above-mentioned reasons the Single Judge decided the following:

"1. The claim lodged by the Claimant, Carlos Ferreira Cabral, is partially accepted.

2. The Respondent, Zamalek Sporting, has to pay to the Claimant the amount of USD 148,000 within 30 days as from the date of notification of this decision.

3. Any further claims lodged by the Claimant are rejected.

4. If the aforementioned sum is not paid within the aforementioned deadline an interest rate of 5% per year will apply and the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.

(…)".

On 11 May 2006, the Appellant – via its legal representative – filed a Statement of Appeal with the Court of Arbitration for Sport (CAS). It challenged the above-mentioned Decision.

The Appellant's submissions may be summarised as follows:

- The decision to stop paying the Respondent is only the consequence of the Respondent's initial contractual breaches.
- The Respondent failed to attend several training sessions and this had a serious impact on the players and the results of the team. The Respondent's behaviour was a breach of the Contract and consequently, the Appellant took the decision to suspend his salary payments as from March 2005 in order to urge the Respondent to comply with his contractual obligation. The Appellant draws the Panel's attention to the fact that the Respondent's infringement was officially reported and notified by police reports at the end of April 2005. Finally, since the Respondent did not make any effort to respect his obligations, the Appellant notified him a termination notice on 28 April 2005.

Concerning the Contract in dispute in the present proceedings, the Respondent draws the Panel's attention to the fact that it does not stipulate that it should be divided into two periods. Article 2 is clear: *"Contract Duration. Effective from 20/11/2004 and expired 30/06/2006"*. The division of the contractual period was only relevant for the difference of monthly salary from one period to the other. Therefore, he should have been awarded the total amount of the two signing-on fee, or US$ 150,000 (as established by the handwritten mention of US$ 150,000 added on both parties' version of the contract), whereas he only received US$ 50,000.

To the allegation made by the Appellant that the Respondent did not support in the appropriate manner the team while it was the season of the Egyptian Champions League and that the Club lost many matches, the Respondent answers that he has never been absent from the training sessions and finally submits that the accusations of the Club are entirely false and are mere fabrications whose purpose was to harm him.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Art. 60. of the FIFA Statutes and Art. R47 of the Code of Sport-related arbitration (the "Code").

2. It follows that the CAS has jurisdiction to decide on the present dispute.

3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

Applicable law

4. Art. 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 para. 2 of the FIFA Statutes 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.

6. The rules and regulations of FIFA shall therefore apply primarily and Swiss law shall apply subsidiarily.

Admissibility of the appeal

7. The appeal was filed within the deadline provided by Art. 60 of the FIFA Statutes and stated in the Decision, that is within 10 days after notification of such decision.

8. It follows that the appeal is admissible.

Merits

9. The main issues to be resolved by the Panel are:

   a) Did the Respondent comply with his obligations under the Contract as professional coach? Did he miss some training sessions? Did he breach the Contract?

b) Was the Appellant entitled to stop paying the Respondent?

c) Are any of the parties entitled to compensation for the early termination of the contract?

10. The Panel considers that there is no evidence in the record that the Respondent did not comply with his obligations under the contract as professional coach and that he missed some training sessions or otherwise breached the contract. The record only contains unilateral declarations of the Appellant and a notification prepared by the Club and notified by the Bailiff of the Civil Court of Cairo to the Respondent on 28 April 2005. The notification refers to two Police reports established on the basis of complaints made by the Appellant but these police reports are not in the record. Since the breaches are disputed by the Respondent who contends that he has attended all the training sessions until the last one and there is no evidence of the contrary, the Arbitral Panel considers that the Appellant's position is without merit.

11. Given the answer to the preceding issue, the Arbitral Panel answers this question in the negative. The terms of the contract had to be complied with and since the Appellant is considered to have performed his obligations until the end of the first period, the Appellant had to pay his salary until the end of May 2005. The contract was indeed terminated as of 31 May 2005.

12. Given the answer to the two preceding issues, the Arbitral Panel considers that the Respondent was indeed entitled to receive his salaries for March, April and May 2005 amounting to US$ 48,000 + the balance of the signature payment, i.e., US$ 100,000, in accordance with article 7 (1) of the Contract, that is a total of US$ 148,000 plus interest – as decided by the Single Judge of the Players' Status Committee of FIFA – at the rate of 5% per year in case of non payment within 30 days of the notification of his decision.

13. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Panel dismisses the Appeal and confirms the FIFA Single Judge's decision of 15 February 2006 in all its provisions.

The Court of Arbitration for Sport rules:

1. The appeal filed by Zamalek Sporting Club on 11 May 2006 is dismissed.

2. The decision issued on 15 February 2006 by the FIFA Players' Status Committee is confirmed.

(…).