Arbitration CAS 2006/A/1129 Juraj Czinege v. Elazigspor Kulubu, award of 22 December 2006

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football
Termination of the employment contract
Obligation of the club to perform its contractual obligation
Obligation to pay the contractual interests

1. **When a valid agreement has been concluded between a player and a football club, the club is obliged to pay the contractual amount owed unless circumstances are presumed to exist that could give a just cause for finding that the player is in material breach of the agreement or that the agreement has lapsed in any other manner. If the club has not discharged the onus of showing that this is the case, the club is still under an obligation to perform the agreement according to its terms.**

2. **Contractual default interest, in the event of late payment of the specified amounts, charged at the rate of 0.01% per day as from the due date until the date of payment, are valid as long as no reasoned objections have been raised against such interest.**

Mr Juraj Czinege (hereinafter the "Appellant") is a football player from Slovakia.

Elazigspor Kulubu (hereinafter the "Respondent") is a football club, whose registered office is situated in Elazig, Turkey. It is a member of the Turkish Football Association, which is affiliated with the Fédération Internationale de Football Association (hereinafter the "FIFA").

On 27 January 2004 the Appellant and the Respondent entered into a contract of employment, known as the "Protocol Agreement", which would remain in force until 31 May 2005 according to the terms of the contract.

On 13 May 2005 the Respondent lodged a formal complaint against the Appellant with FIFA.

According to this complaint, the Appellant left the Respondent on 5 May 2005 without permission or just cause, the result of which was, in the Respondent's opinion, that the Respondent lost an important match against the Turkish club, Bursaspor, on 8 May 2005.

The Respondent presented FIFA with two notarised statements, from which it appeared that the Appellant did not participate in the Respondent's training sessions on 5 and 10 May 2005.

Against the background of these circumstances, the Respondent filed a claim against the Appellant for compensation to the amount of EUR 50,000.

In connection with this claim against the Appellant, the Respondent informed FIFA that the Appellant had left the Respondent on a previous occasion, on 27 December 2004, similarly without permission or just cause, and as a result of which, the Respondent had filed a similar complaint with FIFA on 5 February 2005.

This complaint was subsequently withdrawn however; as the parties signed a voluntary settlement agreement on 25 February 2005, based on a payment plan pertaining to the Respondent's payments to the Appellant, on which the parties had agreed on 23 February 2005 (hereinafter the "Agreement").

The following appears from clause 1 of the Agreement, "the Player" being synonymous with the Appellant:

> *"The Player will obtain the following instalments from Elazigspor:*
>
> *2.3.2005 = 7,500.- EURO*
>
> *30.3.2005 = 10,000.- EURO*
>
> *30.4.2005 = 10,000.- EURO*
>
> *30.5.2005 = 10,000.- EURO".*

Furthermore, clause 3 specifies as follows:

> *"In case of delay in payments, interest on late payments will be charged, amounting to 0.01% for each day of delay".*

On 29 August 2005 the Appellant lodged his defence to the claim with FIFA, including a counter-claim against the Respondent in which he claimed that the Respondent had allegedly failed to perform its payment obligation to the Appellant under the Agreement as only the first of the agreed instalments, according to the information available, had been paid.

In support of this, the Appellant presented a copy of a letter dated 11 June 2005 from the Respondent to the Appellant, in which the Respondent expressed its amazement over the Appellant's accusations that it had forged receipts for the payment of the instalments in dispute.

The Respondent presented FIFA with a copy of the allegedly forged receipts, which were supposed to convey the impression that the Respondent had paid EUR 19,000 and EUR 1,000.

The Appellant stated that the amount of EUR 1,000 was shown in Turkish Lira and not, as agreed, in Euros. During the proceedings it was mentioned that one Turkish Lira corresponds to EUR 0.61.

The Appellant further stated that he had left the Respondent after having discussed such a step with the Respondent and as a result of an agreement between the parties that non-payment of the outstanding amounts was a just cause for terminating the agreement.

Moreover, the Appellant stated that the Respondent did not want the Appellant to return to the club.

As far as the claim for compensation is concerned, the Appellant rejected its justification on the grounds that the Respondent's success or failure in terms of sports results was of no legal relevance to the dispute at hand.

Against the background of these circumstances, the Appellant claimed payment by the Respondent of EUR 30,000, corresponding to the last three, allegedly unpaid, instalments under the Agreement, interest accrued at 0.1% per day and reimbursement of expenses paid for legal assistance.

In reply to this claim, the Respondent confirmed to FIFA that payment of the second instalment in the amount of EUR 10,000 had in fact been delayed and, therefore, had been paid together with the third instalment on 13 April 2005, a total amount of EUR 19,000, and with EUR 1,000 on 22 April 2005.

The Respondent maintained in that connection that the Appellant had received these amounts and also denied the accusations of forgery in relation to the invoices presented to FIFA. For that purpose the Respondent presented FIFA with the original invoices.

The Appellant denied that this was the case and directed FIFA's attention to the fact that the invoice pertaining to the alleged payment of EUR 1,000 did in fact specify an amount of Turkish Lira 1,000.

Under these conditions, the Respondent subsequently announced its willingness to pay the difference established, an amount equalling around EUR 390.

On 23 March 2006 the dispute was heard by FIFA's Dispute Resolution Chamber (hereinafter the "DRC"), which decided, after having established its jurisdiction in the relevant case, that the dispute be settled according to the FIFA Regulations for the Status and Transfer of Players (edition 2001).

The DRC subsequently established that the first instalment under the Agreement had indisputably been paid to the Appellant.

Against the background of an analysis of the receipts presented, the DRC then concluded that it had to be taken into account that the Respondent had paid EUR 19,000 and Turkish Lira 1,000 to the Appellant.

Furthermore, the DRC concluded that both parties were partly responsible for the aggravation of the contractual situation between April and May 2005, which were incidentally the last two months of the term of the Protocol Agreement.

As far as the Respondent is concerned, the DRC emphasised that the Appellant had not received payment according to the plan set out in the Agreement. Moreover, as a consequence of inadequate evidence that the Appellant was responsible for the club losing the football match against Bursaspor, the DRC rejected the allegation that the Respondent had a just cause for withholding the fourth instalment, which remained unpaid.

As far as the Appellant is concerned, the DRC found that he had not produced evidence to prove that he had agreed with the Respondent that he could leave the club as a consequence of the alleged non-payment of the second and third instalments. The DRC also found – because the Appellant had accepted the payment plan set out in the Agreement and because the second instalment was only 13 days late – that the Appellant was not entitled to leave the Respondent prematurely, i.e. prior to the expiry of the contract term, and the DRC consequently decided that the Appellant breached the contract of employment without just cause on 5 May 2005.

Given these circumstances, the DRC stated as follows:

> *"Taking into account all of the above, the Chamber concluded that both parties bear an equal part of the responsibility for the early termination of their contractual relationship and, in particular, did not fulfil their contractual obligations equally.*
>
> *As a result, the Dispute Resolution Chamber decided to fully reject the claim lodged by the Claimant as well as the counter-claim lodged by the Respondent",*
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> after which the DRC rendered the following decision:
>
> > *"1. The claim submitted by the Claimant/Counter-Respondent, club Elazigspor Kulübü, is fully rejected.*
> >
> > *2. The counter-claim submitted by the Respondent/Counter-Claimant, Mr. Juraj Czinege, is fully rejected.*
> >
> > *3. According to art. 60 par. 1 of the FIFA Statues, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives)".*

On 23 March 2006 FIFA's Dispute Resolution Chamber rendered a decision (hereinafter the "Decision") in the dispute between the Appellant and the Respondent.

On 12 July 2006 the Appellant forwarded a "Request for hearing and consideration" to CAS.

On 21 July 2006 the Appellant filed a statement of appeal in compliance with Article R48 of the Code.

On 11 August 2006 the CAS received a letter from the Respondent, dated 10 August 2006 and addressed to the "General Secretary of Turkey Futball Federation", in which the Respondent presents the specific circumstances of the dispute to the national football federation of Turkey. Enclosed with this letter was a copy of the notarised statements previously presented to FIFA together with an English translation as well as a copy of the receipts concerning EUR 19,000 and Turkish Lira 1,000, likewise presented to FIFA, but which had not been translated into English.

The Appellant has filed a claim with the CAS for the annulment of paragraph 2 of the Decision, which reads as follows:

"The counter-claim submitted by the Respondent/Counter-Claimant, Mr. Juraj Zcinege, is fully rejected".

As a result of this rejection, the Appellant has re-lodged his claim for payment by the Respondent of EUR 30,000 with interest at the rate of 0.01% per day, from the due date until the date of payment, as well as payment by the Respondent of the fee paid to the CAS of CHF 500 and reimbursement of his expenses for legal assistance to a total of 15% of the amount claimed above.

Considering the Respondent's failure to prepare a formal answer during the preparatory stages of the proceedings, the Respondent's answer can solely be deduced from the Respondent's letter dated 10 August 2006.

From this letter it appears that the Appellant's claim should be rejected on the basis of payment of EUR 20,000 and because the Appellant, by leaving the club, has lost his entitlement to receive the fourth and last instalment in the amount of EUR 10,000.

Hence, no claim for the payment of compensation has been lodged in connection with the submission of the appeal to the CAS, as was the case during the review of the dispute by FIFA, and this aspect will therefore not be addressed during the arbitration proceedings.

LAW

Admissibility and jurisdiction

1 Under Article 60 of the FIFA Statutes, and as communicated to the parties in FIFA's Decision, any appeal against a decision passed by FIFA must be filed with the CAS within 21 days of receipt of notification of the decision, which means in the present case that a statement of appeal must have been filed on or before 24 July 2006.

2 On 12 July 2006 the Appellant submitted a request for hearing and consideration, followed on 21 July 2006 by the Appellant's statement of appeal, which the Appellant subsequently confirmed to constitute the Appellant's appeal brief, as well.

3 Given these circumstances, the Sole Arbitrator concludes that the appeal is admissible and that the material received from the Appellant meets the conditions set out in the Code.

4 The CAS has only received one letter from the Respondent, dated 10 August 2006, and addressed to the Turkish football federation.

5 In the circumstances of the present case, the Sole Arbitrator has decided to conduct the proceedings and render an award on the basis of the written submissions..

6 The jurisdiction of CAS, which is not disputed, derives from Articles 59 and 60 of the FIFA Statutes and Article R47 of the Code.

7 The scope of the Sole Arbitrator's jurisdiction is defined in Article R57 of the Code, which provides that *"The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*.

Applicable law

8 Article R58 of the Code provides as follows:

"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".

9. It does not appear from the material submitted to the CAS or from the parties' supplementary submissions that the parties have chosen the applicable law.

10. Therefore, the dispute will be decided on the basis of FIFA's rules and according to the law of Switzerland subsidiarily.

Justification of claim

11. In connection with a previous dispute between the parties, the parties entered into an agreement in February 2006, which entitled the Appellant to receive a total amount of EUR 37,500 according to the following payment plan:

"2.3.2005 = 7,500.- EURO
30.3.2005 = 10,000.- EURO
30.4.2005 = 10,000.- EURO
30.5.2005 = 10,000.- EURO"

12. The parties agree that the Appellant has received the first instalment in the amount of EUR 7,500 in compliance with this payment plan.

13. The parties further agree that the fourth and last instalment in the amount of EUR 10,000 has not been paid.

14. As far as the second and third instalments are concerned, an aggregate amount of EUR 20,000, the parties disagree as to whether or not this amount has been paid by the Respondent to the Appellant.

15. The dispute underlying this appeal therefore springs from a valid agreement concluded between the parties for payment of a total amount of EUR 37,500.

16. Against the background of this agreement, the Respondent is thus obliged to pay the amount owing unless circumstances are presumed to exist that could give a just cause for finding that the Appellant is in material breach of the Agreement or that the Agreement has lapsed in any other manner.

17. According to the information available to the CAS, the Sole Arbitrator does not find that the Respondent has discharged the onus of showing that this is the case.

18. The Sole Arbitrator finds in this connection that the notarised statements presented provide inadequate proof for the discharge of this onus.

19. The Sole Arbitrator thus finds that the Respondent is still under an obligation to perform the agreement according to its terms and is therefore obliged to pay to the Appellant the fourth and last instalment in the amount of EUR 10,000 as this amount has indisputably not been paid earlier.

20. As far as the second and third instalments are concerned under the Agreement, an aggregate amount of EUR 20,000, the Appellant contends that these instalments have never been received, whereas the Respondent contends that payment has been effected in that the Respondent paid EUR 19,000 and Turkish Lira 1,000, respectively, and subsequently the difference up to EUR 20,000.

21. Hence, there is no dispute as to whether the Appellant is entitled to receive this amount, and the decisive question before the Sole Arbitrator is therefore whether or not the Appellant must already be deemed to have received this amount.

22. As evidence of the alleged payment of these instalments, the Respondent has presented the two receipts previously presented to FIFA, although these receipts have not been translated into English.

23. The Appellant has informed the CAS that it contests the authenticity of these receipts and has in that connection presented copies of the same receipts previously received from the Respondent, which have been provided with only two signatures, while the receipts presented by the Respondent bear three signatures.

24. In relation to this discrepancy, the Appellant contends that the receipts in question, for that reason alone, can be of no evidential value as a subsequent signature does not serve the purpose

of a simultaneous signature, i.e. as proof that the person signing the document has been present and observed the payment concerned.

25. Furthermore, the Appellant contends that amounts in Euros have never before been paid in cash between the parties as payments in Euros from the Respondent to the Appellant have always been effected by way of inter-bank transfer.

26. According to the Appellant, it is therefore only the small amounts in Turkish Lira that have been paid in cash between the parties.

27. In connection with the arbitration proceedings, as mentioned above, the parties are responsible for ensuring that documents on which they wish to rely are presented in translated form to facilitate the Panel's review of the material in question.

28. The receipts provided by the Respondent were not presented to the CAS in English, which is the language of the arbitration proceedings.

29. Nor has the Respondent, in connection with the presentation of witness statements or in any other manner, substantiated to the CAS the authenticity of the receipts presented or the alleged payments.

30. The Sole Arbitrator has therefore not been in a position to ascribe any evidential value to the invoices presented during the review of this appeal.

31. Against the background of the information available to the CAS, the Sole Arbitrator finds that there is inadequate evidence to prove that payment of the second and third instalments under the Agreement has been effected.

32. The Sole Arbitrator therefore finds that the Respondent, in view of the agreement concluded, is obliged to pay, together with the fourth instalment, the second and third instalments in the amount of EUR 20,000, with the effect that the Respondent's total payment obligation to the Appellant comprises an aggregate amount of EUR 30,000.

33. In view of the fact that the parties to the Agreement have agreed that default interest, in the event of late payment of the specified amounts, will be charged at the rate of 0.01% per day as from the due date until the date of payment, and in view of the fact that no reasoned objections have been raised against such interest, the Sole Arbitrator further decides that:

- the second instalment of EUR 10,000 will carry interest at the rate of 0.01% per day from 30 March 2005 until the date of payment;
- the third instalment of EUR 10,000 will carry interest at the rate of 0,01% per day from 30 April 2005 until the date of payment;
- the fourth instalment of EUR 10,000 will carry interest at the rate of 0,01% per day from 30 May 2005 until the date of the payment.

The Court of Arbitration for Sport pronounces:

1. The appeal filed by Mr Juraj Czinege is admissible.

2. Paragraph 2 of the Dispute Resolution Chamber's decision of 23 March 2006:

   "The counter-claim submitted by the Respondent/Counter-Claimant, Mr. Juraj Zcinege, is fully rejected"

   is annulled.

3. Elazigspor Kulubu shall pay an amount of EUR 30,000 (thirty thousand), which corresponds to three instalements, to Mr Juraj Czinege within 30 days as from the date of the notification of this award. This amount shall carry interest at the rate of 0.01% per day as from the due date until the date of payment, namely:

   - EUR 10,000 plus interest at a rate of 0,01% per day from 30 March 2005,
   - EUR 10,000 plus interest at a rate of 0,01% per day from 30 April 2005,
   - EUR 10,000 plus interest at a rate of 0,01% per day from 30 May 2005.

(…).