Arbitration CAS 2007/A/1366 Slezsky FC Opava v. Rusmin Dedic, award of 29 April 2008

Panel: Mr Lars Halgreen (Denmark), Sole Arbitrator

Football
Validity of an employment contract
Burden of proof
Binding effect of the contract

1. **When the validity of an employment contract is disputed, it is the player who bears the burden to prove with a reasonable degree of certainty that a valid and legally binding contract has been entered into by the club, i.e. that the agreement has been signed by the required number (in accordance with the by-laws) of authorised persons of the club.**

2. **A professional football player ought to know that a contract is only binding when signed by authorised persons representing the club; the stamp of the club, although bearing its name and official address, is no legal substitution for such an authorisation.**

Slezsky FC Opava ("the Appellant" or the "Club") is a football club with its registered office in Opava, the Czech Republic. It is a member of the Czech Football Association which is affiliated with Fédération Internationale de Football Association (FIFA).

Rusmin Dedic ("the Respondent" or the "Player"), residing in Velenje in Slovenia, is a Slovenian professional football player.

This case concerns the binding effect of an employment contract allegedly signed by the parties on 25 February 2003 and the economic consequences as a result of the Respondent's termination of the contract.

On 25 February 2003 the parties allegedly signed an employment contract valid from the date of signature until 30 June 2006. The contract was signed personally by the Respondent, whereas the signature on behalf of the Appellant was unknown and unidentified. However, the contract bore the stamp of "SFC Opava, Lipova 2, 74601 Opava", which is the registered address of the Appellant. The contract was drawn up in English and Russian.

Simultaneously the parties signed an appendix No. 1 to the above employment contract in which the various contractual benefits and bonuses of the Respondent were stipulated. The relevant parts of the appendix 1 read as follows:

> *"A. He will obtain payment which equals to the following amounts:*

1. From the 01.03.2003 to the 30.06.2006 – USD 30,000 that is: USD 10,000 at the signing of the contract and USD 20,000 in 4 months in equal parts (5,000 per month).

2. 2003/2004 – USD 60,000 paid in 12 months in equal parts (5,000 per month).

3. 2004/2005 – USD 60,000 paid in 12 months in equal parts (5,000 per month).

4. 2005/2006 – USD 60,000 paid in 12 months in equal parts (5,000 per months).

A. At participation in not less than three official matches with the 1st team of his country the monthly payment will increase by USD 1,000.

B. All bonuses will be paid according to the "Regulations on the conditions and procedure of remuneration" approved by the club's authorities.

C. It will be rented an apartment for the player and his family.

D. It will be paid once a year to airplane tickets on the route Czech republic – Slovenia".

The appendix was drawn up in English and Russian and signed in the same way and by the same parties as the employment contract.

On 1 March 2003 the parties signed a second appendix according to which the Ukrainian football club Vorskla Poltava ("Vorskla") was to hire the Respondent in the period between 1 March 2003 and 30 June 2003.

A third appendix was allegedly signed between the parties according to the information from the Respondent. This third appendix expanded the loan period until 31 December 2003. A copy of this loan agreement has not been provided by neither of the parties nor FIFA.

As regards the registration of the Respondent, the Czech Football Association informed FIFA that the Respondent had never been registered for the Appellant before leaving to play in the Ukrainian club, Vorskla.

The Football Federation of Ukraine on the other hand informed FIFA that the Respondent was loaned by the company "REAN Limited, Opava", which was listed as "founder of Slezsky" to Vorskla from 16 January to 30 December 2003. A copy of the relevant loan agreement was provided by the Football Federation of Ukraine to FIFA.

The Football Federation of Ukraine had requested and received the International Transfer Certificate (ITC) of the player from the Football Association of Slovenia.

According to the information provided by the Respondent he had only received an amount of USD 10,000 as a sign-on fee at the time when the contract was signed on 25 February 2003 and after that 8 monthly salaries till November 2003 each in the amount of USD 5,000.

To document these payments, the Respondent provided bank receipts according to which he was paid 7 times from 16 June to 1 December 2003. These amounts varied between USD 3,050 and USD 5,000 and all came from the company "Rean S.R.O." domiciled in Opava. The bank receipts did not specify nor referred to the reason for payment.

With respect to the payment of the initial signing-on fee of USD 10,000, the Respondent explained that the amount was paid to him by a company called "US Corporation SA" which was domiciled in Fribourg, Switzerland, and whose majority owner was Mr. Alexej Borovikov, who was allegedly a member of the presidency board of the Appellant. The connection between the Appellant and Rean S.R.O., which company had paid the monthly salaries into the Respondent's bank account was, according to the Respondent, that Rean S.R.O. was partially owned by Mr. Petr Psotka, who was president of the Board of Directors of the Appellant. According to the Respondent, Mr. Alexej Borovikov was also a partial owner of Vorskla.

The Respondent claimed that when the loan agreement with Vorskla expired at the end of December 2003, he returned to the Appellant in the beginning of 2004 where he participated in all activities as a player.

Upon request of the Czech Football Association the Respondent's ITC was issued to the Czech Football Association on 30 January 2004.

The Appellant on the other hand has acknowledged that in the fall of 2003 the Respondent underwent some tests with the club. However, the Appellant lost interest in the Respondent after having received a letter dated 30 January 2004 from Ukraine together with the Respondent's ITC.

This letter from the Football Federation of Ukraine stated that the Respondent was disqualified by the Controlled Disciplinary Committee of Football Federation of Ukraine till 1 May 2004 due to use of drugs, and that such disciplinary sanction should be implemented in accordance with Article 9, § 2, of the FIFA Regulations for the Status and Transfer of Players (Edition 2001) (the "FIFA Regulations 2001").

The Respondent received his last monthly salary of USD 5,000 in November 2003. Hereafter he claims not to have received any payment under the contract neither from Rean S.R.O., US Corporation SA nor the Appellant.

Due to the Appellant's alleged non-compliance with the contract, the Respondent unilaterally terminated the contract on 31 May 2004.

The Respondent claimed for the outstanding salaries according to his employment contract from November 2003 until May 2004 in the total net amount of USD 35,000. Furthermore, he claimed for the payment of all salaries, which he was contractually entitled to receive until the ordinary expiry of his contract (30 June 2006) in the total net amount of USD 125,000 excluding interest. He also claimed for reimbursement of his legal costs in the amount of USD 2,000.

On 10 July 2004, the Respondent submitted his claim against the Appellant to FIFA.

The Respondent explained that he had tried without success to submit his claim to the arbitration committee of the Czech Football Association. No decision was, however, taken by the association in

the matter, since the Respondent had not been registered with the Czech Football Association before 30 January 2004.

In September 2004 FIFA authorized the Football Association of Slovenia to provisionally register the Respondent for NSD NK Olimpija in order to avoid jeopardizing the Respondent's future career.

The Respondent signed an employment contract valid from 31 August 2004 to the end of the season 2005/2006 with NSD NK Olimpija. The contract stipulated a monthly salary of EUR 2,005 and referred to the club's internal regulations with regard to bonuses. From 1 February to 30 June 2005 the Respondent was under contract with the Austrian club FC Kärnten, which contract stipulated EUR 1,000 as a monthly salary and several performance related bonuses. In continuation hereof he was registered as an amateur with the Slovenian club NK Rudar Velenje. The Respondent never specified the amount he had earned with NSD NK Olimpija and FC Kärnten, but only submitted copies of the relevant employment contracts.

On 19 August 2004 the Appellant replied to the Respondent's claim and principally maintained that the Respondent had submitted his claim to the arbitration committee of the Czech Football Association, which had entirely rejected his claim.

Secondly, the Appellant argued that the Respondent had never been registered with the Appellant at the Czech Football Association.

Moreover, the Appellant maintained that it was not the club mentioned as "Slezsky" in the introduction of the contract. The contract was void due to the fact that only one person allegedly on behalf of the club instead two had signed the contract.

The Appellant rejected any knowledge of the employment contract of 25 February 2003 and stated that the use of the club's stamp was a forgery.

On 12 January 2007 FIFA's Dispute Resolution Chamber (FIFA DRC) passed a decision stating as follows in relevant parts ("the Decision"):

> *"1. The claim of the Slovenian player Rusmin Dedic is partially accepted.*
>
> *2. The Czech club Slezsky FC Opava has to pay the amount of UDS 35,000 to the player Rusmin Dedic.*
>
> *3. The amount due to the player Rusmin Dedic has to be paid by the club Slezsky FC Opava within the next 30 days as from the date of notification of this decision.*
>
> *4. If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.*
>
> *5. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as from the first day of expiry of the aforementioned deadline.*
>
> *6. The player Rusmin Dedic is directed to inform the club Slezsky FC Opava immediately of the account Number to which the remittance is to be paid and to notify the Dispute Resolution Chamber of every payment received".*

The Decision also contained the DRC's reason for the judgment.

On 20 August 2007 the Appellant filed an appeal to the Court of Arbitration for Sport (CAS). The statement of appeal contained a short statement of the facts and legal arguments accompanied by supporting documents. It challenged the Decision, requesting the following:

> *"A. The decision of the DRC is annulled.*
>
> *B. The claim of Rusmin Dedic fully rejected.*
>
> *C. The Respondent shall pay all costs and expenses relation to the arbitration proceedings".*

Furthermore, the Appellant requested a stay of execution of the Decision due to the fact that the Appellant was a financially stable joint-stock company and that *"a decision on stay of execution would not jeopardize the potential claim of the Respondent under the Decision of the DRC".*

On 5 October 2007 the Respondent filed an answer with the following motions for ruling against the Appellant:

> *"1) For the sum of USD 138,788 netto without taxes for the rest of the contract, payable to the account of the legal representative.*
>
> *2) For interest thereon at the legal rate from mentioned dates.*
>
> *3) For reasonable attorneys fees and costs incurred herein in the amount of EUR 3,000".*

On 26 October 2007 the Deputy President of the CAS Appeal's Arbitration Division dismissed the Appellant's application for a stay of the execution of the Decision.

A hearing was held on 6 December 2007 at the CAS premises in Lausanne.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed by either party in this case, derives from Art. 59 ff. of the FIFA statutes and Art. R47 of the Code. It follows that CAS has jurisdiction to decide on the present dispute.

Applicable Law

2. 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 challenge in 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".

3. The Appellant has claimed that the contract (cf. Art. 1.2 of the contract) represents a special form of contract of employment and is to be regulated by the Czech legislation in force. The Respondent has not commented on the issue of applicable law, but has solely referred to the Decision in his answer of 5 October 2007.

4. Therefore, in the present matter the Parties have not agreed on the application of any particular law, therefore the rules and regulations of FIFA shall apply primarily, and Swiss law shall apply subsidiarily.

Admissibility

5. The appeal was filed by the Appellant within the time limit provided by the FIFA Statute and mentioned in the Decision. It complied with all other requirements of Art. R48 of the Code.

6. It follows that the present appeal is admissible, which has not been disputed by the Respondent.

Merits

7. The main issues to be resolved by the Sole arbitrator are the following:

   1) Did the parties conclude a valid employment contract on 25 February 2003?

   2) If not, has the Appellant in a legally binding manner afterwards ratified the agreement?

   3) If question 1) or 2) can be answered in favor of the Respondent, was the Respondent entitled to terminate the contract, and will the Respondent be entitled to compensation for breach of contract?

1) Did the parties conclude a valid employment contract on 25 February 2003?

8. When considering the validity of the employment contract in question, the Sole arbitrator has made a careful evaluation of the facts and arguments brought forward by the parties and the facts and arguments on which the FIFA DRC based its decision.

9. The circumstances surrounding this employment contract are in the view of the Sole arbitrator somewhat dubious and unusual. The employment contract appears from the outset to be closely

linked to the subsequent transfer agreement with the Ukrainian football club Vorskla, according to which the Respondent should offer his services as a professional football player already from 1 March 2003.

10. The immediate transfer of the player to Vorskla only a few days after the signing of the employment contract, has had the immediate effect that Vorskla seems to have had the primary interest in obtaining the services of the Respondent as a professional football player. The Respondent was even not registered with the Czech Football Association before leaving to play in Vorskla, and the Football Federation of Ukraine consequently obtained the ITC of the Respondent from the Football Association of Slovenia, where the Respondent played before.

11. In the Sole arbitrator's opinion, this sequence of events demonstrates that the Appellant did not have anything to do with the Respondent before he left for Ukraine. However, the Sole arbitrator acknowledges that, even though these circumstances surrounding the signing are unusual, they do not remove the Appellant from its legal obligations, provided the employment contract is to be considered valid and legally binding for the Appellant.

12. In its Decision FIFA's DRC put significant emphasis on the fact that the submitted employment contract contained all *essentialia negotii* of a fixed term employment contract such as for example the parties to the employment contract, the starting and ending date of the contractual employment relationship and the salary of the employee in return for him rendered his services to the employer. Although the Sole arbitrator agrees with the reasoning of the FIFA DRC in its analysis of what constitutes a valid fixed term employment contract, the Sole arbitrator disagrees with the FIFA DRC's conclusions with respect to the legal consequence hereof for the Appellant in the present dispute.

13. Although the contract in question may contain all *essentialia negotii* of a fixed term employment contract, the relevant question to be answered in this context is whether the contract has *de lege* been bindingly entered into by authorized person(s) on behalf of the Appellant?

14. It is an undisputed fact that the signature on the contract allegedly on behalf of the Appellant cannot be identified; secondly, it is an undisputed fact that the contract only bears the signature of one person, and there is no information available whatsoever about the function or status of that signatory.

15. The heading of the contract refers to the name "FC Slezsky", which is not consistent with the correct name of the Appellant, i.e. Slezsky FC Opava. However, on the signature page is the stamp of "SFC Opava", which also bears the registered official address of the Appellant.

16. The presence of an official stamp on a document is a strong indication that the document has been accepted by the legal entity to which the stamp belongs. However, a stamp is not the same as a legally binding signature by the authorized person or persons of that legal entity.

17. Based on the evidence provided by the Appellant during these proceedings, the Sole arbitrator is of the opinion that the employment contract has not been signed by the necessary two

members of the Board of Directors on behalf of the Appellant in accordance with the by-laws of the club. In fact, only one signature is present on the contract, and it is not established with any reasonable certainty to whom the unidentified signature might belong.

18. At the hearing, the Respondent and Mr. Pavlovic explained that they had met at the Zagreb airport to sign the contract in the presence of Mr. Psotka and Jiri Berousek representing the Appellant. According to the Commercial Register Mr. Petr Psotka was at the time chairman of the Board of the club. The Appellant's legal representative, Mr. Jiri Knava has upon receipt of the written transcript from the oral hearing protested against the witness statement and claimed that Mr. Psotka and Mr. Berousek had never met with the Respondent and Mr. Pavlovic in Zagreb airport at the time in question.

19. In the Sole arbitrator's opinion it is the Respondent, who must lift the burden of proof that a valid and legally binding contract has been entered into by the Appellant on 25 February 2003. The Sole arbitrator notes that the witness statements by Mr. Pavlovic and the Respondent have not been brought forward during the proceedings before FIFA's DRC, nor have they been mentioned in the Respondent's brief of 5 October 2007. Given the importance of this new information and the obvious interest of the Respondent to have brought forward this information earlier, the Sole arbitrator feels inclined not to put emphasis on the statement of the Respondent and Mr. Pavlovic at this stage, but solely base its decision on the written documents in the case.

20. Therefore, it is the Sole arbitrator's opinion that the Respondent has not been able to prove with a reasonable degree of certainty that the agreement has been signed in a legally binding manner by authorized persons of the Appellant based on the evidence procured in this case.

21. However, given the usual circumstances surrounding the identity of the signatory on behalf of the Appellant, the Sole arbitrator feels that it is necessary to discuss whether the burden of proof nevertheless should be reversed towards the Appellant in the present case.

22. In its evaluation hereof, the Sole arbitrator has taken the following circumstances into consideration:

    a) there appears to be no consistency between the name of the club used in the heading of the contract compared with the stamp on the signature page,

    b) the signature on behalf of the Appellant remains unknown and unidentified and no other indications as to the status and function of the signatory is to be found in the contract,

    c) the stamp of "SFC Opava a.s." is not by itself sufficient to establish that the contract has been signed by a legally authorized person of the Appellant,

    d) the Respondent as a professional football player could have taken very simple precautions by checking the identity of the signatory on behalf of the club.

23. Although the presence of the stamp bearing the name and official address of the Appellant would make it reasonable to believe that the document was signed by an authorized person from the club, the Sole arbitrator, however, believes that the burden of proof should not be

reversed in this case, because the Respondent is not deemed to have been in good faith, as he ought to have known that a contract is only binding, when it has been signed by an authorized person representing the club, and that the stamp of the club is no legal substitution for such an authorization. Once again the Sole arbitrator has chosen not to take the witness statements of Mr. Pavlovic and the Appellant into consideration for the reasons expressed above in point 19. The Sole arbitrator must therefore reach the conclusion that the burden of proof should not be reversed towards the Appellant under the present circumstances.

2) If not, has the Appellant in a legally binding manner afterwards ratified the agreement?

24. Based on the evidence there is nothing to suggest that the Appellant has been directly involved with any of the financial transactions between the Respondent and Vorskla whilst the Respondent played in the Ukraine. It is undisputed that the signing-on fee of EUR 10,000 was paid to the Respondent by a company called US Corporation SA, which was domiciled in Switzerland. The monthly salaries paid into the Respondent's bank account were paid by a company called Rean S.R.O., which had its seat in Opava in the Czech Republic, but the connection between the Appellant and Rean S.R.O. remains quite uncertain.

25. Allegedly, these two companies were owned respectively of Mr. Alexej Borovikov and Mr. Petr Psotka; however, none of the payments whilst the Respondent played in the Ukraine have been paid by the Appellant, and there has been no evidence to support the notion that the payments were made on behalf of the Appellant or in accordance with a contract entered into by the Appellant.

26. As of December 2003 the Respondent has not received any payments under the contract either from US Corporation SA, Rean S.R.O., Vorskla nor the Appellant. After the Respondent returned to the Czech Republic to practice and train with the Appellant, he has not received any remuneration up until May 2004 where he unilaterally terminated the employment contract.

27. Based on an overall picture of the events following the signing of the contract, the Sole arbitrator believes that none of these events can be linked to the Appellant in any legally binding manner. All salary payments have been made by companies, who are not identical with the Appellant. It may be that Mr. Psotka and Mr. Borovikov somehow are linked to the Appellant either through an indirect ownership or through representation on the Board of Directors, but the Sole arbitrator must conclude that these facts have not been satisfactorily substantiated by the Respondent in a way as to establish that the employment contract may have been ratified afterwards by the Appellant.

28. The Sole arbitrator neither believes that other circumstances could speak in favor of the Appellant having ratified the contract. The Appellant has never had the Respondent registered as a player with the Czech Football Federation, and according to the information provided by the Appellant, the Appellant lost interest in signing a contract with the Respondent, once the club learned that the Respondent had been sanctioned for a doping violation in the Ukraine.

29. It is again the Respondent, who has to lift the burden of proof that the contract had been ratified by the Appellant after the signature. The Respondent has not in the opinion of the Sole arbitrator been able to do so, and there is nothing to suggest that the burden of proof should be reversed under the present circumstances.

30. Therefore, it is the conclusion of the Sole arbitrator that no legally binding employment contract has been entered into through the actions afterwards of the Appellant.

31. Due to the conclusion that no binding contract exists between the parties, there is no reason for the Sole arbitrator to enter into a discussion about any possible compensation for breach of contract by the Appellant.

32. This means that the Decision of 12 January 2007 is reversed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Slezsky FC Opava is upheld.

2. The appealed decision of 12 January 2007 rendered by the FIFA Dispute Resolution Chamber is set aside and the claim of Rusmin Dedic against Slezsky Opava is fully rejected.

3. (…).

4. (…).

5. Any and all other prayers for relief are dismissed.