



**Arbitration CAS 2008/A/1456 Yaw Hammond v. Polis Di-Raja Malaysia FC, award of 30 September 2008**

Panel: Mr José Juan Pintó (Spain), Sole Arbitrator

*Football*

*Termination of an employment contract*

*Dies a quo for the calculation of the time limit to file an appeal before the CAS*

*Principle of certainty of law*

- 1. The notification of a decision served to the representative of a party shall be understood as served to the represented party. If a national association acts as the representative of a player in the proceedings before the FIFA bodies, the *dies a quo* for the calculation of the time limit to file an appeal before the CAS against the FIFA decision is the day that this latter decision was notified to the national association.**
- 2. It would be contrary to the general principle of certainty of law to admit that the *dies a quo* for the calculation of the time limit can be left to the sole and exclusive hands of the representative of a party in the proceedings, who could decide to notify a decision to the represented party at any time of its choice and with it, determine the starting point for the calculation of the time limit for the appeal as well.**

Mr. Yaw Hammond (the “Player” or the “Appellant”) is a professional football player of Ghanaian nationality.

Polis Di-Raja Malaysia FC (the “Club” or the “Respondent”) is a member club of the Royal Malaysian Police Football Association, affiliated to the Football Association of Malaysia, which at its turn is affiliated to Fédération Internationale de Football Association (FIFA).

On 14<sup>th</sup> January 2004 the Player signed an employment contract with the Royal Malaysian Police Football Association to play for its member club Polis Di-Raja Malaysia FC until 31<sup>st</sup> December 2004.

On 7<sup>th</sup> July 2004, that is to say while his contract with the Club was still in effect, the Player got injured during a league match, which required him to have an operation on his leg.

In September 2004 the Player, *inter alia*, signed a document named “Termination of Contract” in which it was mentioned that his employment contract is to be terminated with effect 15<sup>th</sup> August 2004 with the mutual consent of the Royal Malaysian Police Football Association, granting the Player from

the mentioned association 3 months (of salary) compensation as final settlement and committing the Player not to claim to the referred association thereafter.

On 11<sup>th</sup> September 2004 the Player signed another document in similar terms in which he insisted again in the fact that (i) his employment contract with the Club was terminated with effect 15<sup>th</sup> August 2004, (ii) a compensation of 3 months of salary for the termination of the contract was agreed between the parties and (iii) he should not take any other claim.

On 17<sup>th</sup> March 2005 the Player, represented by the Ghana Football Association, lodged a claim against the Club asking for the payment of the benefits under article 2 (c) of his employment contract, which were detailed by the Player in its written submission to FIFA dated 12<sup>th</sup> May 2005 as follows:

*The exact amounts claimed by the player from the Club PDRM FC of Malaysia are:*

- i. Personal Accident Policy RM 120,000.00 US\$ 30,000.00.*
- ii. Extension to permanent disablement policy of RM 25,000.00 US\$ 7,000.00.*
- iii. On Provident Fund and Social Security US\$ 50,000.00.*

On 20<sup>th</sup> July 2005 the Club filed before FIFA two documents dated September 2004 related to the termination of the contract with the Player.

On 28<sup>th</sup> September 2007 FIFA rejected the claim lodged by the Player on the basis of the following considerations as to the substance:

- 6. In continuation, and entering into the substance of the matter, the members of the Chamber acknowledged the documentation contained in the file and took note that the Claimant signed on 14 January 2004 an employment contract providing for that the Claimant would play for the Respondent.*
- 7. First of all, the members of the Chamber considered that in view of the circumstances of the matter at stake, they will have to focus their considerations on the question concerning the way in which the employment contract finished and if any outstanding amounts are still due to the Claimant by the Respondent.*
- 8. In this respect, the members of the Chamber duly analysed the document dated September 2004 and denominated "TERMINATION OF CONTRACT" sent by the Respondent to the Dispute Resolution Chamber during the investigation of the present case.*
- 9. As regards the relevant contractual relationship and considering the above mentioned document, the members of the Chamber noted that the Claimant did not deny having signed the said "TERMINATION OF CONTRACT" dated September 2004 providing for the annulment of the employment contract signed in January 2004. Equally, the Chamber remarked that the validity of this document is not contested by the Claimant. Then, the Chamber duly took note of the contents of this relevant document denominated "TERMINATION OF CONTRACT", which mentions the following: "I HAMMON YAW, Passport No: H0129999 (Fed. Rep. Of Ghana) and as a Professional Player with The Police FA, would like to have my contract terminated with effect from 15<sup>th</sup> August 2004 with the mutual consent from The Football Association of the Royal Malaysia Police. I also agree to accept the 3 months compensation as final settlement from The Police FA, I also agree that I shall not make any claim from The Police FA after this".*

10. *As a consequence, of the above consideration, the Dispute Resolution Chamber came to the conclusion that the relevant contractual relationship between the Claimant and the Respondent terminated undoubtedly on 15 August 2004 by mutual consent and that by means of this document which was duly signed by the Claimant, the latter confirmed this contractual termination and the final settlement of this matter in which the obligations of the Respondent are concerned. The members of the Chamber agreed that this document must be considered as a waiver duly signed by the Claimant. That is, by signing the said declaration, which refers explicitly to the employment contract the parties entered into, the Claimant waived all direct rights that he may have towards the Respondent on the basis of the relevant employment contract in future.*
11. *Therefore, the Dispute Resolution Chamber considered that the player Yaw Hammond is not entitled to claim to the Respondent any financial aspect of the employment contract.*
12. *As a result of all of the above, the Dispute Resolution Chamber decided to fully reject the Claimant's claim.*

FIFA notified the above mentioned decision of 28<sup>th</sup> September 2007 to the Ghana Football Association, representative of the Player in the proceedings, on 18<sup>th</sup> December 2007, and to the Club via the Football Association of Malaysia on 17<sup>th</sup> December 2007.

On 10<sup>th</sup> January 2008 the Player appealed the referred decision of FIFA (the “Appealed Decision”) before the CAS by means of a Statement of Appeal, requesting that the Appealed Decision is reversed and the claims made by him before FIFA are granted.

On 22<sup>nd</sup> January 2008 FIFA informed the CAS of its waiver to intervene in the present proceedings. However it also pointed out that the Appellant had not respected the deadline for the submission of the appeal according to article 61.1 of the FIFA Statutes, as the Appealed Decision was notified on 18<sup>th</sup> December 2007 and the Statement of Appeal had been filed on 10<sup>th</sup> January 2008. A fax delivery notification of the Appealed Decision to the Ghana Football Association on 18<sup>th</sup> December 2007 was provided to CAS as an attachment to the aforementioned FIFA communication of 22<sup>nd</sup> January 2008.

On 19<sup>th</sup> February 2008 the Appellant informed the CAS of the fact that (i) the Statement of Appeal already filed by him in the present proceedings should be regarded as an Appeal Brief as well, and (ii) the Appealed Decision was given to him by the Ghana Football Association on 23<sup>rd</sup> December 2007. Regarding this last point, the Appellant expressed his disagreement with the alleged lack of respect of the deadline for the filing of the appeal by means of written submissions dated 14<sup>th</sup> August 2008.

After the corresponding consultation from CAS to the parties made on 27<sup>th</sup> May 2008, both of them agreed on the case being decided on the basis of the written submissions. In view of this and according to article R57 of the CAS Code, it was decided not to hold a hearing in the present case and to decide on the basis of such written submissions.

## LAW

### CAS Jurisdiction

1. The jurisdiction of CAS is acknowledged by articles 60 and 61 of the FIFA Statutes and article R47 of the CAS Code.
2. In addition none of the parties has challenged CAS's jurisdiction in the present case.
3. Consequently, CAS is competent to deal with this matter.

### Applicable law

4. Article R58 of the CAS Code states 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. In addition article 60.2 FIFA Statutes reads as follows:  
*"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*
6. According to the above mentioned provisions, the sole arbitrator considers that the present dispute shall be decided according to the regulations of FIFA and additionally, Swiss law.

### About the dispute submitted to CAS by the parties

7. According to the written submissions filed by the parties in the present proceedings it appears that:
  - The Player requests that the pleadings made by it in the procedure before FIFA (and referred to in the above mentioned paragraph 8 of the present award) are granted.
  - The Club sought to request that the Appeal Decision is confirmed. However the sole arbitrator shall point out that this position was expressed in the Club's written submissions of 26<sup>th</sup> August 2008, which were filed late and are therefore not admitted in the present file.
8. Before entering into the merits of the present dispute, the sole arbitrator has noticed that some controversy regarding the admissibility of the appeal has arisen in the case, as FIFA informed of an eventual non respect of the term for filing the appeal and the Player holds that he indeed respected such term and that the appeal has been filed in due time.

9. Therefore the arbitrator shall primarily deal with and resolve this controversy regarding the admissibility or not of the appeal, on the basis that it was possibly filed after the expiry of the applicable time limit.
10. In this respect the sole arbitrator considers that it shall firstly check the wording of article 61.1 of the FIFA Statutes (version 2007) regarding the appeals of FIFA decisions to CAS, which reads as follows:  
*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.*
11. It is therefore clear that the statement of appeal against a FIFA decision shall be sent to CAS within 21 days of receipt of the notification of the decision.
12. Having this in mind the sole arbitrator shall now examine in which date the notification of the Appealed Decision was made to the Appellant and afterwards, in which date the statement of appeal was filed by the Appellant before CAS.
13. According to the fax delivery notifications produced by FIFA to CAS with its communication dated 22<sup>nd</sup> January 2008, the sole arbitrator notes that the Appealed Decision was notified on 18<sup>th</sup> December 2007 to the Ghana Football Association, the legal representative of the Player in the proceedings as per express appointment of the Player in virtue of power of attorney dated 3<sup>rd</sup> May 2005 produced in the FIFA file, having been submitted by the Player.
14. In this respect the sole arbitrator cannot share the Appellant’s opinion by virtue of which the Appealed Decision was notified to the Player not on 18<sup>th</sup> December 2007 but on 23<sup>rd</sup> December 2007 because it was the date in which the Ghana Football Association notified to him the Appeal Decision received from FIFA 5 days before, and that therefore the *dies a quo* for the calculation of the 21 days term shall be settled on 23<sup>rd</sup> December 2007. And this for several reasons:
  - 1) It appears from the FIFA file received by CAS on 2<sup>nd</sup> September 2008 that the representative of the Player in the entire FIFA proceedings was the Ghana Football Association for an express decision of the Player, who granted power of attorney in its favour to represent him before FIFA in these specific proceedings. In use of the mentioned power of attorney, the Ghana Football Association has been the one sending and signing on behalf of the Player all the written submissions filed in interest of the Player before FIFA. The sole arbitrator shall highlight in this respect among others the written submissions filed on 22<sup>nd</sup> August 2005, in which one can read that are signed by the General Secretary of the Ghana Football Association “on behalf of Yaw Hammond”. Therefore the notifications served to the representative shall be understood as served to the represented party.
  - 2) The referred association being the representative of the Player, during the whole proceeding FIFA notified to it any and all letters, claims, submissions or documents of

any kind, the Player not having complained about it at any time. The fact of the Player complaining now about it would imply *venire contra factum proprium*, which is inadmissible.

- 3) Admitting the Player's position would imply that the *dies a quo* for the calculation of the term could be left to the sole and exclusive hands of the representatives of the parties in the proceedings, who could decide to notify a decision to the represented party at any time of its choice and with it, determine the starting point for the calculation of the term for the appeal at its choice as well. And this is obviously contrary to the general principle of certainty of law.
- 4) There is no provision in the FIFA Regulations which oblige to notify the decisions directly to the parties and not to their representatives in the dispute.

Apart from the above mentioned, it shall be also highlighted that when the Ghana Football Association notified the Appealed Decision to the Player (23<sup>rd</sup> December 2007) not only the term to file the appeal before CAS had not expired, but also the remaining period for filing the appeal was still considerable (more than two weeks), so the Player was, despite having been informed by the Ghana Football Association of the Appeal Decision with some delay, in a position to appeal the Appealed Decision in time.

It is therefore clear that the *dies a quo* for the calculation of the 21 days term shall be fixed on 18<sup>th</sup> December 2007. The relevant notification date is the one in which the body issuing the decision (FIFA) notifies the Appealed Decision to the Player's representative in the proceedings, and not other, being irrelevant to such purpose when the representative notifies the decision to the represented party.

15. Given that the Appealed Decision was notified to the legitimate Player's representative on 18<sup>th</sup> December 2007, the term for the Player to file the appeal expired on 8<sup>th</sup> January 2008 (21 days of notification of the decision in question).
16. As the Statement of Appeal was filed by the Appellant on 10<sup>th</sup> January 2008 (2 days after the expiration of the term), to the sole arbitrator considers that the appeal shall not be admitted as it was filed after the expiry of the applicable time limit, and therefore the sole arbitrator cannot enter into the merits of the case.

#### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr. Yaw Hammond on 10 January 2008 against the Decision of FIFA dated 28 September 2007 concerning a dispute between Mr. Hammond and Polis Di-Raja Malaysia FC is not admissible.

(...).