Arbitration CAS 2010/A/2059 FK Dac 1904 a. s. v. Dritan Stafsulaj, award of 15 November 2010

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football
Termination of the employment contract without just cause by the club
Conclusion of a contract of employment according to Swiss law
Validity of a contract concluded in accordance with the FIFA regulations in case of non conformity with national regulations
Just cause

1. **If the club's behaviour is in performance of the contract and the club is paying the salaries to the athlete whereas the athlete is playing matches for the club, it is considered that there is a valid agreement according to the provisions of Swiss law.**

2. **The fact that a contract does not fit with the requirements of the national directives for registration of professional football players is not decisive in a case where the parties did conclude a valid employment contract according to FIFA regulations and Swiss law. The non-respect of the provisions of the national directives shall not result in the non-validity of the contract, especially if the contract that was concluded between the parties fulfills the economical requirements of the FIFA Regulations on the Status and Transfer of Players. Moreover, it would be unjust to admit the non-validity of the contract in a case where the contract has been prepared by the club and not by the player who ignored the requirements of the national regulations.**

3. **There is no termination of the contract of employment with just cause in case of termination due to an absence from 2 training sessions and one friendly/preparatory match with the B team.**

FK DAC 1904 A.S. (the "Appellant") is a football club with its registered office in Slovakia, which is affiliated to the Slovak Football Association. The Slovak Football Association is affiliated with Fédération Internationale de Football Association ("FIFA").

Dritan Stafsulaj (the "Player" or the "Respondent") is a Finish professional football player, born on 16 July 1981.

The elements set out below are a short summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the written submissions of the parties, the exhibits produced before and at the hearing held on 16 August 2010 at the CAS headquarters in Lausanne.

On 15 January 2009, the Respondent alleges to have signed and returned to the Appellant an employment contract ("the Contract") with the Appellant, which employment contract the Respondent alleges to have received signed by the Appellant on the same date.

The Appellant contests ever having received the Contract signed by the Respondent.

According to the terms of the Contract dated 15 January 2009, the Contract covered a period of time from 15 January 2009 to 31 May 2010, with a monthly salary for the Respondent of EUR 4'000.-- net until 30 June 2009 and of EUR 4'500.-- net from 1 July 2009 until the expiry of the Contract.

The salaries were to be paid on the 15th of every month, beginning on 15 February 2009.

Moreover, the Contract provided for the payment to the Respondent of two flight tickets Oulu-Vienna / Bratislava-Oulu and EUR 1'000.-- per season for family flights and accommodation with a two bedroom furnished flat.

Immediately after allegedly signing and returning the Contract, the Respondent joined the Appellant's training camp in Dubai and afterwards followed the Appellant's team back to Slovakia.

The Respondent played a few matches for the Appellant's A-team but was substituted in every game he played for that team.

By letter dated 18 March 2009, the Appellant demoted the Respondent from A team to B team.

By letter dated 26 March 2009, the Appellant informed a number of players including the Respondent of the decision of the management of the Appellant to cut 50 % of the monthly pay for February 2009 for several of the Appellant's players, including the Respondent. The reasons invoked read as follows: *"weak sporting performances in the championship matches of Corgon-league (Z. Moravce, Artmedia, Zilina) / unprofessional behaviour during the training process (disputes and confrontations with fellow players) / unappropriate* (sic) *attitude towards training duties"*.

By letter to the Respondent dated 1 April 2009, the Appellant imposed a penalty on the Respondent of EUR 4'000.-- "for missing trainings for reserve team at 23th and 24th of march and one friendly match at 25th march (...)".

By letter to the Respondent dated 14 April 2009, the Appellant informed the Respondent it has no interest to cooperate with him anymore. The Respondent was requested to leave his flat which was rented by the Appellant before 20 April 2009.The reasons invoked by the club were the coaches' discontent regarding the Player's preparation and sport-efficiency and that the Player did not rectify the situation described in the club's letter dated 1 April 2009.

The Respondent only received one payment of EUR 4,000.00, in February 2009.

On 9 June 2009, the Respondent lodged a claim against the Appellant for allegedly outstanding salaries and requested the FIFA Dispute Resolution Chamber to immediately confirm his right to conclude an employment contract with another club of his choice.

The claim included:

- the salary of March 2009 (EUR 4,000.-- plus interests);
- the salary of April 2009 (EUR 4,000.-- plus interests);
- EUR 57,500.-- as compensation for breach of contract (consisting of the monthly salaries for the period between 1 May 2009 to 31 July 2010);
- EUR 732.28.-- corresponding to flight tickets for his family;
- Legal expenses amounting to EUR 3'850.--;
- Sanctions to be imposed on the club.

On 27 August 2009, the FIFA Dispute Resolution Chamber decided that the Appellant had to pay the Respondent the total amount of EUR 38,732, consisting of EUR 8,000 for outstanding salaries, plus 5 % interest from their respective due dates, EUR 30,000 as compensation for breach of contract and EUR 732 for flight tickets for the Player's family. The further requests lodged by the Respondent were rejected.

On 2 February 2010, the Appellant filed its Statement of Appeal, together with 5 exhibits, and requested a stay of execution of the challenged decision.

On 11 February 2010, the Appellant filed its Appeal Brief, together with 2 exhibits.

On 17 February 2010, the Appellant withdrew its request for a stay.

On 2 March 2010, pursuant to article R64.2 of the Code of Sports-related Arbitration (the "Code"), the Respondent requested the Appellant to pay the Respondent's share of the advance of costs and the deadline for the filing of his answer to be fixed only after the payment.

On 24 March 2010, FIFA renounced its right to request to intervene in the present arbitration.

On 14 April 2010, the CAS advised the parties that Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, had been appointed as Sole Arbitrator to decide the matter.

On 30 April 2010, the Respondent requested an extension of the time limit until 21 May 2010 to file his answer. On 6 May 2010, the CAS granted the Respondent an extension of time to file his answer.

On 14 May 2010, the Respondent filed his answer, together with 8 exhibits.

On 9 June 2010, the Appellant requested a hearing to be held and for the right to respond to the Respondent's answer, considering notably the change in representation of the Appellant which occurred in the middle of the proceedings.

On 16 June 2010, the CAS informed the parties that there would be no additional round of submissions and that a hearing would be scheduled and that the Appellant would then have a full opportunity to respond to the Respondent's answer.

On 17 June 2010, the Respondent stated that a hearing would be too expensive for him to attend considering his economic situation and demanded if it was necessary to hold it. On 24 June 2010, the CAS advised the parties that the hearing could be held by telephone or video conference.

On 2 July 2010, the CAS informed the parties that the hearing would take place on 16 August 2010.

On 28 July 2010, the Appellant transmitted its list of witnesses to be heard at the hearing.

On 2 August 2010, the Respondent transmitted his list of witnesses to be heard at the hearing.

On 13 August 2010, the Respondent applied to submit new exhibits (7 letters between FIFA and the Slovak Football Association). The Respondent relied on article R56 of the Code in support of its request.

A hearing was held on 16 August 2010 at the CAS headquarters in Lausanne.

At the end of the hearing the parties confirmed that they had no objections to raise regarding their right to be heard and had been treated equally and fairly in the arbitration proceedings. The parties also confirmed that they had no objection with regard to the composition of the Panel.

LAW

CAS Jurisdiction

1. According to article 63 para. 1 of the FIFA Statutes, the Appellant has the right of appeal to the CAS.

2. The jurisdiction of the CAS in the present case is not contested by the Respondent and has been confirmed by the signature of the order of procedure by the parties to the present arbitration.

3. It follows that the CAS has jurisdiction to decide upon the appeal that relates to the FIFA Dispute Resolution Chamber decision dated 27 August 2009 on the claim presented by Mr Dritan Stafsulaj against FK DAC 1904 a.s.

4. Under Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law. The Sole Arbitrator therefore held a hearing *de novo* evaluating all facts and legal issues involved in the dispute.

Applicable law and Admissibility

5. Article 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 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".

6. Article 62 para. 2 of the FIFA Statutes provides that *"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law"*. The applicability of the FIFA regulations and, additionally, of Swiss law has not been disputed by any party.

7. Hence, the relevant questions at stake have to be assessed according to the various regulations of FIFA and, additionally, according to substantive Swiss law.

8. Article 63 par. 1 of the FIFA Statutes provides that the statement of appeal must be sent to the CAS within 21 days of receipt of notification of the DRC Decision.

9. The DRC Decision was notified to the parties on 12 January 2010. The Statement of Appeal was filed on 2 February 2010. It follows that the appeal was filed in due time and is admissible.

Main issues

10. The main issues to be resolved by the Sole Arbitrator are the following:

- Did the parties ever conclude an employment contract?

In case of an affirmative answer:

- What consequences on such a contract's validity does the "Directive for Registration of Professional Football Contracts" of the Slovak Football Association, in particular article 3, have?
- Was the employment contract between the parties terminated with just cause on 14 April 2009 by the Appellant?

Discussion on the merits

11. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made by the parties, the Sole Arbitrator decides as follows on the main issues:

A. Did the parties ever conclude an employment contract

12. Article 320 of the Swiss "Code des Obligations" reads as follows:

"1. Sauf disposition contraire de la loi, le contrat individuel de travail n'est soumis à aucune forme spéciale.

2. Il est réputé conclu lorsque l'employeur accepte pour un temps donné l'exécution d'un travail qui, d'après les circonstances, ne doit être effectué que contre un salaire.

(…)".

Translation:

"1. Unless otherwise provided for by law, an individual employment contract requires no special form in order to be valid.

2. An employment agreement is deemed to have been concluded if someone accepts a person's work for a certain period of time and under the given circumstances, such work would normally be done for remuneration".

13. In view of all documents and evidence provided by both parties, it is concluded that the Contract dated 15 January 2009 was sent by the Appellant on 14 January 2009. According to Mr Barnabas Antal's declaration, this document was signed by the secretary of the Appellant and not by himself.

14. However, with reference to the fact that there were negotiations between the Respondent's agent and Mr Barnabas Antal concerning the transfer of the Respondent to the Appellant the Respondent was entitled to consider the document received on 14 January 2009 – even if dated 15 January 2009 – as a formal offer and to accept it.

15. The fact that the document was not signed by two authorized representatives of the Appellant shall not be considered as decisive. That being said, the Sole Arbitrator notes that the signature on the document dated 15 January 2009 appears similar to Mr Barnabas Antal's signature on the letter of the Appellant dated 2 February 2010.

16. The Respondent alleges that he immediately signed the Contract and returned it to the Appellant. This is expressly challenged by the Appellant.

17. According to article 8 of the Swiss "Code Civil", it is for the Respondent to prove that he signed and returned the Contract to the Appellant.

18. The Sole Arbitrator notes that the Respondent was not able to prove by any written documentation that the Contract was returned to the Appellant.

19. This was only stated by the Respondent's agent who allegedly returned the signed Contract to the Appellant.

20. However, the Sole Arbitrator notes that the Appellant fulfilled - at least in the beginning - the obligations mentioned in the Contract, in particular the following:

- The first salary (month of February) was paid to the Respondent;
- The Respondent moved to Slovakia with his family and lived in a flat rented by the Appellant
- The Respondent played two official league matches in the main league.

21. Moreover, there are other factors that indicated that the parties did in fact conclude the Contract, in particular the followings:

- The Respondent joined the A-team and participated in different tests in Dubai;
- The Respondent was sanctioned by letters dated 18 March 2009 and 1 April 2009;
- The "cooperation" between the parties was terminated by letter dated 14 April 2009.

22. In light of the foregoing, the Sole Arbitrator is satisfied that the parties did actually conclude the Contract. Indeed, the club's behavior after 15 January 2009 was in performance of the Contract and contradicts the submission that the Contract was not concluded.

23. Thus, the Sole Arbitrator considers that there was a valid agreement according to the provisions of Swiss law, in particular article 320 para. 2.

24. Moreover, according to the provisions in the Contract the Respondent was employed as a professional and not only as an amateur (article 2 of the FIFA Regulations on the status and transfer of players (Edition 2008)).

B. What consequences on such a contract's validity does the "Directive for Registration of Professional Football Contracts" of the Slovak Football Association, in particular article 3, have?

25. The Appellant invokes *inter alia* that the Contract presented by the Respondent does not fit with the requirements of the "Directive for Registration of Professional Football Contracts" of the Slovak Football Association (SFA), in particular article 3 para. c of the over-mentioned directive.

26. The Sole Arbitrator considers it is true that the Contract does not fit with the requirements of the above-mentioned "Directive for Registration of Professional Football Contracts".

27. However, the Sole Arbitrator deems that this issue is irrelevant in the present matter in light of the fact that the parties did conclude a valid employment contract according to FIFA regulations and Swiss law.

28. The non-respect of the provisions of the Slovak "Directive for Registration of Professional Football Contract" shall not result in the non-validity of the Contract.

29. The Sole Arbitrator adds that the Contract concluded between the parties fulfills the economical requirements of article 2 of the FIFA Regulations on the status and transfer of players (Edition 2008).

30. Moreover, it would be unjust to admit the non-validity of the Contract – at least in this case - for these reasons as the Contract has been prepared by the club and not by the player who ignored these requirements.

C. Was the employment contract between the parties terminated with just cause on 14 April 2009 by the Appellant?

31. The Appellant terminated the Contract on 14 April 2010 alleging 1) sporting reasons and 2) that the Respondent breached the Contract (absence from the training on 23 and 24 March 2009 and on the preparatory football match dated 25 March 2009; the Player did not respect the coaches' instructions).

32. First of all, the Sole Arbitrator considers that in light of the circumstances outlined above, sporting reasons cannot be invoked by the club to terminate the Contract with immediate effect.

33. Concerning the non-respect of the Contract, it is uncontested by the Respondent that he was absent from 2 training sessions and one friendly/preparatory match with B team. The Sole Arbitrator considers that by this behavior, the Respondent unjustifiably breached the provision of the Contract.

34. In the light of the foregoing, the Respondent received a penalty from the Appellant on 1 April 2009.

35. There is no evidence provided by the Appellant that the Respondent missed other matches and/or training sessions after 1 April 2009.

36. Moreover, the Respondent did not receive, after 1 April 2009, a formal warning from the Respondent.

37. Consequently, the Sole Arbitrator deems that the Appellant was not justified to terminate with immediate effect the Contract concluded with the Respondent.

38. Thus, the Respondent did not breach the Contract by leaving the Appellant after he received the Appellant's letter dated 14 April 2009 and the FIFA Dispute Resolution Chamber was entitled to allow the Respondent the outstanding remuneration and compensation for breach of contract in conformity with article 17 para. 1 of the FIFA Regulations on the status and transfer of players (Edition 2008).

39. The Sole Arbitrator specifies that there is no reason to consider that the Respondent accepted the termination of the agreement by asking for the payment of his return flight ticket. Indeed, the Respondent had no reason to remain in Slovakia after he received the letter dated 14 April 2009. Moreover, the Respondent was requested by this letter to leave the flat rented by the club.

Conclusion

40. In light of the foregoing, the Sole Arbitrator concludes that the appeal filed on 2 February 2010 by the Appellant is dismissed and the FIFA Dispute Resolution Chamber decision is confirmed.

The Court of Arbitration for Sport rules:

1. The appeal filed on 2 February 2010 by FK DAC 1904 a. s. against the decision issued on 27 August 2009 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision issued on 27 August 2009 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

5. All other claims are dismissed.