



Arbitration CAS 2004/A/640 New Panionios Football Club v. Erol Bulut, award of 7 March 2005

Panel: Mr Jean-Philippe Rochat (Switzerland), President; Mr Pantelis Dedes (Greece); Mr Goetz Eilers (Germany)

Football

Contract of employment

Validity of a written agreement before the transfer period according to Greek law

Unilateral extension of a labour contract through disciplinary suspension

Validity of an injunction to remain with the employer

- 1. According to the “Greek Regulations of the Relations between Professional Football Players and Football Corporations”, any written agreement between a football corporation and a football player on the rendering of services by such football player which is concluded before the transfer period is invalid even though it is a contract renewal.**
- 2. It is contrary to the rules of general labour law to allow a unilateral extension of a labour contract through disciplinary suspension of the contract. To reason otherwise would put the employee at a disadvantage. His contract could be pursued without his agreement, which is contrary to general principles of contractual labour law.**
- 3. According to the consistent CAS case law, a person should not be compelled to remain in the employment of a particular employer. An employee who breaches an employment contract by wrongful and premature withdrawal from it may be liable in damages, but not to an injunction.**

New Panionios Football Club is a club of the first Greek Division (“New Panionios”), organized under the laws of Greece having its registered offices at 1 I. Xrisostomou Street, 171 21 N. Smirni Athens, Greece.

Mr Erol Bulut (“Mr Bulut”) is a Turkish professional footballer.

On 5 November 2001 New Panionios and Mr Bulut signed an employment agreement called “Private Contract” valid from 1 December 2001 to 30 June 2002. This agreement granted New Panionios with two unilateral renewal rights, each of them being valid for one season.

Clause 2 of the foregoing agreement stated as follows:

“(..). For the extension period the player will receive the amount of 400.000 DM for the period 2002-2003 and 600.000 DM for the period 2003-2004, of the Club renewal (sic.) the player’s contract. The Club will contact with the player till 30/04/2002 and for the second year till 30/04/2003”.

This contract was not made up on the Hellenic Union of Joint-Stock Football Companies (EPAE) form and was not submitted to the latter for acknowledgement and recognition.

The employment agreement was concluded at a period of the year when transfers of football players are not allowed by the national topic regulation(s).

On 3 January 2002, i.e. during a transfer period, New Panionios and Mr Bulut entered into a second agreement complying with the formal prerequisites of EPAE.

This agreement was duly notified to EPA, which registered the agreement on 11 January 2002.

Clause 2.II stated the following:

“This contract is valid from 1-1-2002 to 30-6-2002 with 1 (it must be written both in numbers and in full) one year unilateral renewal right which must be notified by a bailiff to the football player and at the same time to the Football players union (P.S.A.P.) and to the Hellenic Union of Joint-Stock Companies (E.P.A.E.), at least five (5) days before the beginning of the transfer season, as defined by K.E.P.*

(It is obligatory that in the renewal be defined-otherwise the renewal is void –

- a. The renewal’s financial terms.*
- b. The way of renewal, e.g. whether the renewal will be continuous or interrupted per year or semester”.*

In addition, clause 8 par. 2 of the foregoing agreement said:

“Private agreements not duly notified to the E.P.A.E. which regulate in a way different than the present contract the relationships between the players and the clubs, are not valid, nor shall they be taken into account as regards the resolution of their disputes and shall be regarded as legally void and inexistent”.

**: K.E.P. = Regulation of the Relations between Professional Football Players and Joint Stock Football Companies*

On 25 April 2002 New Panionios unilaterally renewed the contract with Mr Bulut for the football season 2002/2003, that is to say from 1 July 2002 to 30 June 2003. On this basis Mr Bulut thus regularly performed duties and played football for New Panionios until 30 June 2003.

On 23 April 2003 New Panionios unilaterally used a second time its alleged right to renew the employment agreement with Mr Bulut for an additional football season, i.e. 2003/2004, and more specifically from 1 July 2003 to 30 June 2004.

On 24 April 2003, New Panionios served to Mr Bulut and to his authorized representative Mr Panagiotis Domoutzoglou an extrajudicial statement – summoning – notification stating as follows:

“According to from 5/11/2001 private agreement, as this afterwards completed and the between us signed professional contract, you have been enrolled to the dynamic of our company’s professional footballers squad.

The initial duration of our contract was expiring at 30/6/2002, with the right for one-sided renewal from our company for two (2) more years, which would be made partially every year and with the financial terms that have been agreed.

Already with our Extrajudicial Statement dated 25/4/2002, which we legally served you, your contract has been renewed for the period of 1/7/2002 until 30/6/2003.

With this Extrajudicial Statement and in continuance with the above, WE DECLARE and WE NOTIFY you, inside the agreed time limit, that the between us contract is renewed for one (1) more year and in particular for the period from 1/7/2002 until 30/6/2004, with the financial terms that have been agreed, applying the relative agreement of the private agreement dated 5/11/2002”.

Mr Bulut replied by means of an extrajudicial statement dated 13 May 2003 in which he refused the unilateral renewal of the contract as having no basis in law or contract. At the same time, Mr Bulut called on New Panionios to pay him outstanding monies.

By means of extrajudicial statement dated 16 May 2003 and served to Mr Bulut on 21 May 2003, New Panionios denied the claims of Mr Bulut.

The same day, Mr Bulut submitted an appeal to the Financial Disputes Resolution Committee of First Instance (A’ EEODEP) requesting the payment of a total amount of EUR 92,904.22.

On 21 May 2003 as a consequence of defamatory statements allegedly made by Mr Bulut, the Board of Directors of New Panionios imposed on him a disciplinary suspension of his contract for a period of 4 (four) months running from 21 May 2003 to 20 September 2003.

On 27 May 2003 Mr Bulut appealed the aforementioned decision to the Financial Disputes Resolution Committee of Second Instance (B’ EEODEP) and requested the termination of his contract dated 3 January 2002 due to the fault of New Panionios and the payment of EUR 92,904.22 still owed to him by New Panionios.

On 30 May 2003 New Panionios submitted to the A’ EEODEP a petition requesting the approval of the 4 (four) months suspension penalty against Mr Bulut as of 21 May 2003.

By decision n° 1314/2003 issued on 24 June 2003, the A’ EEODEP on the one hand dismissed the petition filed by Mr Bulut. On the other hand A’ EEODEP accepted the claim lodged by New Panionios and the implementation of the contract of Mr Bulut was suspended for a period of four months, commencing on 21 May 2003 to 20 September 2003 with an equal extension of his contract.

On 29 July 2003, on appeal, the B’ EEODEP issued a decision n° 74/2003 stating:

“The A’ EEODEP admits the appeal of the appellant football player dated 25.6.2003 in formal and substantive terms.

It strikes out the decision of the first instance dispute resolution tribunal No. 1314/2003 and having re-tried the appeals – petitions dated 21.5.2003 and 30.5.2003 on their merits, admits in part the appeal of the football

player Erol Bulut dated 21.5.2003 against the NEOS PANIONIOS Football CLUB, obliges the respondent football club to pay the appellant the total amount of € 25,897.28 plus interest in accordance with the reasoning set out above, accepts in part the petition of the football club dated 30.5.2003 against the football player Erol Bulut, suspends implementation of the contract for a period of one (1) month due to the fault of the football player, namely from 21.5.2003 until 21.6.2003 and orders the return of the relevant fees paid by the appellant in advance”.

On 31 July 2003 B' EEODEP issued a decision n° 106 suspending the validity of the contract for a period of one (1) month due to the fault of Mr Bulut as of 4 July 2003.

On 27 August 2003 the A' EEODEP issued a decision n° 1519/2003 suspending the implementation of the contract for a period of two (2) months as of 1 September 2003 to 31 October 2003 with a corresponding extension of the contract. The first instance Tribunal stated that this sanction was justified by the fact that Mr Bulut unjustifiably abandoned New Panionios on 3 July 2003 being absent from training sessions and in general from all team events.

On 17 September 2003 the A' EEODEP issued a decision n° 6/2003 suspending the implementation of the contract for a period of two (2) months commencing on 1 November 2003 and lasting until 31 December 2003 with a corresponding extension in the duration of the contract. This sanction was justified by the fact that Mr Bulut unjustifiably abandoned New Panionios on 31 July 2003 being absent from training sessions and in general from all team events.

On 12 November 2003 A' EEODEP issued a decision n° 75/2003 stating that the validity of the contract of Mr Bulut would be suspended for a period of two (2) months commencing on 1 January 2004 and lasting until 29 February 2004 with a corresponding extension in its duration.

On 23 July 2003 following a petition lodged by New Panionios on 14 July 2003 the Control Committee of the EPAE issued a decisions stating:

“The joint stock company, (P.A.E.) NEOS PANIONIOS notified the above named football player of the unilateral extension of the contract existing between the company and the football player. There was no agreement in the affected contract, however, that P.A.E. NEOS PANIONIOS can extend and renew the contract on an unilateral basis.

The control committee has rejected the unilateral declaration of P.A.E. for this reason”.

New Panionios appealed the aforementioned decision. On 15 October 2003 the B' EEODEP issued its judgment dismissing the appeal of New Panionios considering that the contract executed on 3 January 2002 entitled New Panionios to renew the contract for only one more year, that is from 1 July 2002 to 30 June 2003. The main argument was that New Panionios could not invoke any right from the contract executed on 5 November 2001 since it was entirely void and has to be considered as it was never made according to relevant Greek regulations considering notably that it was not prepared in a transfer period.

On 4 November 2003 the FIFA authorized Mr Bulut to provisionally register with the Turkish Club Bursaspor.

On 10 June 2004 the Dispute Resolution Chamber of the FIFA (the DRC) issued a decision rejecting on the one hand the claim put forward by Mr Bulut over the payment of EUR 25,897 plus interests. On the other hand, the DRC rejected the counterclaim of New Panionios asking for the payment of “EUR 400,000, corresponding to EUR 331,700, which had been paid to Mr Bulut in concept of contract payments, salaries and house rent allowance, and the remaining amount to cover the moral and financial loss incurred through the departure of the player”.

In addition, the DRC upheld the decision of the FIFA Administration dated 4 November 2003 authorizing Mr Bulut to register with the Turkish club Bursaspor.

On 23 June 2004, New Panionios filed a statement of appeal with the CAS in order to set aside the decision rendered by the DRC of 10 June 2004. In addition the Club claimed for damages in the amount of EUR 400,000.

On 6 July 2004, New Panionios filed an appeal brief. It also requested the examination of Mr Achilleas N. Beos as a witness.

On 21 July 2004, Mr Bulut filed his answer concluding that the appeal of New Panionios was to be dismissed.

A hearing was held in Lausanne on 1 December 2004.

New Panionios’ position is based on the contract signed between the club and the player dated 5 November 2001. This contract in its opinion was valid until 30 June 2002 and had two unilateral options on behalf of the club for the extension of the employment, each valid for one season. The club therefore considers that on the basis of these clauses, it was entitled to exercise its right by written notice, which it duly notified to Mr Bulut on 25 April 2002 specifically extending the contract until 30 June 2003 (first renewal). This same procedure was adopted by New Panionios on 23 April 2003 for the season which was to be concluded on 30 June 2004 (second renewal).

The club also based its position on the fact that the player had made defamatory remarks against the coach and the club in May 2003 and as a consequence the player was penalized by the Board of Directors of New Panionios with a suspension of his contract for a period of four (4) months (decision dated 27 May 2003) According to KEP, the suspension of the player’s contract (disciplinary sanction) extend his contract for an equivalent period of time which in this case is four months; due to this extension, New Panionios claims that Mr Bulut was obliged to provide his services from 21 May 2003 until 20 September 2003. New Panionios states that Mr Bulut left during that period without justification and this fact entailed for him new disciplinary sanctions among which was the obligation to provide his services for the season 2003/2004 (decisions 106/2003 of B’ EODEP and 1519/2003, 6/2003 of A’ EODEP).

The fact that the player violated his contractual obligations caused damage to the club, which were estimated at EUR 400,000 (four hundred thousand Euros). This was due to the fact that the club had to enter into new contractual relations to engage two players to replace Mr Bulut and due to the fact that New Panionios, at the time Mr Bulut left had paid him EUR 331,700 (three hundred and thirty-one thousand seven hundred Euros).

For its part Mr Bulut submitted that the claim for EUR 400,000 was unjustified, both in terms of reasons and amount. He argued that the wages that were paid to him in exchange for his services (i.e. EUR 331,700) cannot be included in the above mentioned total amount of EUR 400,000.

In the opinion of Mr Bulut, the decision rendered on 23 July 2003 by the Control Committee of EPAE and the decision No. 176/2003 of B' EEODEP, dated 15 October 2003, by which the unilateral renewal of the player's contract (notified to him on 25 April 2003) was rejected, were sufficient proof that the second renewal claimed by Panionios was invalid. The two decisions were to be considered correct and legally binding.

LAW

CAS Jurisdiction

1. Art. R27 of the Code of Sports-related arbitration (hereinafter the "Code") provides that the Code applies "whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later agreement or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies".
2. In the case at hand, the jurisdiction of CAS, which is not disputed, derives from art. 59 ff. of the FIFA Statutes, which provides as follows:
1 FIFA shall create an option for recourse to the Court of Arbitration for Sport, an independent arbitration tribunal with headquarters in Lausanne (Switzerland), to resolve any disputes between FIFA, the Confederations, Members, Leagues, clubs, Players, Officials and licensed match agents and players' agents.
2 The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regard to substance, CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs and, additionally, Swiss law.
3. Moreover, the jurisdiction of the CAS is explicitly recognized by the parties both in their respective briefs as well as in the Order of Procedure that they both signed. It is further confirmed by the unconditional appearance of the parties or their representatives at the occasion of the hearing. It follows that the CAS has jurisdiction to decide the present dispute with regard to New Panionios and Mr Bulut.
4. As to the admissibility of the appeal, the decision of the FIFA Dispute Resolution Chamber stated that "according to art. 60 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 10

days of receipt of notification of this decision [...]”. Article 60 para. 1 of the FIFA Statutes provides that:

Only CAS is empowered to deal with appeals against decisions and disciplinary sanctions of the last instance, after all previous stages of appeal available at FIFA, Confederation, Member or League level have been exhausted. The appeal shall be made to CAS within 10 days of notification of the decision.

5. By filing its request for arbitration on 24 June 2004, New Panionios acted within the deadline of 10 days as laid down in the disputed decision and as provided by art. 60 of the FIFA Statutes. The appeal, which also complies with all other requirements set forth at art. R48 of the Code, is consequently admissible.
6. 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 ruled de novo - took new evidence and established all facts and legal issues involved in the dispute.

Applicable law

7. Rule 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”.
8. In the present matter, the parties, were expressly given the opportunity by the President of the Panel to state their opinion as to the applicable law to this dispute. It was agreed that the relationship between both parties and the ensuing dispute was governed by Greek law.

Merits

9. Pursuant to Article 7 of the “Regulations on the relations between Professional football Players and Football Corporations”, issued on the basis of Article 87 of Law 2725/1999, contracts between football players and football corporations are to be signed in 6 (six) copies on an official form provided for by EPAE, then on the responsibility of the football club and be sent at the latest 5 (five) days after its signature to the EPAE. This formality is necessary for the contract to be considered valid.
10. The Regulation No 1 “Registration-Transfers of Football Players” issued on the basis of Article 88 of Law 2725/1999 Article 3 Subsection 2 provides that the registration and the transfer of professional football players (Greeks, of Greek descent or foreigners) shall take place every year during the months of January and July (i.e from 1 January to 31 January and 1 July to 31 July). Article 10 of the “Regulations of the Relations between Professional Football Players and Football Corporations” issued on the basis of Article 87 of Law 2725/1999 under provision of Article 8 Subsection 1 and Article 9 Subsection 2, of the regulations, states that any written

agreement between a football corporation and a football player on the rendering of services by such football player which is concluded before the transfer period is invalid even though it is a contract renewal.

11. In the present matter, according to Greek law, the agreement signed between the parties on 5 November 2001 was invalid due to the fact it was not signed and validated pursuant to the official legal forms. Secondly, it was not completed during a transfer period. Hence the binding valid contract between the parties for the Panel is the contract properly signed and homologated by EPAE dated 3 January 2002.
12. This contract stipulated that the player would render his services for the period from 1 January 2002 to 30 June 2002 and the football club being entitled to extend the contract for another year, i.e from 1 July 2002 to 30 June 2003. The player therefore performed until the latter date, according to the valid contractual agreement. The Panel however considers that there is no extension of the contractual relations past this date which could be imposed on the Player.
13. The first reason is the fact that the contract dated 3 January 2002 is the only valid contract according to Greek law and that such contract did not provide for any agreement entitling either party to unilaterally extend its duration.
14. The second reason is that the Panel considers that it is contrary to the rules of general labour law to allow a unilateral extension of a labour contract through disciplinary suspension of the contract. To reason otherwise would put the employee, or in this case the player, at a disadvantage. His contract could be pursued without his agreement, which is contrary to general principles of contractual labour law.
15. This is in compliance with the consistent CAS jurisprudence (CAS 2004/A/678; CAS/2003/O/482; CAS 2004/A/691), according to which

In principle, a person should not be compelled to remain in the employment of a particular employer. An employee who breaches an employment contract by wrongful and premature withdrawal from it may be liable in damages, but not to an injunction. This is the position under Swiss law (Article 337 d of the Swiss Civil Code), the Greek Civil Code: section 673, and indeed the common law (CAS 2004/A/678).

In addition, the disciplinary measures imposed on the player, which entailed extensions of his contract, are invalid anyway, for the mere fact that the authorities called to render these decisions based their findings on the erroneous and false fact that there was a valid contract between the parties after 30 June 2003.

16. Considering that there is no binding relationship between the player and the club, there are no grounds for damages which would result from the termination, if any, by the Player of such contract upon its expiration. Mr Bulut, in the Panel's opinion was justified in law to consider that there was no longer any contractual obligation binding him to be present with New Panionios after 30 June 2003. Moreover, the decisions rendered by the relevant Greek authorities in his favour could only have strengthened his belief that he was justified not to be obligated towards New Panionios after this date. In the absence of a breach of contract, or any

misconduct by him entailing damages to the club, there are no grounds to allocate damages to New Panionios.

17. It follows that the appeal is to be dismissed.

The Court of Arbitration for Sport rules:

1. The appeal of New Panionios Football Club against the decision issued on 10 June 2004 by the FIFA Dispute Resolution Chamber is dismissed. The decision of rendered by the Dispute Resolution Chamber of FIFA dated 10 June 2004 is confirmed.

(...).