

**Arbitration CAS 2005/A/940 Abel Xavier v. Hannover 96, award of 6 June 2006**

Panel: Mr Chris Georghiades (Cyprus), President; Mr Michele Bernasconi (Switzerland); Mr Raj Parker (United Kingdom)

*Football**Contract of employment between a player and a club**Compensation for sporting just cause**Right to play*

- 1. Article 24 of the FIFA Regulations provides for the termination of a player contract for a valid sporting reason (“sporting just cause”). A sporting just cause is established according to article 24 on a case by case basis pursuant to the procedure set out in article 42. Compensation is payable only if sporting just cause has been established. There is no case for a sporting just cause if a player himself chose to terminate the contractual relationship with the club and therefore to trigger the contractual provisions in this regard.**
- 2. As a matter of general principle, no player, whatever his status, has a fundamental and absolute right to be selected to play for the first team of a club.**

Mr Abel Luis Silva Costa Xavier (hereinafter “the Player” or “the Appellant”) is a Portuguese professional football player.

Hannover 96 Gmbh (hereinafter “Hannover 96” or “the Respondent”) is a German football club whose registered office is in Hannover, Germany.

On 2 February 2004, the Player and Hannover 96 concluded an employment contract (hereinafter “the Contract”) valid until 30 June 2005. A basic monthly salary of EUR 68,000 (gross) and an additional appearance and performance bonus of EUR 3,000 (gross) per point in case of playing at least 45 minutes, otherwise 50%, were stipulated in the Contract.

On the same day, the parties concluded a special agreement (hereinafter “the Special Agreement”) according to which the Player had the right to end the Contract after the last match of the season 2003/2004 on or before 31 May 2004. This termination would end the Contract as per 30 June 2004, failing which the Contract would end on 30 June 2005.

On 26 May 2004, the Respondent proposed to sign an agreement for the mutual termination of the Contract. According to such agreement, the Respondent would pay the monthly salaries due until end

of June 2004 and the Player would renounce any further claims towards the Respondent. The Appellant did not sign this agreement.

On 27 May 2004, the Player filed a complaint with the FIFA Dispute Resolution Chamber (hereinafter “the DRC”) requesting the payment by the Respondent of the salaries due for May and June 2004 together with a financial compensation amounting to six months salary.

On 1 June 2005, the FIFA Dispute Resolution Chamber rendered a decision (hereinafter “the Decision”) according to which the Player’s claim was rejected.

The Decision was notified on 29 July 2005 to the parties.

On 9 August 2005, the Player lodged a statement of appeal with the Court of Arbitration for Sport (hereinafter “CAS”) against the Decision.

On 12 September 2005, the Appellant submitted his appeal brief to the CAS Court Office asking the CAS Panel to decide as follows:

- *HANNOVER 96 has to pay the salary for the month of June 2004.*
- *HANNOVER 96 has to pay a financial compensation amounting to 6 month salary, i.e. 6 x 68.000 EUR.*
- *HANNOVER 96 has to bear entirely the arbitration costs”.*

On 5 October 2005, the Respondent filed its reply to the CAS Court Office according to which “*the claims pursued by the appellant are wholly unfounded with no basis in fact or law, so that the appeal must be dismissed, with the appellant to bear all costs*”.

By letter of 21 October 2005, the CAS Court Office informed the parties that the Panel was constituted as follows:

- President: Mr Chris Georghiadis, Attorney-at-Law in Limassol, Cyprus
- Arbitrators: Mr Michele Bernasconi, Attorney-at-Law in Zurich, Switzerland
Mr Raj Parker, Solicitor in London, England

The Panel decided to render its decision on the basis of the written submissions.

The Appellant’s arguments can be summarized as follows:

- i) according to the wording of the Special Agreement, the salary of June 2004 shall be paid in the event that the Player exercises his option to terminate the Contract. This means also that the payment of the June 2004 salary does not depend on the presence of the Player at the club during June 2004 when it can be supposed that there are no activities within the club. Furthermore, the Appellant alleged that the Respondent raised at a very late stage of the proceedings the argument that the Player should not receive the salary of June 2004;

- ii) the copy of the claim filed with FIFA on 27 May 2004 and sent to the Respondent, by which the Player informed that he terminates the Contract, is to be considered as sufficient to satisfy the formal condition of notification in written form provided for by the Special Agreement;
- iii) finally, the Appellant considers that the termination of the Contract was justified for a sporting just cause. Following this and according to article 24 of the FIFA Regulations for the Status and Transfer of Players (hereinafter “the FIFA Regulations”), the Respondent should pay a financial compensation to the Player.

The Respondent’s reply can be summarised as follows:

- i) the Appellant failed to make himself available for work beyond 22 May 2004 by leaving Hannover without authorization and without informing the Respondent of his whereabouts. Even if the season had ended, players continued to have certain contractual duties to fulfil with their club. This means that the Appellant failed to perform his Contract, with the consequence that he is not entitled to any remuneration for this period. According to the wording of the Special Agreement, the Player was granted a unilateral right of termination, which was agreed at his sole and express request. In the event that the Player was to make use of this right, his contractual obligations would remain valid until the end of June 2004. The fact that the Respondent left Hannover directly after the last match of the season 2003/2004 on 23 May 2004, unauthorized and unexcused, is not in conformance with the Special Agreement and therefore does not entitle the Player to any salary for June 2004.
- ii) the Respondent alleges that there is no sporting just cause for the termination of the Contract by the Appellant. In order to justify such a cause, it would imply that the Respondent committed a breach of contract. According to the Appellant, Hannover 96 breached the contract in that it did not use him in all games. However, it is an accepted principle that a player has no fundamental right to be selected for a team place, therefore the Player’s request for compensation based on article 24 of the FIFA Regulations is unfounded.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from articles 59ff of the FIFA Statutes and art. R47 of the Code of Sports-related Arbitration (hereinafter “the Code”). It is further confirmed by the Order of Procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Under art. R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable Law

4. Art. R58 of the Code specifies that 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 the present case, there was no agreement among the parties regarding the application of any particular law.
6. It follows that the FIFA rules and regulations and Swiss law are applicable to the present case.

Admissibility

7. The appeal was filed within the applicable deadline provided by art. 60 of the FIFA Statutes.
8. It follows that the appeal is admissible.

Merits

9. The main issue to be resolved by the Panel is whether or not the Appellant by virtue of his petition to FIFA on the 27 May 2004 made use of the provisions of the Special Agreement dated 2 February 2004 and whether the said petition caused the termination of the Contract and whether the Appellant is entitled to the salary for June 2004.

A further issue to be resolved is whether or not the Appellant was entitled to compensation pursuant to article 24 of the FIFA Regulations, i.e. 6 months salary.

A. Termination of the Contract

10. Concerning the first the Panel is of the view that the Appellant was entitled to make use of the provisions of the Special Agreement whereupon the Appellant could terminate the Contract after the last match of the football season 2003/2004.

According to the Special Agreement, if the Appellant made use of the mentioned termination clause, the Contract would end on 30 June 2004.

The Panel comes to the view that the filing of the petition with FIFA on 27 May 2004, operated as a notice of termination pursuant to the provisions of the Special Agreement as a result of which the Contract came to an end on 30 June 2004.

The Panel is therefore of the view that the Appellant, by filing the petition with FIFA on 27 May 2004, made use of the provisions of the Special Agreement and terminated his Contract with the Respondent as per 30 June 2004.

B. *Payment of the June 2004 salary*

11. Concerning the Appellant's claim for payment of the salary of June 2004 the Panel noted the following:

- (a) By triggering the provisions of the Special Agreement the Contract would come to an end on 30 June 2004.
- (b) There is no evidence that the Respondent called, asked or required the Appellant to make himself available during the month of June 2004.
- (c) By virtue of a letter dated 4 June 2004 sent by the Respondent to counsel for the Appellant, the Respondent acknowledged that the Contract would terminate on 30 June 2004, as stated by the counsel for the Appellant.

In this letter the Respondent confirmed and accepted that the Contract was terminated on the date stated above and requested written confirmation of the termination of the Contract from the Appellant. The Respondent furthermore asked the Appellant to agree that the Contract was terminated on 30 June 2004 and that the Appellant had no further demands.

Also in this letter, the Respondent stated that it would pay the Appellant the monthly salaries due until 30 June 2004.

In this letter, the Respondent did not ask the Player to return to Hannover and/or to make himself available to the Respondent.

- (d) On 26 May 2004 the Respondent sought to sign an agreement for the mutual termination of the Contract offering payment of salaries for May and June 2004 and renouncing all other claims. This agreement was never signed.

On the basis of the above the Panel is of the view that there is no evidence suggesting that the Respondent required the Appellant to make himself available at any time during June 2004. The Panel is therefore of the view that the Respondent should have paid the Appellant the salary for the month of June 2004.

12. In this respect the FIFA Decision whereby the Appellant was found not to be entitled to a salary for the month of June 2004 shall be reversed and the Appellant is entitled to the payment in full of the June 2004 salary.

C. Compensation under Article 24 of the FIFA Regulations

13. Article 24 of the FIFA Regulations provides for the termination of a player contract for a valid sporting reason (“sporting just cause”).

A sporting just cause is established according to article 24 on a case by case basis pursuant to the procedure set out in article 42.

Compensation is payable only if sporting just cause has been established.

Reviewing the documents at hand, the facts and circumstances as a whole the Panel is of the view that there is no case for a sporting just cause as the Appellant himself chose to terminate the contractual relationship with the Respondent and therefore to trigger the provisions of the Special Agreement. It is indeed accepted that there was no contractual obligation by the Respondent and/or its agents or officers (i.e. manager/coach) to select the Appellant for the first team. Indeed, as a matter of general principle, the Panel emphasises that no player, whatever his status, has a fundamental and absolute right to be selected to play first team football for a club. Therefore, it was up to the discretion of the Respondent and its agents/officers to decide whether or not the Appellant was to be selected for the first team matches.

14. In view of the above, and since the Appellant was not able to prove that the requirements for a termination for sporting just cause have been fulfilled, the Panel is of the opinion that the Appellant failed to prove a right to compensation for a sporting just cause pursuant to article 24 of the FIFA Regulations.
15. All other claims of the parties shall be dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Abel Luis Silva Costa Xavier against the Decision issued on 1 June 2005 by the FIFA Dispute Resolution Chamber is partially admitted.
2. The Decision of the FIFA Dispute Resolution Chamber is amended as follows: Hannover 96 is ordered to pay to Mr Abel Luis Silva Costa Xavier the monthly salary of June 2004 within 30 days of the notification of the present award.
3. (...).
4. (...).
5. All other claims are dismissed.