



Arbitration CAS 2007/A/1205 S. v. Litex Lovech, award of 6 June 2007

Panel: Mr Hendrik Willem Kesler (Netherlands), President; Mr Peter Leaver (United Kingdom); Mr François Carrard (Switzerland)

Football

Contract of employment between a coach and a club

Breach of contract without just cause

Termination of the contract by the club due to the refusal of the coach to negotiate a position subordinate to the position of head coach

Compensation for damages due to the early termination of the contract

- 1. The lack of a work permit is not a valid reason to terminate the contract of a coach, neither can the coach be expected under the terms of his employment contract to accept a position that is subordinate to the agreed position of Head Coach. In the absence of any conduct on the part of the coach that could be said to have contributed to the termination of the contract, there is a clear breach of contract without just cause by the club.**
- 2. Neither the FIFA's Statutes nor its Regulations, nor the laws of Switzerland, provide grounds for mitigating the residual value of the contract where there is a clear breach of contract without cause.**

The Appellant is S. (the "Appellant"), a professional football coach.

The Respondent is PFC Litex Lovech, a professional football club from Bulgaria.

On 18 November 2004 the Appellant and the Respondent signed an employment contract ("the contract") for a term commencing on 1 December 2004 and finishing on 30 May 2006.

Pursuant to the contract the Appellant was employed as the Head Coach and was entitled to receive for the first period of his employment (1 December 2004 until 30 May 2005) the amount of EUR100.000, payable on 1 December 2004, as the first tranche of the signing-on fee, and, in addition, the amount of EUR 210.000 payable in six equal instalments of EUR 35.000 as monthly salary. For the second year (1 June 2005 until 30 May 2006) the Appellant was entitled to receive the amount of EUR 100.000 as the second tranche of the signing-on fee (the due date for payment of this tranche was not stated in the contract) as well as EUR 420.000 payable in twelve equal instalments of EUR 35.000 as monthly salary.

Clause 8 of the contract provides that *“if the club decides for any reason to end its cooperation with the Head Coach, during this agreement contract, then the club is obligated to pay him all remaining sums of his salary, bonuses and first payment as agreed in point 1, 2, 3, 4 of this contract, till the end of the contract”*.

After a match on 7 May 2005 the Appellant was informed by a representative of the Respondent that the Respondent wanted him to resign immediately. The Appellant refused to do so.

The Appellant was invited to a meeting in the Kempinski Hotel in Sofia, in order to discuss his future position.

On 9 May 2005 two sessions of negotiations took place at the Kempinski Hotel. The Appellant was, on his own request, accompanied by his lawyer.

It is common ground between the parties that during those negotiations the Appellant was offered a position as senior team manager or as a scout, but that the position as Head Coach was no longer open to him.

According to the Appellant this decision of the Respondent was caused by a lack of confidence from the President of the Respondent. According to the Respondent it was due to the fact that the Bulgarian FA was unwilling to register the Appellant as Head Coach, because the Appellant did not have the legitimate documents required to work as a Head Coach in the Bulgarian Football League.

The negotiations did not result in an agreement. The Respondent then required the Appellant to handover his car keys, because the contract was terminated.

The Appellant then left Bulgaria. He informed the Respondent that he would ask FIFA to settle his financial demands.

On 18 May 2005 the Appellant lodged then his formal claim at FIFA, asking for an amount of EUR 605.000 as the outstanding amount for the salary for May 2005 (EUR 35.000), the second part of the signing on fee (EUR 100.000) for the season 2005/2006, salaries for the season 2005/2006 (EUR 420.000) and estimated bonuses of EUR 50.000. Furthermore Appellant requested to be compensated for his legal expenses and his lawyer's fee.

On 26 September 2006 the Single Judge of the Players' Status Committee rendered his decision on the claim lodged by the Appellant. No hearing took place. The Single Judge decided that the Respondent had to pay a total amount of EUR 150.000 to the Appellant within 30 days of notification of his decision. Furthermore the Single Judge decided that the Respondent had to pay an interest rate of 5% per year in case the Respondent fails to comply with his decision.

Any other claims of the Appellant were rejected.

The Appellant was notified by FIFA of the decision by fax dated 22 December 2006.

On 5 January 2007 the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS), followed by his appeal brief on 15 January 2007.

The Appellant challenged the Single Judge's decision. In particular, he submitted that the Single Judge based his final decision on the amount of compensation to be paid to him by taking into account, in a totally unspecified way, the "behaviour" of the Appellant.

The Respondent answered by letter dated 1 March 2007, which was clearly after the deadline as set out in Art. R55 of the Code of Sports-related Arbitration ("the Code"). The Panel decided that it would take a decision about the admissibility of this letter during the Hearing.

A Hearing was held on 4 May 2007 at the CAS premises in Lausanne.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from the articles Art. 59 ff of the FIFA Statutes and Art. R47 of the Code. It is further confirmed by the Order of Procedure signed by the parties.
2. It follows that the CAS has jurisdiction to decide on the present dispute.
3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel, therefore, examined not only the legal aspects of the Single Judge's decision, but held a trial de novo, evaluating all facts and legal issues involved in the dispute.

Applicable law

4. Art. R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and rules of law chosen by the parties or, in the absence of the such a choice, according to the law of the country in which the federation / association of 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. Art. 59 para. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA or, if applicable of the Confederations, Members, leagues and clubs, and, additionally, Swiss law.
6. In the present matter, the application of any particular law has not been agreed on. Therefore, the rules and regulations of FIFA shall apply primarily and Swiss Law shall apply subsidiarily.

Admissibility of the appeal

7. The appeal was filed within the deadline provided by Art. 60 of the FIFA Statutes and stated in the Decision, that is within 21 days after notification of such Decision. It complied with all other requirements of Art. R48 of the Code.
8. It follows that the appeal is admissible, which is also undisputed.

The main issues

9. The main issues to be resolved by the Panel are:
 - who was responsible for the breach of contract?
 - what compensation is due to the party who is not responsible for breaching the contract?
- A. Who was responsible for the breach of contract between the parties?*
10. First, the Panel examined the decision of the Single Judge.
11. There is no dispute that the Parties concluded an employment contract which was due to expire on 30 May 2006.
12. Furthermore, the Panel notes, on the basis of the hearing, among other things, that it is agreed that on 9 May 2005, they discussed the termination or change in the terms of the contract concluded between them. This finding is further supported by the fact that the Respondent has not disputed that the lawyer for the Appellant was present at the meeting on that day. The Panel finds that the presence of the lawyer is an indication of the seriousness of the negotiations with respect to (at the very least) a possible change in the terms of the existing contract between the Parties.
13. The Panel notes, on the basis of the facts and on what has been stated at the Hearing that the Respondent in any event did not wish to continue the contract with the Appellant under the same terms provided for in the existing contract. The Respondent indicated that the Appellant had been offered an alternative position because, in its view, the Bulgarian Football Association did not wish to register the Appellant as Head Coach as he lacked the requisite

documentation (legitimate documents). The Panel is satisfied that the Respondent terminated the Appellant's contract, although it was willing to negotiate with him for a new contract for employment in some other capacity.

14. The Panel also notes that the Parties failed to reach a mutually satisfactory conclusion to their negotiations on 9 May. As a result of the failure of negotiations, the Appellant left Bulgaria, having been requested to hand over his car keys, and did not return. During the discussions, he made it known through his lawyer that he intended to present his financial claims to FIFA.
15. The Panel concludes on the basis of the above that, the negotiations between the Parties were unsuccessful, a fact that becomes all the more apparent since the Appellant went on to submit his claim to FIFA already very soon afterwards, on 18 May.
16. The Panel notes moreover that the Respondent failed to present any correspondence as evidence that the Appellant had been ordered to return to work after his departure from Bulgaria. On the basis hereof, the Panel must conclude that the Respondent did not object to the departure of the Appellant from Bulgaria knowing that the Appellant objected to the financial terms of the termination of the contract. This dissatisfaction was made clear when soon after 9 May 2005 the Appellant lodged an official appeal with FIFA, seeking full payment of his contractual entitlements.
17. The Panel has no hesitation in agreeing with the conclusion arrived at by the Single Judge as stated in Paragraph 22 of his Decision of 26 September 2006. Moreover, the Panel is of the same view as the Single Judge with regard to the grounds cited by the Respondent as giving rise to a proper termination of the contract (the lack of a work permit cannot be cited as a valid reason). Neither can the Appellant be expected under the terms of the employment contract to accept a position that is subordinate to the agreed position of Head Coach.
18. Finally, the mere fact that he left the country after the meeting on 9 May cannot be held against the Appellant. He had, after all, been ordered to hand in his car keys and, as stated above, he had made it abundantly clear that he was dissatisfied with the terms of settlement of the termination and had communicated this to FIFA quite soon after his return to Israel.
19. The Panel comes therefore to the final conclusion that there was a clear breach of contract without just cause by the Respondent and that the Respondent should be held responsible for the payments as agreement upon in the employment contract. The Respondent has failed to establish any conduct on the part of the Appellant that could be said to have contributed to the termination. Indeed, the Respondent did not attempt to rely upon any such conduct during the hearing.

B. *What compensation is due to the party who is not responsible for breaching the contract?*

20. The Panel does not however agree with the view of the Single Judge that in assessing the damages, note must be taken of the Appellant's behaviour. The reason for the Panel's disagreement with the Single Judge on this issue is simple: there was no evidence in the papers before the Single Judge or the Panel, and (as has been stated) no attempt by the Respondent during the hearing to justify the termination by reliance on any conduct on the part of the Appellant. In the view of the Panel, the determination of the sum of EUR 150,000, which in fact represents a mere 25% of the residual value of the contract, is therefore incomprehensible and unjust.
21. Neither FIFA's Statutes nor its Regulations, nor the laws of Switzerland, provide grounds for mitigating the residual value of the contract under the circumstances established by the evidence. There was, the Panel wishes to stress, a clear breach of contract without cause by the Respondent.
22. The Panel has therefore concluded that the Appellant is entitled to a payment of
 - EUR 100,000, corresponding to the second part of the sign-on fee;
 - EUR 455,000, corresponding to thirteen times EUR 35,000, this being the monthly salary from 1 May 2005 until 31 May 2006, being the amounts as foreseen in the employment contract under Art. 8.
23. The Panel, however, rejects the Appellant's claim of EUR 50,000 in respect of the bonuses said to be due to him. The Appellant failed to provide substantive proof in support of this claim, and during the hearing failed to demonstrate that the bonus was due to him or should have been due to him.
24. Finally, the Panel has to answer the formal question whether an amount of EUR 50,000 should be deducted from this amount as this is foreseen in the employment contract under Clause 8 of the contract in case the Appellant terminates the contract prematurely. As has already been stated, the Panel does not hold the Appellant responsible for breaching the contract. Therefore, a reduction of the amount to be paid by the Respondent is not applicable.
25. The Single Judge ordered the Respondent to pay 5% interest after 30 days, effective from 22 December 2006 until the date on which payment is made in full. The Panel does not find this interest payment unreasonable or excessive and agrees that it is in line with the relevant statutory provisions applicable under Swiss law.

The Court of Arbitration for Sport rules:

1. The Appeal filed on 5 January 2007 by S. against the decision issued on 26 September 2006 by the Single Judge of the Players' Status Committee of FIFA is allowed.
2. The decision issued on 26 September 2006 by the Single Judge of the Players' Status Committee of FIFA is set aside.
3. PFC Litex Lovech shall pay compensation to S. of EUR 555,000 (five hundred and fifty-five thousand Euro) together with 5% interest as from 22 January 2007 within a deadline of 30 days of the date of the present award.
4. (...)
5. All other motions or prayers for relief are dismissed.