

CAS 2024/A/10480 Amar Kovcic v. NK Trnje Zagreb

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Ernesto Gamboa Morales, Attorney-at-Law in Bogotá, Colombia

in the arbitration between

Amar Kovcic, Bosnia & Herzegovina

Represented by Mr. Sanel Masic, Attorney-at-Law in Mönchengladbach, Germany

Appellant

and

NK Trnje Zagreb, Croatia

Represented by Mr. Nikola Badovinac and Mr. Miran Kraljevic, Attorneys-at-Law in Zagreb, Croatia

Respondent

I. THE PARTIES

1. Amar Kovcic (the “Appellant” or the “Player”) is a Bosnian football player currently playing for a Bosnian club affiliated to the Bosnia and Herzegovina Football Federation.
2. NK Trnje Zagreb (the “Respondent” or the “Club”) is a professional football club affiliated to the Croatian Football Federation (“HNS”). The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established based on the Parties’ written submissions and the evidence examined during the present appeal proceedings and at the hearings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion that follows.

A. Background facts

4. In the summer of 2023, the Player joined the Club. According to information from HNS, the Player played six matches between August 26, 2023, and October 7, 2023.
5. On August 31, 2023, with the assistance of the Club, the Player received his personal identification number from the Croatian authorities.
6. On October 9, 2023, the Player received from the Croatian authorities a temporary residence permit valid until November 4, 2023.
7. On October 12, 2023, the Club signed a document for the Player’s release.
8. On November 22, 2023, the Player filed a claim before the Dispute Resolution Chamber (“DRC”) of the FIFA Football Tribunal against the club for unilateral termination without just cause of the employment contract. In his claim, the Player requested the payment of €271 for unpaid wages for October 2023, and €6,029 as compensation for the breach of the Contract. Alternatively, the Player requested the payment of €4,200. He also requested interest payment at 5% per annum until the effective date of payment. Finally, the Appellant requested the imposition of sporting sanctions on the Club.

B. The Appealed Decision

9. On February 8, 2024, the DRC issued the following decision (the “Appealed Decision”):

“1. The claim of the Claimant, Amar Kovcic, is rejected.”

2. *This decision is rendered without costs.*”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

10. On March 14, 2024, pursuant to article R47 of the Code of Sports-related Arbitration (the “Code”), the Appellant filed his statement of appeal before CAS challenging the Appealed Decision. Furthermore, the Appellant requested that the dispute be submitted to a sole arbitrator and that the language of the proceedings be English. Moreover, the Appellant applied for legal aid.
11. On April 9, 2024, the Athletes’ Commission of the International Council of Arbitration for Sport issued an Order on Request for Legal aid, granting assistance for the CAS arbitration costs from the Football Legal Aid Fund.
12. On April 18, 2024, the Respondent agreed to the proceedings being conducted in English and did not object to the dispute being submitted to a sole arbitrator.
13. Pursuant to Article R54 of the Code, on May 14, 2024, the President of the CAS Appeals Arbitration Division appointed Mr. Ernesto Gamboa Morales, Attorney-at-Law in Bogotá, Colombia, as sole arbitrator (the “Sole Arbitrator”).
14. On May 20, 2024, the Appellant filed his Appeal Brief and requested the Sole Arbitrator to order the Respondent to produce the contract signed by the Parties.
15. On June 9, 2024, the Respondent filed its Statement of Defense and denied the existence of a contract between the Parties, and therefore did not produce the document requested by the Appellant.
16. On July 15, 2024, CAS informed the Parties that the Sole Arbitrator decided to hold a hearing.
17. On August 20, 2024, after consulting the Parties’ availability, CAS Court Office informed that the hearing was going to be held on September 17, 2024.
18. On August 21, 2024, the CAS Court Office sent a copy of the Order of Procedure to the Parties, which was duly signed by both.
19. On September 17, 2024, the Respondent requested to postpone the hearing due to medical complications of the Club’s president.
20. On October 29, 2024, a hearing was held by videoconference. The following persons attended the hearing in addition to the Sole Arbitrator and Mrs. Delphine Deschenaux-Rochat, Counsel to the CAS:

For the Appellant:

- Mr. Amar Kovcic, the Appellant
- Mr. Sanel Masic, counsel to the Appellant
- Mr. Hugo Paris, counsel to the Appellant
- Mr. Kamal Papracanin, witness
- Mrs. Maja Tapic, translator

For the Respondent:

- Mr. Miran Kraljevic, counsel to the Respondent
- Mrs. Anna Britvec, witness
- Mrs. Aleksandra Basta, translator

21. Although the Club's president, Mr. Jakov Sivric, was called as a witness, he did not appear at the hearing and did not present any justification. However, the Parties agreed to continue the hearing at a later date in order to hear Mr. Sivric's testimony.
22. On December 21, 2024, the hearing continued. In addition to the Sole Arbitrator and Mrs. Deschanaux-Rochat, the following persons attended this session:

For the Appellant:

- Mr. Amar Kovcic, the Appellant
- Mr. Sanel Masic, counsel to the Appellant
- Mr. Hugo Paris, counsel to the Appellant

For the Respondent:

- Mr. Miran Kraljevic, counsel to the Respondent
- Mr. Jakov Sivric, Club's president and witness
- Mrs. Aleksandra Basta, translator

23. Before the hearing concluded, the Parties expressly stated that they had no objection to the way that this proceeding has been conducted and that the equal treatment of the Parties and their right to be heard had been respected.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

24. Below is a summary of the arguments raised by the Parties on the subject matter of this proceedings. Notwithstanding, the Sole Arbitrator points out that he has reviewed, considered, and taken into account all and each of the submissions and evidence filed by the Parties, whether or not an express reference to any such evidence is made under this Section.

A. The Appellant

25. According to the facts described by the Appellant, he joined the Club on July 13, 2023. Although the Parties entered into a contract for the maintenance of the field, in reality, the Appellant acted as a player for the Club and played six matches. However, the Respondent never provided him with a copy of the contract.
26. The Appellant claims that the release signed by the Respondent on October 12, 2023, constitutes a unilateral termination without just cause of the employment contract. He further states that this occurred on the same day that the Appellant was due to leave Croatia due to the expiration of his residence permit.
27. As to the merits of the dispute, the Appellant points out that the Appealed Decision rejected his claim as a consequence of the difficulty he had in presenting a copy of the written employment contract. However, the Appellant considers that the Appealed Decision failed to evaluate the evidence demonstrating the existence of a contractual relationship between the Parties.
28. In this regard, he points out that the FIFA rules and the Swiss Civil Code establish that the party alleging a fact has the burden of proving it. Although the standard of proof in contractual matters is one of comfortable satisfaction, according to CAS jurisprudence, a lower standard must sometimes be applied, in particular when the party alleging the fact does not have access to direct evidence, but to circumstantial evidence. Thus, the standard is met when the arbitral tribunal considers that a fact is more likely to have occurred rather than an alternative event.
29. In this case, although the Appellant was unable to provide a copy of the written contract due to the Respondent's bad faith, he provided other evidence that was ignored by the Appealed Decision. In this regard, he refers to the evidence of the payment of what would be the salary, for €700 per month, the main obligation of the employer.
30. Likewise, the Appellant questions the reasoning of the Appealed Decision as contradictory. Indeed, it indicates that the DRC stated, based on the Commentary on the Regulations on the Status and Transfer of Players (the "Commentary"), in order to determine the status of a player – professional or amateur – it must be determined whether the requirements of Article 2.2 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") are met, regardless of the category under which the player has been registered with the corresponding soccer association. However, the DCR focused on the fact that according to the Player's release, he was registered as an amateur.
31. The errors in the Appealed Decision are also evident when it states that the release was signed by HNS, when in fact it was the Respondent. Despite FIFA's assertions, the truth is that the Player was a professional, as he was paid more than his expenses and the Parties signed a contract.

32. The Appellant submits that the contract was valid until the end of the 2023-2024 season (30 June 2024), as this is the minimum duration of a contract in football pursuant to Article 18(2) of the FIFA RSTP and Article 37(7) of the Croatian Football Federation Regulations.
33. According to the Appellant, he received monthly salary payments of €700 in cash for July, August, and September. In October, he worked for 12 days, entitling him to a pro rata payment of €271, plus interest at a rate of 5% per annum.
34. The Appellant argues that the Respondent had no right to unilaterally terminate the contract before 30 June 2024. As a result, the termination was without just cause, and Article 17 of the FIFA RSTP applies, which provides for compensation equivalent to the remaining value of the prematurely terminated contract. Therefore, the Appellant claims that the Respondent must pay him €6,029.
35. The Appellant further asserts that, although he joined the Bosnian club Gradina on 22 February 2024, this should not be considered as mitigation of damages, as he does not receive a salary and was registered as an amateur player.
36. Additionally, the Appellant contends that, since the termination occurred while he was within the protected period under the FIFA RSTP, the applicable sporting sanctions must be imposed.
37. Based on the above arguments, the Appellant requests CAS:
 - “a) That the CAS accepts the present appeal;*
 - b) That the Appealed Decision be set aside and that the Panel or the Sole Arbitrator renders an award establishing that:*
 - i. the Respondent shall pay to the Appellant EUR 271.00 (two hundred seventy-one euros) as overdue payables, with an interest of 5% p.a. as from 13 October 2023, until the date of effective payment;*
 - ii. The Respondent terminated the contract with the Appellant without just cause;*
 - iii. The Respondent shall pay to the Appellant EUR 6,029.00 (six thousand twenty-nine euros) as compensation for breach of the contract, with an interest of 5% p.a. as from 13 October 2023, until the date of effective payment;*
 - iv. Sporting sanctions shall be applied upon the Respondent;*
 - c) that the Respondent be ordered to bear the entire cost and fees of the present arbitration;*
 - d) that the Respondent be ordered to pay the Appellant a contribution towards its legal fees and other expenses incurred in connection with the proceedings in the amount of CHF 10,000, or in the amount deemed fair by the Panel or the Sole Arbitrator.”*

B. The Respondent

38. The Respondent submits that the dispute involves the Appellant's status as a player. The key issue to be determined is whether he was a professional or an amateur player, and the corresponding legal consequences.
39. According to the Respondent, the Parties never signed a contract. The Appellant was an amateur player during the period in which he was registered with the Respondent.
40. The Respondent contends that the Appellant failed to comply with his legal obligation to register his domicile during his stay in Croatia, which led to an inquiry by the Ministry of the Interior. This registration was the Appellant's responsibility, not the Respondent's.
41. The Respondent asserts that the temporary residence permit was obtained with its support solely to allow the Appellant to train and participate in competitions legally.
42. The Respondent argues that there was never a written contractual obligation between the Parties, nor was there any possibility for either party to unilaterally terminate a contract. It was the Appellant –not the Respondent – who requested his release. This request was made through his agent and another individual, who allegedly verbally harassed the Club's secretary to obtain such release. In this regard, the Respondent submits that the Appellant voluntarily decided to leave the club.
43. The Respondent maintains that the CAS jurisprudence invoked by the Appellant regarding the standard of proof is not applicable, as no contract was ever signed between the Parties. Furthermore, the Respondent highlights that the Appellant had the right to request a copy of the contract from the Respondent but never did so while he was registered with the club.
44. The Respondent submits that the Appealed Decision correctly assessed the evidence and is in line with the applicable FIFA regulations and CAS jurisprudence regarding the recognition of a player's status.
45. With respect to the payments made by the Respondent to the Appellant, the Respondent argues that these are insufficient to establish that he was a professional player. In accordance with the applicable regulations, two cumulative requirements must be met: (1) the existence of a written contract, and (2) the payment for football-related activities exceeding the player's expenses. The Appellant failed to demonstrate that the payments constituted a salary.
46. The Respondent further contends that the existence of a salary requires not only a written contract but also an application to the Croatian Employment Services, which is the competent authority for worker registrations. The Appellant did not provide evidence of this requirement. Additionally, Croatian labor law does not permit salary payments in cash.

47. The Respondent submits that Article 17 of the FIFA RSTP regarding the unilateral termination of a contract without just cause is not applicable, as no written contract ever existed between the Parties. In any event, even if such a contract did exist, it was the Appellant who unilaterally requested his release.
48. The Respondent emphasizes that CAS jurisprudence has consistently underscored the importance of the burden of proof. Furthermore, such jurisprudence has confirmed that the DRC has ruled that the existence of an employment contract cannot simply be assumed based on circumstances that are likely but do not establish with certainty that a contract was signed, such as a payment. Likewise, the requirement of a written contract must be interpreted strictly. The Commentary clarifies that, even if local laws permit the existence of verbal contracts, such laws are contrary to FIFA's mandatory provisions.
49. In accordance with its arguments, Respondent requests CAS:
- “A. In conclusion of all of the above, the Respondent requests that this honourable Court of Arbitration for Sport, with a registered seat in Lausanne, rejects the present Appeal lodged by Amar Kovčić and confirms the Decision passed by the FIFA Dispute Resolution Chamber on 22 February 2024 in its entirety.*
- B. Furthermore, the Respondent asks that the CAS orders the Appellant to bear all the costs incurred with the present procedure and to cover all legal expenses related to the proceedings at hand.”*

V. JURISDICTION

50. Article 47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”

51. Article 57 of the FIFA Statutes provide as follows:

“Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.”

52. The Sole Arbitrator notes that it is undisputed that the Appealed Decision is a final decision taken by FIFA and that the parties do not dispute CAS's jurisdiction. On the contrary, they explicitly confirmed it by signing the Procedural Order without raising any objections. Consequently, it follows that CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

53. Article R49 of the Code provides the following:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”

54. Similarly, Article 57 of the FIFA Statutes, as previously noted, requires that appeals against decisions passed by its legal bodies be submitted to the CAS within 21 days of notification.

55. The 21-day time limit was observed. The grounds for the Appealed Decision were notified on February 22, 2024. The Appellant filed his appeal on March 14, 2024.

56. Furthermore, the Statement of Appeal comply with the formal requirements outlined in Article R48 of the Code. Accordingly, the appeal is admissible.

VII. APPLICABLE LAW

57. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

58. According to Article 56(2) of FIFA’s Statutes, “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

59. Moreover, the Parties agree that the dispute shall be resolved in accordance with FIFA regulations, particularly the RSTP, and, additionally, Swiss law. Accordingly, the Sole Arbitrator holds that the present dispute shall be decided principally according to the FIFA regulations, with Swiss law applying subsidiarily.

VIII. MERITS

60. In order to resolve the present dispute, the Sole Arbitrator shall, first, determine whether the Appellant joined the Club as a professional player or an amateur player, since this shall determine, mainly, whether or not the requested compensation is due. If the Sole Arbitrator establishes that the Appellant was a professional player, then he must determine whether the termination of his employment relationship with the Respondent was with or without

just cause. Finally, if so, the Sole Arbitrator shall decide whether the sporting sanctions to the Respondent are applicable.

A. Was the Appellant a professional player?

61. Article 2 of the RSTP establishes the difference between a professional player and an amateur player. This rule states that a professional player is one who meets the following two cumulative requirements: (i) he must have a written employment contract with a club and (ii) he must be paid more than the expenses he incurs in his activities as a football player. Any other player who does not meet these requirements is considered an amateur.
62. In this case, the fulfillment of the first requirement is in dispute, since, while the Appellant alleges that he signed a contract and that the Respondent – acting in bad faith – did not provide him with a copy of it, the latter states that the Parties never signed a contract. Thus, the absence of evidence of a written contract was the reason why the Appealed Decision dismissed the Appellant’s claim. On this point, the Appellant considers that the DRC failed in assessing the evidence, since it was possible to determine the existence of the employment contract based on other elements. To this end, he indicated that the Appealed Decision disregarded the fact that the Player received remuneration from the Club and that he disputed six matches.
63. In this proceeding, the Appellant requested the Sole Arbitrator to order the Respondent to produce a copy of the contract entered into between the Parties. In response to this request, the Respondent asserted that such document does not exist. In view of this situation, the Sole Arbitrator has no alternative but to evaluate the other evidence in the record to determine whether a written contract between the Parties was likely to exist. In this regard, the Sole Arbitrator finds that the testimonies offered by the Parties do not provide certainty as to the existence of such written contract, since they are not consistent and the different witness statements are contradictory. While some witnesses asserted the existence of a written contract, others denied it. The Sole Arbitrator does not find some witnesses more credible than others.
64. The existence of a written contract is an essential requirement to consider that a football player is a professional and this requirement cannot be replaced by national legislation. CAS case law has been insistent on this point. For example, in CAS 2015/A/4148 & 4149 & 4150, the Panel stated:

“The status of a player has to be analysed exclusively based on the relevant FIFA regulations. The status of the player as a ‘professional’ is exclusively defined in the RSTP without any reference to national regulations. This primacy exists not only for international transfers but also for national transfers. Pursuant to Articles 1 para. 3, litt. a) and 26 para. 3 RSTP, a national federation is obliged to literally transpose Article 2 RSTP, which includes the mandatory (and worldwide) definition (for the purposes of the RSTP) of ‘Professionals’ and ‘Amateurs’.”

65. The Sole Arbitrator also considers that the documents submitted as evidence are not sufficient to establish the existence of a written employment contract. Under Swiss law, the essential elements of the employment contract are the salary and the personal performance of work by the employee for a certain period (Article 320.2 of the Swiss Code of Obligations). In this case, although the second element was demonstrated, as the Parties do not dispute that the Appellant played some football matches for the Club, the first element was not proven. The Appellant alleges that he received a remuneration of €700 per month, the first months in cash, and the last month, by means of a bank transfer. To support this claim, he provided the certificate of a bank transfer he received from Ana Kljajic, who apparently would be the daughter of the Club's vice-president. However, for the Sole Arbitrator, this transfer does not prove the existence of a salary, since it was made on November 3, 2023, i.e. when the Player had already left the Club. In other words, the only proof of payment provided by the Appellant was made by a person other than the Club and on a date after the period in which the Player claims to have played for the Appellant.
66. In addition to the absence of evidence of a written contract, the Appellant also failed to prove that the remuneration he allegedly received from the Respondent exceeded his expenses as a football player. The Appellant's submissions do not even refer to his expenses, which he was in a position to prove. Moreover, the Sole Arbitrator considers that the fact that the Player has played football matches for the Club and, eventually, received payment, does not mean that he had a contract as a professional player. Amateur players also play matches and may receive certain payments from their teams, provided that these do not exceed their expenses. As an example of the above, there is the amateur player contract that the Appellant himself signed with OFK Gradina, after leaving the Club.
67. Even if it were considered that the player was an amateur – which the Appellant does not allege – there would be no place for the compensation claimed, since Article 17 of the RSTP only applies to professional players.
68. In line with the foregoing, the Sole Arbitrator concludes that in this proceeding, it has not been demonstrated that the Player was a professional under Article 2 of the RSTP and, therefore, it is not possible to satisfy the compensation claimed nor his other relief sought.

IX. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Amar Kovcic on March 14, 2024, against the decision issued on February 8, 2024, by the Dispute Resolution Chamber of the FIFA Football Tribunal is dismissed.
2. The decision issued on February 8, 2024, by the Dispute Resolution Chamber of the FIFA Football Tribunal is fully confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 31 March 2025

THE COURT OF ARBITRATION FOR SPORT

Ernesto Gamboa Morales
Sole Arbitrator