



GHANA FOOTBALL ASSOCIATION

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[E944]

DECISION OF THE PLAYERS' STATUS COMMITTEE ON THE PETITION EVANS OWUSU AGAINST ASANTE KOTOKO ON BREACH OF CONTRACT

FACTS OF THE CASE

The Petitioner and the respondent appeared before the PSC on 26 November 2020. The petitioner set out his case in his petition as follows:

1. The Petitioner was engaged under a contract dated 31st October 2018 for a period of three years. The contract will expire on 30th October 2021.
2. Under the contract the Player was entitled to a salary of GHC 1,000 monthly to be paid at the end of each month and an Enticement Fee of GHC 30,000 to be paid over the period of three years at the beginning of each season.
3. The Player states that at the beginning of the 2020/2021 season, he realized after checks that Respondent had not registered him for the 2020/2021 season.
4. It is the position of the Respondent that his contract has been unilaterally terminated.
5. The Petitioner proceeded to the PSC for the following reliefs:
 - Installment payment of Enticement Fee for the Second Year (31 October 2019 – 30 October 2020) – GHC 10,000
 - Installment payment of Enticement Fee for the Third Year (31 October 2020 – 30 October 2021) – GHC 10,000
 - Salary for the month of October 2020 – GHC 1000
 - Salaries for the months of November 2020 – October 2021 (12 months x GHC 1000) GHC 12,0000
 - Compensations for unlawful termination of contract without just cause.

Respondent in his response stated that that:

1. The Respondent, contrary to the claims by the Petitioner is doing everything in its power to respect its contract with the player.

2. That the GFA registration is in two (2) windows and that, they will renew the player's registration in the second window when it opens.

FINDINGS

De-Registration of the Player

1. It is established that the two parties had a binding three-year contract commencing 31st October 2018 to 30th October, 2021.
2. Under the terms of the contract clause 1 provides that the Respondent Club has agreed to contract the Player to play for it as its player and the player has agreed to do so....
3. Clause 25(a) and (b) of the contract further stipulate:

“a) Upon the execution of this Agreement, the Club shall effect the registration of the player with the Football Association and the FA Premier League as appropriate in accordance with their Rules and Regulations.

b) Such registration may be transferred by mutual consent of the club and the player during the currency of this agreement...”

4. The PSC understands that these clauses place an obligation of the club to register the player with the Football Association and the FA Premier League in order for him to play football in the fulfillment of his agreement.
5. Upon submission of the petition and upon conducting investigations, the IT Department of the GFA indicates that the Player's registration by the Club was not renewed for the 2020-2021 season. In effect, the player appears to have been deregistered as a Player of the Respondent Club despite having featured for them for 2 years of his contract.
6. Article 26(4)(b) of the Premier League Regulations states that “All players shall be registered anew every season”. Article 25(b) of the same Regulations state that:

“A player must be registered with a club as either a Professional or an Amateur in accordance with the provision of Article 2 of the FIFA Regulations on the Status and Transfer of Players. Only registered players are eligible to participate in the League.”

7. From the evidence retrieved from the IT Department of the GFA, it is apparent that the Petitioner's name was omitted from the thirty (30) players listed by the Respondent club to feature in the GFA Premier League. This omission means that the Petitioner has not been registered to feature for the

Respondent Club in accordance with his contract. In essence, he is not going to play for the club in the 2020-2021 season. This amounts to de-registration of the Petitioner and a breach of contract.

8. In the DRC Ruling on the matter of de-registration passed in Zurich, Switzerland, on 21 May 2015 the panel ruled as follows:

13."With the above-mentioned considerations in mind, the members of the Chamber considered it important to point out, as has been previously sustained by the DRC, that among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to be given the possibility to compete with his fellow teammates in the team's official matches".

9. In this respect, the Chamber emphasized that the deregistration of a player effectively bars, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player. The Chamber therefore established that the deregistration of a player constitutes, in principle, a breach of contract since it de facto prevents a player from being eligible to play for his club.

Outstanding Salary Payment

1. With regard to the one-month salary payment outstanding as being a breach and therefore grounds for termination. The PSC is guided by article 14bis of the FIFA Regulations on the Status and Transfer of Player which states that:

"In the case of a club unlawfully failing to pay a Player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s).

2. One-month arrears is inadequate to base a breach of contract on, especially where the statutory (or if more advantageous) the contractual notice period has not been satisfied. We however concede and are of the firm view that indeed a player has the right to the timely payment of his salaries.

DECISION

Breach of Contract

1. The GFA RSDTP provides that compensation under clause 16(1) shall be paid by a party in breach of contract. "The compensation shall be calculated with due regard to the labour laws of Ghana, the specific case of football as a sport,

and other objective criteria including the player's remuneration and/or other fringe benefits that he may be entitled to under his current or new contract, the time left of his current contract up to a minimum of five (5) years, the fees or expenses paid or incurred by the former club amortised over the term of the contract and finally, whether the contractual breach occurred during the protected period"

2. The protected period as defined is a period of three entire seasons or three years following entry into force of the contract where such contract is concluded prior to the 28th birthday of the professional. The petitioner is 23 years old in the 2nd year of his contract and therefore is considered to be within the protected period.
3. The PSC has considered the evidence and authorities placed before it by the Petitioner and the Respondent. In considering this evidence, the PSC was satisfied that the Respondent Club is in contravention of Article 14(2) of the FIFA Regulations. This provides that;

"Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of a contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".

4. The actions of the Respondent Club, in excluding the Petitioner from the registered squad and further denying the petitioner the fundamental right to train with the team can safely be said to amount to abusive conduct. If there is any doubt in this, the additional decision to remain silent when answers were sought by the Player is yet another example of abusive behaviour. It is indeed a shame, in these times where we seek to educate players and clubs on using the mechanisms of their contracts to seek redress, such actions set the body of club / player contract administration further back.
5. Having given the Petitioner no option, the Petitioner proceeded to terminate his engagement with the Respondent Club. The PSC is satisfied that the Petitioner having been induced to do so terminated his contract with just cause. The player is therefore granted free status and permitted to sign for any club of his choice
6. Having taken the above into consideration, the PSC grants compensation to the Petitioner as follows:
 - a. GHS 20,000 being the remainder of the enticement fee due to the Petitioner;

In invoking the total payment of the signing-on fee to the player, the Committee made reference to Court of Arbitration for Sports (CAS) case 2010/A/2159 Al-Kor Sports Club Vs Jean-Paul Radier, award of 17th January, 2011 where it was held:

“the Respondent is entitled to the outstanding signing-on fee because the signing-on fee is a reward for joining the Appellant and not linked to the contracts term of validity.”

- b. GHS 6,000 being six months’ salary.
- c. These shall be paid within a period of 14 days from the communication of this decision.

In the event that the above-mentioned sums are not paid within the aforementioned deadline, the present matter shall be submitted to the GFA’s Disciplinary Committee for consideration and a formal decision per Article 15 of the GFA Disciplinary Code.



PROSPER HARRISON ADDO, ESQ
[GENERAL SECRETARY]

SIGNED:



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CORNELIS R. OTOO, ESQ
VICE CHAIRMAN [PSC]

IN ATTENDANCE

| | | |
|------------------|---|---------------|
| Is-Hak Al-Hassan | - | Chairman |
| Cornelis R. Otoo | - | Vice Chairman |
| Sylvester Mensah | - | Member |
| Vivian Aggor | - | Member |
| Kwame Ayew | - | Member |
| Hannah O. Amakye | - | Secretary |

DISTRIBUTION

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|---------------------|---|------------|
| 1. EVANS OWUSU | - | PETITIONER |
| 2. ASANTE KOTOKO SC | - | RESPONDENT |