



GHANA FOOTBALL ASSOCIATION

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[E966]

DECISION OF THE PLAYERS' STATUS COMMITTEE ON THE PETITION OF STEPHEN TETTEH AYIKU AGAINST ASANTE KOTOKO ON BREACH OF CONTRACT

FACTS OF THE CASE

Petitioner's/Player's Case

The Petitioner set out his case in his petition dated 8 December 2020 as follows:

1. The Petitioner was engaged under a contract dated July 14 2019 for a period of three years. The contract will expire on 13th July, 2022.
2. Under the contract the Player was entitled to a salary of GHC 1,500 in the first season and GHC 2,000 monthly to be paid in the second and third seasons and an Enticement Fee of GHC 75,000 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 was informed by the Respondent that he was no longer in the future plans of the Respondent club and was no longer welcome to join its training sessions and was removed from the Respondent Club's WhatsApp group.
4. The Player indicated that on three occasions letters were sent to the Respondent Club:
 - In the first instance by a letter dated October 23, the player sent a letter to the Club in which he objected to his exclusion from the team.
 - On November 11, 2020 seeking explanation as to his exclusion from the team and requesting reinstatement and the payment of his outstanding enticement fee of GHS 25,000 was sent via email to the Respondent. A request for a response within 5 days was made.
 - In the second instance by a letter dated November 20, 2020 the same reliefs were sought by the Player with warning that he will seek to terminate his contract with the Respondent Club. A request for response within 5 days was made. This too was sent to the email of the Respondent.

- In the third instance, November 27, 2020 the Player terminated his contract, citing just cause.
5. The Petitioner states that no response was received to any of the letters above, he therefore wrote to the Respondent Club terminating his contract of employment invoking just cause and citing the failure of the Respondent Club to register him for the 2020/2021 season and excluding him from training sessions.
 6. The Petitioner proceeded to the PSC for the following reliefs. That the PSC rule:
 - that the Player terminated the contract with just cause and is therefore a free player to sign with a new club without and compensation due whatsoever
 - The club has to pay GHC 65,000 to the player as compensation for breach of contract + 5% interest as from November 27, 2020 until the date of effective payment.
 - The club must pay the player GHC 27,000 as outstanding salaries +5% interest from November 27, 2020 until the date of effective payment.
 - Ban the club from registering new players for one registration period; and
 - Fine the club with a fine of not less than GHC 5,000.

Respondent's written response dated 18 December 2020 is that:

1. The Respondent, contrary to the claims for the Petitioner is doing everything in its power to respect its contract with the player and allow him to train with the Team.
2. The Respondent club maintains that it has given no cause to disrupt the stability of the Contract or the trust of the Claimant in the fulfilment of the Contract and as such the reliefs sought by the Claimant should not be granted and should be dismissed as groundless.

FINDINGS

De-Registration of the Player

1. It is established that the two parties had a binding three-year contract commencing 14th July, 2019 to June, 2022.
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 was not registered by the Club for the 2020-2021 season.
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.
8. In the case CAS 2014/A/3525 Changchun Yatai Football Club Co. Ltd. V Marko Ljubinkovic, award of 17 February 2015 addressing the issue of de-registration constituting a breach of contract the panel notes:

63. "In consequence, the Panel has come to the conclusion that the Player was entitled to terminate his contract with "just cause" in accordance with Art. 17 of the FIFA RSTP. The Panel finds that the primary justification for the "just cause" termination lies in the fact that the Player arbitrarily and without any contractual basis was deregistered as a player for the club and thereafter, was denied appropriate training and medical facilities. This unilateral and undisputed action by the club, which metaphorically speaking left the Player "out in the cold" and denied him the appropriate training and medical facilities, confirms the impression that the club really did not care much about the Player any more... Therefore, the Panel is satisfied that the Player had valid reasons to terminate the Employment Contract."



9. In another 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".

10. 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.

Exclusion from Training

1. The Petitioner also alleged he was excluded from training with the first team. The Respondent denies this and has put the onus on the Petitioner to prove same. Even though, the Respondent in its response denies this and says, "he who alleges, must prove". The PSC is guided by the CAS and DRC cases submitted by the Petitioner which highlight the fundamental rights of players to be given the right to access training.
2. Outside of the decisions, the evidence provided by Petitioner indicates that the Respondent club had no less than two occasions (letters of 11 and 20 November) to respond to the representatives of the Petitioner to indicate that he was still very much part of the plans of the club and that he should return to training. This was not done. Instead, a reply was never afforded to the Petitioner.
3. This leads the PSC to believe, as there is no other plausible explanation for the silence, that it was likely that the Respondent indeed did not have interest in a de-registered player and preferred not to use training resources on him but rather, as per its own assertion in paragraph 24 of its response, wait for the player to find a club to initiate a transfer.
4. Silence from club administration featured in the CAS 2014/A/3525 Changchun Yatai Football Club Co. Ltd. v. Marko Ljubinkovic, award of 17 February 2015. Addressing the silence of club administration to the voice of its player, the panel stated:

60. "In reaching this conclusion, the panel has put a significant amount of importance on the fact that the Player's agent contacted the club on numerous occasions in writing.... None of these letters were answered by the club and, and more importantly, nobody from the club

management made a whole-hearted attempt to contact the player in person to make good faith attempt to resolve the matter.

61. In this respect, the panel is of the opinion that the many letters sent by the player's agent (dated.....) must be construed as an important part of the reasons the Player terminated the employment relationship by the letter dated 7 August 2012....In the present case, the panel believes that for the conduct of the club to be considered in good faith, it should have answered the Player's agent letters by denying the allegations made against the club and by stating that the player still had access to training facilities and medical treatment while deregistering. In view of the above, the panel concludes that the club did not act in good faith when it remained silent despite the numerous letters sent by the Player's agent, and that the club's behavior must be interpreted as a tacit admission of the claims made by the Player's agent".

5. Similarly, in the case before the PSC, the committee notes that, the Representative of the player wrote several letters on behalf of the player drawing the club's attention to the potential breach of the player's contract which received no attention. Credence must therefore be given to the position of the Petitioner with regard to his allegations and requests in his letters outlined above.

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 and 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.
3. On this matter, the payment of remuneration and the sanctity of the contract, the Respondent would have the PSC accept its position that it has fulfilled its obligations to the Petitioner with regard to the contract between them. The Respondent seeks to say that they “fully complied with all requirements under the contract, paying all the salaries of the player and allow him to train...”
4. The Committee feels this response has come too late in the day and is not supported by evidence. The silence of the Respondent when these issues were brought to its attention by the Player's Representative was not appropriate,

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especially considering that the contract executed by the parties is to be upheld and administered by the parties for their mutual benefit. It is therefore disheartening to see genuine attempts to resolve issues with the confines of a contract being spurned by one party. This is not the reason we have contracts.

5. In putting its position across, the Respondent further relies on the DRC Decision of 23rd March 2006, No. 36460 par 18-19 which states:

18 "The DRC then had to analyze if the player had any other just cause to temporarily leave the club.

19. In this respect, the DRC referred to the fact that at the moment of the first unauthorized departure of the player, one month's salary was unpaid. In view of this, the DRC deliberated whether the non-payment of one monthly salary is a just cause for a player to leave his club without permission but came to the conclusion that one outstanding monthly salary does not allow the player to leave his club without authorization."

6. The PSC is of the view that the above reference is misplaced as the two situations are not the same. In this case before the PSC, the termination by the player was because he was deregistered and not because of the non-payment of one month salary. The salary issue was used to enhance the argument of not being considered a member of the team anymore.

7. Again, the Respondent in paragraph 20 of their response wrote:

"In accordance with DRC Decision of 9 May 2014, No. 05143281, as long as the player is regularly paid his salary and the club respects all other contractual obligations, a player must accept that he might not be lined up, and that not having the player fielded does not constitute a breach of contract. Therefore, it is clear that the Respondent did not breach the contract with the player."

8. The PSC is of the opinion that this is another wrong example of a DRC ruling drawn by the Respondent. In this case cited by the Respondent, the player under reference in the DRC ruling is still a registered player of the club and as such may or may not be "lined up" for matches. A deregistered player as in the case before the PSC, has no chance to be "lined up" because he is not in the records of registered players to get the opportunity of being "lined up". You must be registered to be eligible to play.

DECISION

Termination with Just Cause

1. The GFA RSDTP in Article 1 provides that the regulations within the FIFA Regulations on the Status and Transfer of Players are in some instances sacrosanct and in others to be respected as basic principles. These basic principles include Articles 13-15 of the FIFA Regulations.

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2. 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”.
3. 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.
4. 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 choosing.

Compensation

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 Twenty- Four [24] years old in the 1st year of his contract and therefore is considered to be within the protected period.
3. Having taken the above into consideration, the PSC grants compensation to the Petitioner as follows:
 - a. GHS 50,000 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 9,000 being six months' salary.
- c. These shall be paid within a period of 14 days from the communication of this decision. There will be no interest calculated on same.

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:



**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

1.	STEPHEN TETTEH AYIKU	-	PETITIONER
2.	ASANTE KOTOKO SC	-	RESPONDENT