



GHANA FOOTBALL ASSOCIATION

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[F088]

DECISION OF THE PLAYERS' STATUS COMMITTEE ON THE PETITION OF MEDEAMA SC AGAINST MOHAMMED OBENG HAMZA (ASSISTANT COACH)

FACTS OF THE CASE

1. On the 6th of April, 2021, MEDEAMA SC (Club/Petitioner), wrote to the Players Status Committee (PSC/Committee), complaining of a unilateral termination of contract by their Assistant coach, Mr Mohammed Obeng Hamza (Respondent/Coach)
2. Petitioner said they signed a 3 (three) year contract with Respondent. Contract was signed on the 8th November, 2018 and due to end 7th November, 2021. On the 16th of March 2021 however, when the contract had about eight months, three weeks to expire, the Respondent tendered in his resignation letter, stating no reasons for his actions. This, the Petitioner finds arbitrary and capricious as it sins against their signed agreement. Several attempts by the club to make Respondent see the consequences of his action yielded no results. Left with no alternative, petitioner was compelled to resort to the Players' Status Committee (PSC/Committee) for redress.
3. The petitioner therefore wants a declaration of entitlement to GHC19,375 (Nineteen Thousand, Three Hundred and Seventy-Five Ghana Cedis), being residual value of the unexpired part of his contract; general damages entitlement of GH¢50,000 (Fifty Thousand Ghana Cedis), sporting sanctions and cost. The petitioner attached copies of contract they signed with the coach, as well as the resignation letter.

ASSISTANT COACH RESPONSE

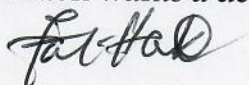
On the 5th of May 2022, Mr. Zakaria Tanko, Representative of the coach put in a written response

Zakaria Tanko

1. He indicated that the club behaved in a way such as to demotivate the coach and generally created a sense of insecurity for the job of the coach.
2. According to the coach, the petitioner is not entitled to the compensation being sought because clause 7 of the contract clearly stipulates the compensation to be paid by parties in the event of termination without notice. The coach went further to indicate that it is only when the contractual terms fails or does not provide any compensation mechanism that FIFA Regulation (6) and (2) may be contemplated or considered.
3. In his view, petitioner can at best be entitled to one month or three months salary, according to clause 7 of their contract.
4. The coach further rejects the claim for general damages because petitioner has not supported its claim of financial loss with demonstrable evidence.
5. The coach enumerated a catalogue of events that led to the sense of insecurity, among which were:
 - a. Coach returned home one day from training only to find that all his belongings had been packed from his official residence into one small room without prior notice. His apartment had been handed over to Mr. Yaw Acheampong, who had been brought in as Assistant coach to Yaw Preko, the newly appointed Head coach.
 - b. The club, contrary to contractual agreement, owes the coach several winning bonuses, with all attempts to secure same, frustratingly ignored.
 - c. The Respondent claims that, even though the Addendum to his contract raising his salary from Ghc1200 to Ghc2'500 is dated 11 December,2019, he only started receiving the new amount from October 2020 to February 2021 (evidence attached).
 - d. He worked under emotional and psychological trauma.
 - e. Respondent says, he was left with no choice but to conclude that, the conduct of Management, was a deliberate attempt to force him out of the club.
 - f. He asserts that, after his resignation, MEDEAMA released him to Accra Hearts of Oak when the latter needed to complete his registration for the second round of the 2020/2021 Football season.
 - g. The Respondent asserts that, but for the bad treatment he received from the club, he was not ready to leave the club

COUNTER CLAIM

6. The Assistant Coach wants a declaration he is entitled to:



- a) Seven (7) winning bonuses. NC tournament Tier1 and Tier 2
- b) Three (3) winning bonuses meant for some games in the 2019/2020 season, and 1 MTN FA Cup winning bonus in the 2019/2020 season
- c) A declaration that Assistant Coach is entitled to general damages and compensation for the creation of employment insecurity while in the employment of petitioner.
- d) Any significant sanctions against petitioner for introducing job insecurity into respondent's employment.
- e) Cost

INVESTIGATIONS AND OBSERVATIONS

The Committee decided to delve into the relevant portions of the existing contract in relation to the claims by both parties

1. CLAUSE 1 Employment of Head Coach

The club shall employ the Assistant coach and the Assistant coach shall from the date of this agreement serve the club as football Assistant coach of the club for a period of three (3) years starting from the 8th day of November 2018

2. CLAUSE 2 OBLIGATIONS OF THE HEAD COACH

During the period of employment, the Assistant coach shall:

2.2 At all times promptly obey and carry out the orders and instructions of the club, the Head coach or any officer of the club who may be placed in authority over him and submit to and observe the rules and regulations of the club in force for the time being

3. CLAUSE 3 OBLIGATIONS OF THE CLUB

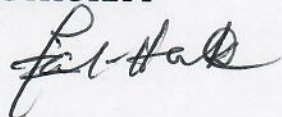
In consideration of the services to be rendered by the coach the club shall:

3.3 Pay the Assistant coach a monthly salary of One thousand, Two Hundred Ghana Cedis (GH¢1,200.00) in arrears payable latest by the end of the last day of the month

3.6 The Assistant coach is entitled to one and half the winning bonus received by the players

3.15.4 The Coach shall be entitled to 5% of net player transfer fees effective 1st December, 2020

4. CLAUSE 4 AUTHORITY



4.1 The Assistant coach shall report directly to management

4.2 The management//board shall monitor the day-to-day operations of the Assistant Coach on behalf of the club. Any order(s), instruction(s) of the board shall be issued by the management

5. CLAUSE 7. TERMINATION

This agreement may be terminated by either party on thirty days written notice to the other or in lieu of the notice pay a one-month salary. If the Assistant coach so terminates the agreement in accordance with the provisions of this agreement, the Assistant coach shall have the right to terminate this agreement upon giving 3 months notice in writing to the club or in or in lieu, pay three (3) months of his salary and pay additional amount of thirty thousand Ghana Cedis(GH¢30,000) to the club. That shall not be the exclusive remedy of the club.

It is obvious from the presentations that, the contract did not run its full term as the respondent put in a resignation letter. In order to determine whether there was just cause for resignation or termination, the Committee examined the reasons and conditions advanced by the coach.

- a. The Committee is not happy with the rather bizarre and inhumane treatment of the coach regarding his accommodation when another assistant coach was brought on board as alleged. It is repugnant, if that was a way of "inducing" him to terminate his contract.
- b. The above situation notwithstanding, the Committee strongly believes that, the gravity or magnitude of this administrative lapse of judgement and repulsive attitude, was not enough to warrant the abrupt termination or resignation.
- c. Additionally, the respondent needed to officially put in, written Demand notices for unpaid winning bonuses. The coach could also have registered his displeasure and stated his grievances to management to remedy whatever situation. These were not done and can therefore not be used as causes for termination.

The Committee is therefore convinced that, this contract was terminated without just cause. However, while petitioner is seeking the full implementation of FIFA Article 17 that deals with the consequences of terminating a contract without just cause; the respondent draws attention to the fact that, even if there was a breach of the contract, there exists a penalty clause in the contract to rely on as evidenced in Clause 7 of the contract.

Before determining whether there is a compensation or penalty clause in the contract and ascertaining it's suitability for application in this particular case, the committee wish to state that, penalty or compensation clauses in contracts are permissible and respected if inserted in contracts.

In Arbitration CAS 2015/A/3946 ZAO FC LOCOMOTIV V LEONID STANISLAVOVICH KUCHUK & Football Union of Russia (FUR), award of 28 January 2016, the panel indicated:



“According to well-established CAS jurisprudence, an explicit agreement of the parties to a contract on a certain sum to be paid in case breach of contract does not need to be reduced by any of the amounts that the party entitled to receive such compensation has earned after the termination of an employment contract. Specifically, in case an employment contract contains a typical clause for liquidated damages – i.e. clearly stating how the compensation shall be calculated- the amount stated in the respective clause has to be paid as liquidated damages in the sense that no reduction will be made even if the party entitled to the damages had started a new employment on a date prior to the end of its original employment contract.”

In another decision by the FIFA Dispute Resolution Chamber (DRC) passed in Zurich, Switzerland, on 21 May 2015, the panel noted:

(23) “At this point, the Chamber was eager to highlight that compensation clauses may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality, reasonableness and reciprocity. In this respect, the Chamber highlighted that in order to determine as to whether a compensation clause is to be considered acceptable, the specific circumstances of the relevant case brought before it shall also be taken into consideration.”

(25) “On account of all the above, the Chamber decided that the said compensation clause is valid and applicable in the present matter. Therefore, the Chamber emphasised that any compensation due to the player should be calculated solely on the basis of the relevant clause”

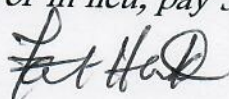
Indeed, incidentally, the Petitioner in this substantive case, makes reference to CAS/2014/A/3707, Emirates Football Company v Hassan TIR, Raja club. The panel held that:

“Parties to an employment contract must stipulate the amount of compensation to pay in the event of a breach of contract. Where such a clause exists, it’s wording should leave no room for interpretation and must clearly reflect the intention of the parties.”

It is significant to mention that, even though petitioner made reference to the above, they indicated that, the contract under review had no such provision.

- a. The committee therefore had to examine the contract to ascertain whether there was a compensation clause as alleged by the Coach; or none, as indicated by the petitioner
- b. The Coach had earlier drawn attention to clause 7 of the contract as representing the compensation or penalty clause. It states:

“This agreement may be terminated by either party on thirty days written notice to the other or in lieu of the notice pay a one-month salary. If the Head Coach so terminates the agreement in accordance with the provisions of this agreement, the Head Coach shall have the right to terminate this agreement upon giving 3 months’ notice in writing to the club or in lieu, pay 3 months of his salary and pay additional amount of



Thirty Thousand Ghana Cedis (GHC30,000) to the club. That shall not be the exclusive remedy of the club”

- c. With reference to the above, the Committee is satisfied that, clause 7 of the contract, qualifies and satisfies its insertion as a compensation or penalty clause considering its proportionality with regard to the contractual benefits that will have accrued to the coach had the contract continued.

DECISION

It is the decision of the Committee that, all relevant and applicable conditions captured in clause 7 of the contract shall apply.

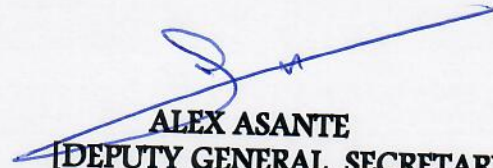
1. The Assistant coach, Mr. Mohammed Obeng Hamza, shall pay to the petitioner, MEDEAMA SC:
 - a) Three months salary in lieu of notice of termination of the contract GH¢7,500 (Seven Thousand, Five Hundred Ghana Cedis representing 3 (three) months salary in lieu of notice- $\text{GH¢}2500 \times 3 = \text{GH¢}7500$.
 - b) An additional GH¢30,000 (Thirty Thousand Ghana Cedis) according to clause 7.
 - c) Clause 7 lastly indicates the above “shall not be the exclusive remedy of the club”. MEDEAMA SC however failed to indicate in their petition, what additional remedy they require. The Committee is therefore unable to offer any, aside what clause 7 captures.

The Assistant coach, Mr. Mohammed Obeng Hamza, shall therefore pay a total amount of GH¢37,500 (Thirty-Seven Thousand Five Hundred Ghana Cedis) to MEDEAMA SC as compensation fee within 14 (fourteen) days after being furnished with bank details of the petitioner, MEDEAMA SC.

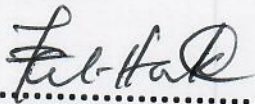
2. The Assistant coach alleged that his new salary of GHC2,500 per month as from December 2019, was not implemented until October 2020. However, the MTN Mobile money report he submitted as evidence, lacked clear and concise information to help the committee work out what is due him in terms of salary arrears. The Committee found payments from Mr. Moses Armah, owner of the club, which were in excess of the coach’s previous salary of GHC1,200. For instance, January 2020, there was a payment of GHC2,000; February, GHC2,000; May, GHC2,000; July, GHC2,000...etc
 - a. No payment was found consistent or conforming to either the old or Amended salary of Addendum of 11 February, 2019. It is the duty of the Respondent to have given a comprehensive financial analysis, backed with matching evidence, to make it easy for the committee to work out what is due him. In the absence of such, the Committee is unable to award anything.



3. The Respondent also failed to indicate the amount of winning bonuses due him. The contract talks about the coach receiving one and half times the winning bonus of players. No specific figures were mentioned neither were winning results indicated. Here again, the Committee is handicapped in fixing an award.
4. 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.
5. The counter claim by the Coach, Mr Mohammed Obeng Hamza, is therefore denied in its entirety.


ALEX ASANTE
[DEPUTY GENERAL SECRETARY]

SIGNED:


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IS-HAK AL-HASSAN
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. MEDEAMA SC - PETITIONER
2. MOHAMMED OBENG HAMZA - RESPONDENT