



## **Legal commentary: The case of the Player Abdullah Al-Saeed v. Club Al-Ahly SC, Egypt**

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### **Abstract**

Legal Commentary: The player Abdullah Al-Saeed's case against Al-Ahly SC, Egypt.

**Keywords:** Football regulations; FIFA RSTP; International players' transfer; Contracts.

### **1. Introduction**

Abdullah Al-Saeed is an Egyptian professional player who plays at Pyramids FC, Egypt, and the National team. The player had played in Al-Ahly SC, an Egyptian football team that is affiliated with the Egyptian Football Federation and plays in the Egyptian Primer League. The player had transferred from Al-Ahly SC, Egypt to Al-Ahli Jeddah, KSA with a condition not to be sold or loaned to any other Egyptian team. The player had terminated his contract with Ahli Jeddah and signed a contract with Pyramids FC as a free agent. Al-Ahly, Egypt filed a claim that the player and Al-Ahli Jeddah had violated the contract when the player moved to play with an Egyptian team other than Al-Ahly SC.

### **Brief Facts**

On 27 May 2018 Al-Ahly SC, Egypt concluded a contract with Al-Ahli Jeddah, KSA to sell the Player Abdullah Al-Saeed the Star of the Egyptian National team for \$1,000,000.

The third clause of the contract between Al-Ahly, Egypt & Al-Ahli Jeddah stipulated that "The second party must pay the first party 1,000,000 (only one million dollars) at the expense of the latter, with a maximum of one week from the date of signing the contract."

The fourth clause reads as follows "All parties have agreed that it **is not permissible to sell or loan the player** inside the Arab Republic of Egypt in any way for a period of three football seasons from the date of signing the contract..."

The seventh clause stated that "It is agreed that if any of the second or third party (the player) violates any of the terms of this contract, he is obligated to pay an amount of \$2,000,000 (two million dollars), as an agreed penalty condition, and it is not permissible to increase or decrease it in any way, to be paid immediately upon the occurrence of the violation."

The eighth clause stated that "All parties have agreed that in the event of any dispute that may arise in connection with this contract, the International Federation of Football Association (FIFA) shall be resorted to, is the only competent authority to settle this dispute or dispute, in order to take the appropriate decision following the rules and laws regulating it. The decision is final in this regard."

**On 2 January 2019, the player Abdullah Al-Saeed terminated his contract with Al-Ahli Jeddah by mutual consent and signed for Pyramids FC, Egypt on 4 January 2019.**

**Al-Ahly, Egypt filed a claim before FIFA Against Al-Ahli, Jeddah KSA.**

On 13 May 2019, Al-Ahly, Egypt maintained that Ahli Jeddah breached the agreement by not complying with the provisions of the contract, namely the fourth clause, and should therefore pay the penalty clause as established in the agreement, i.e. USD 2,000,000.

In Al-Ahli Jeddah's response, it alleged that the employment contract with the player was mutually terminated amicably on 2 January 2019. A settlement was also signed between the respondent and the player, through which the latter acknowledged not to lodge any claim against it.

Given the above, the Respondent denied having sold the player to another club in Egypt and hence cannot be considered to have breached the agreement.

### **Considerations of the Single Judge of the Players' Status Committee**

"10. The Single Judge acknowledged the arguments of both parties in respect of the aforementioned clause and noted that by the information contained in the Transfer Matching System (TMS), **the player was engaged by the new Egyptian club, Pyramids FC, on 4 January 2019, "out of contract / free of payment"**. This information is in line with the argumentation put forth by the Respondent and therefore the Single Judge concluded that no breach of the non-competition clause existed on the part of the Respondent, since the player was neither transferred nor loaned to a third party in Egypt.

"11. In conclusion, the Single Judge decided to follow the argumentation of the Respondent and reject the claim of the Claimant."

**The decision of the Single Judge of the Players' Status Committee came with obvious rejection by FIFA as follows:**

- "1. The claim of the Claimant, Al-Ahly SC, is rejected.
2. The final costs of the proceedings in the amount of CHF 20,000 are to be borne by the Claimant..."

**Al-Ahly, Egypt filed a claim against Abdullah Al-Saeed before the Egyptian Center of Arbitration for sports.**

On 8 May 2021, Media Reports published: "Al-Ahly officially announced that it had obtained a ruling from the Sports Arbitration Center to oblige its former player, current pyramids player, Abdullah Al-Saeed an amount of \$2,000,000 in favor of the Red Club (Al-Ahly), the value of the penalty clause in the player's sale contract to the Saudi Al-Ahli Jeddah Club earlier"

The Player's Attorney in Egypt stated that the Player was not summoned nor notified and did not know about the existence of any proceeding against him before the Egyptian Center of Settlement and Arbitration for Sports.

Moreover, the Attorney stated that as per the Contract and since it's a dispute of international dimension involving 3 parties (Al-Ahly Egypt, Abdullah Al-Saeed the Egyptian player, and Al-Ahli Jeddah) the Egyptian Center of Settlement and Arbitration for Sports shall not be the one to rule over the matter.

### **Legal Issues**

According to the foregoing issue, we can conclude that there are 3 main legal issues at hand:

Did Ahli Jeddah or the player breach the agreement?

Does Ahli Egypt have the right to appeal a FIFA PSC decision on a dispute of international dimension locally?

If the Egyptian center of Arbitration for Sports is competent, was the Player's right to be heard respected?

### **I. Did Ahli Jeddah or the player breach the agreement?**

The answer was given by FIFA PSC in para 10 of its Decision stating: "(...) **the player was engaged by the new Egyptian club, Pyramids FC, on 4 January 2019, "out of contract / free of payment (...)"**"

The Fourth Clause of the agreement reads as follows: "All parties have agreed that it **is not permissible to sell or loan the player** inside the Arab Republic of Egypt in any way for a period of three football seasons from the date of signing the contract..."

As stated in article 18 of the Swiss Code of Obligations (SCO) and its interpretation/application by the Court of Arbitration for Sport, namely in **CAS 2017/A/5312** when it clearly stated that in case, we cannot prove under article 8 of the Swiss Civil Code (SCC) the intentions of the parties regarding a certain contractual clause, there's no need to go and look beyond the "express contractual wording"

This is precisely what FIFA PSC did in its decision. It interpreted the clause as it is; sell or loan indicates transferring the economic rights of the Player from one club to another.

An analogy can be drawn with CAS cases concerning the interpretation of the Sell-On Clause. In this regard, we cannot miss **CAS 2012/A/3012**; a mutual termination preventing in good faith a contractual provision to be triggered is legal, unless as stated in **CAS 2009/A/1756**, it's proven that the parties intended to halt the fulfillment of a condition in bad faith, hence violating article 2 of the SCC and triggering the application of article 156 of the SCO which will deem the condition as fulfilled.

The Player and Ahli Jeddah agreed to the termination of the employment contract and hence ending any economic right Ahli Jeddah used to own. Subsequently, the Player became free and since Ahli Egypt failed to prove any reprehensive behavior from the player or Ahli Jeddah meant to half the fulfillment of the Fourth Clause, FIFA PSC ruled that Ahli Jeddah shall not pay the penalty clause stated therein.

Had the wording been less specific and more different the outcome of the dispute would've been different.

Let's assume that the fourth clause mentioned the word "transfer" instead of "sell or loan", FIFA PSC could've followed an approach similar to the one stated in **CAS 2019/A/6525** by adopting a wider interpretation of the clause since the word transfer, according to this CAS jurisprudence, might include "temporary transfer, transfer on a definitive basis, the moving of the player by registering in another association with another club, etc...", although, in our case, seeing the wording of the seventh clause, it would be debatable as to who will be liable to pay the 2,000,000 USD compensation if the player has freely moved to another Egyptian club after having mutually terminated his employment contract.

### **II. Does Ahli Egypt have the right to appeal a FIFA PSC decision on a dispute of international dimension locally?**

According to clause eight from the contract concluded between the two clubs and the player "All parties have agreed that in the event of any dispute that may arise in connection with this contract, ... **(FIFA) is the only competent authority** to settle this dispute or dispute.... **The decision is final** in this regard."

Besides the choice of the competent authority under the pacta sunt servanda principle, one cannot ignore the fact that FIFA stakeholders shall refer to the FIFA's Regulations on Status and Transfer of Players (FIFA RSTP) whenever the dispute is of international dimension according to its article 1.

These regulations give explicit jurisdiction to FIFA Player's Status Committee (PSC) according to article 23 of FIFA RSTP and specify the exact type of cases that shall be ruled over by PSC in Article 22 para f (Dispute between Clubs of different association)

According to the foregoing, FIFA PSC shall have exclusively the jurisdiction over the matter. Ahli Egypt could've followed a different path and abided by articles 15 and 18 of the FIFA Procedural Rules if it had wished to annul the PSC decision since the only mean of appeal as provided by the FIFA Procedural Rules as well as article 58 of FIFA Statutes is through the Court of Arbitration for Sport.

To have a clear picture of what might have been brought forward by Ahli Egypt to overcome the res judicata of the PSC Decision, it may have argued that the dispute before FIFA was between two clubs and this one is different since Ahli Egypt is targeting the Player as a main party of the claim. Nevertheless, article 22 Para. a)

of the FIFA RSTP widens the jurisdiction of FIFA as it mentioned that FIFA is competent over a dispute between Clubs and players in connection with matters related to contractual stability and breach of contract. The article is a little vague as it does not mention the dimension of the stakeholders whether it will be international or national. But we can easily conclude from article 1 of the RSTP that if an international element is involved FIFA shall have exclusive jurisdiction unless the contract states otherwise.

If we follow the **Egyptian sports law no 71/2017** itself, we will find that it does not give jurisdiction unless a compromise or an arbitration agreement concluded between the parties has been proven to exist according to article 67.

The same article was taken as it is and copied in the Statutes (**decision no 88/2017**) of the Egyptian Center of Settlement and Arbitration for Sport (article 3)

### **III. If the Egyptian center of Arbitration for Sports is competent, was the Player's right to be heard respected?**

The right to be heard is the cornerstone of any fair trial. It's a fundamental right enacted in Swiss law (i.e articles 53 and 373 of the Code of Procedures) and Egyptian law (i.e article 102 of Law no 13/1968) (Article 22 of the Egyptian Constitution). FIFA itself admitted that this right is fundamental in article 5 para 8 of its Procedural rules.

Article 53 of the Statutes of the Egyptian Center of Arbitration for Sport obliges the Arbitration Panel to summon the parties to state their defenses.

According to various reports, the Player was not informed of nor summoned for the proceeding before the said center.

The Egyptian arbitration law no 27/1994 in its article 53 stated 7 reasons to annul an arbitration award before the national court, among these reasons is the violation of the right to be heard (i.e if the arbitration panel failed to summon one of the parties and invite him to state his defense regardless of the reason given the fact that it was out of the control of the prejudiced party.

Notwithstanding the above, article 92 bis of the statutes Egyptian Center of Arbitration for Sport states that the decisions rendered by the center are binding and shall not be subject to appeal before any entity whatsoever which is in contradiction with the aforementioned arbitration law, the New York convention as well as the Egyptian constitution to the extent that there's a current on-going dispute Ref. Nr. 61/42 before the Egyptian Supreme constitution court. The said article gives absolute immunity to the Egyptian Center of Arbitration for Sport vis-à-vis any sort of appeal or annulment of any nature whatsoever.

Even if the Egyptian Center of Arbitration for Sport was competent, the Player's right to be heard was disregarded entirely and made the rendered award defected.

### **Evaluation**

According to the foregoing, the player has appealed the decision of the Egyptian Center of settlement and Arbitration for Sports before the Court of Arbitration for Sports (CAS-TAS).

It's utterly clear that the Player will have an award in his favor. If not because of the reasons that we have mentioned above (no breach, the player was a free agent), there is an important principle that could help the player in his appeal before the Court of Arbitration for Sports which is article 18 para. 1 of the FIFA Regulations of the Status and Transfers of the Players (RSTP).

Looking at the case of the player Mehdi Benattia against his former Italian club Juventus (**Decision 190539 TMS**). When Mehdi transferred from Juventus to Al-Duhail, a Qatari club, The former party had put a condition on the latter not to sell the player to any of the top Italian clubs in Serie A. therefore, FIFA had established that that condition is null by stating in Para. 21. that "(...) the Committee considers that, by entering into this agreement, the club Juventus FC acquired the possibility to exert influence on the independence and policies of another club, namely the club Al Duhail SC (...) As a result, the Committee finds the club Juventus FC liable for the breach of article 18bis para. 1 of the RSTP in relation to the agreement."

Even if the player, in the worst scenario, is considered as he breached the contract with Al-Ahly, Egypt. Unintentionally, the player will have breached a clause that is considered null by FIFA and CAS will order an award in the player's interest since Al-Ahly, Egypt cannot influence Al-Ahli, Jeddah to sell or not to sell the player to any other club either inside or outside Egypt as per Benattia's case. Therefore, we could conclude that the player's position, in this case, is way stronger than the Egyptian club.

#### **References**

- [1] CAS decision 2017/A/5312 (CAS-TAS, 2017);
- [2] CAS decision 2012/A/3012 (CAS-TAS, 2012);
- [3] CAS decision 2009/A/1756 (CAS-TAS, 2009);
- [4] CAS decision 2019/A/6525 (CAS-TAS, 2019);
- [5] (Egyptian sports law no 71/2017);
- [6] Decision no 88/2017 (Egyptian Center of Settlement and Arbitration for Sport, 2017);
- [7] (Article 22 of the Egyptian Constitution, 2014);
- [8] (Egyptian arbitration law no 27/1994);
- [9] Decision 190539 TMS (FIFA TMS, 2019).
- [10] Article 18 FIFA RSTP (FIFA RSTP, 2022)