

**EHF Court of Arbitration
Arbitral Award
(Summarized and anonymous)
Case n° 152033751 ECA
13 May 2015**

In the arbitration between

Mr. X...,
as the Claimant

and

The handball club Y...,
as the Respondent

Panel
Julien Zylberstein (France)
Agata Dziarnowska (Poland)
Alan Soric (Croatia)

I. Facts

A. Parties

1. Mr. X... is a professional handball player (also "the Player"), employed by handball club Y... as from 1 January 2014 until 1 June 2016.

2. Handball club Y... is a men handball club (also the "Club"), playing in the first men's handball league of the national handball federation of ... (also the "National Federation") and in EHF club competitions organized by the European Handball Federation.

B. Facts

3. On 1 January 2014, the Parties entered into a fixed-term contract, effective from 1 January 2014 until 1 June 2016 (the "Contract"). Under the Contract, the Club agreed to undertake the payment to the Player of monthly equal instalments as follows:

- €2,300 (two thousand, three hundred Euros) between January 2014 and May 2014;

- €2,760 (two thousand, seven hundred and sixty Euros) between August 2014 and May 2015; and
- €3,600 (three thousand, six hundred Euros) between August 2015 and May 2016.

4. The Contract also provided that should the Club fail to pay two monthly instalments at any time during the period covered by the Contract, the Player would be released as a free agent and receive all instalments until the end of the Contract, i.e. May 2016.

5. On 11 November 2014, the Player filed a request to terminate the Contract with the National Federation for the alleged non-payment of two consecutive instalments for the months of August and September 2014.

6. On the same day, the Club made a payment of €4,948 (four thousand, nine hundred and forty-eight Euros) to the Player.

7. On 12 November 2014, the National Federation informed the Player that the Club had filed a request to terminate the Contract with the National Federation's Registration Committee, i.e. body of first instance.

8. On 9 December 2014, the Registration Committee rejected the request of the Player on the grounds that he had failed to show evidence that the Club did not pay two monthly instalments.

9. On 15 January 2015, the National Federation's Arbitration Committee, i.e. body of appeal, confirmed the decision of the Registration Committee.

II. Proceedings before the EHF Court of Arbitration

10. On 20 January 2015, the Player filed a statement of claim with the EHF Court of Arbitration ("the ECA").

11. On 27 January 2015, proceedings before the ECA were opened. The ECA Council informed the Parties accordingly and the Club was subsequently invited to send a memorandum in reply, which it did within the set deadline.

12. On the same day, the Player appointed Mr Alan Sorić as arbitrator in the proceedings in accordance with Article 1.1 and Article 1.3 of the Rules of Arbitration for the ECA – Procedural Rules (the “Procedural Rules”).

13. On 28 January 2015, the Club was required to nominate an arbitrator in accordance with Article 1.4 of the Procedural Rules, which it did not. The ECA Council therefore appointed Ms Agata Dziarnowska pursuant to Article 1.4 of the Procedural Rules.

14. On 12 February 2015, the two arbitrators appointed Mr Julien Zylberstein as Chairman of the Panel in accordance with Article 1.5 of the Procedural Rules.

15. On 17 February 2015, the ECA Council informed the Parties that the composition of the Panel was the following:

Mr Julien Zylberstein (France) – Chairman
Ms Agata Dziarnowska (Poland) – Arbitrator
Mr Alan Sorić (Croatia) – Arbitrator

16. The Parties did not raise any objection nor any challenge as to the composition of the Panel.

III. Submissions

A. Claimant’s submissions

17. On 20 January, 21 January and 2 February 2015 respectively, the Player sent a statement of claim, certified translations and further supporting documentation, including evidence.

18. In his submissions, the Claimant argues that between August 2014 and May 2015, the Club had the obligation to pay monthly equal instalments of €2,760 (two thousand, seven hundred and sixty Euros) and

considers that the Club failed to do so in August and September 2014.

19. Consequently, the Claimant contends that the Player was in breach of the terms of Article 1 (b) of the Contract, thus entitling him, pursuant to Article 8 of the Contract, to:

- terminate the Contract;
- be released from any contractual obligations vis-à-vis the Club; and
- receive from the Club the remaining instalments owed until the end of the Contract, i.e. €58,080 (fifty-eight thousand and eighty Euros).

20. Finally, the Claimant requests the Club to bear all legal and arbitration costs for the present proceedings.

B. Respondent’s submissions

21. On 14 February 2015, the Club submitted a memorandum in reply to the Player’s statement of claim. The submissions may be summarised as follows.

22. The Club first denies that it failed to pay two monthly instalments to the Player, with a first payment of €809 (eight hundred and nine Euros) having been made on 8 August 2014 and a second payment of €4,948 (four thousand, nine hundred and forty-eight Euros) having been made on 11 November 2014. This has been confirmed by both the Registration Committee and the Arbitration Committee of the National Federation.

23. The Club also contends that it initiated internal disciplinary proceedings against the Player after he did not attend training sessions and matches between 6 and 10 November 2014. The Player was informed via registered mail that an oral hearing would be held on 24 November 2014 in the context of such proceedings. However, the Player did not appear, nor did he provide any justification for his absence.

IV. Factual and Legal Appreciation by the EHF Court of Arbitration

A. Admissibility

24. The claim filed by Mr. X... is formally admissible, which is undisputed by the Respondent.

B. Jurisdiction of the EHF Court of Arbitration

25. According to Article 1.1 of the Procedural Rules:

"The EHF Court of Arbitration shall have competence [...] in disputes between and among players, player's agents, the EHF, the National Federations, and clubs."

26. In the present case, the Club is a club affiliated to the National Federation and the Player is a professional handball player who was registered with the Club at the time the complaint was lodged.

27. The jurisdiction of the EHF Court of Arbitration is not disputed by the parties.

28. It follows that the EHF Court of Arbitration has jurisdiction to hear and decide on this dispute.

C. Applicable Rules and Regulations

29. The Contract entered into by the Parties for the period 1 January 2014 – 1 June 2016 provides the respective obligations to be fulfilled by the Parties.

30. Article 1 of the chapter of the Contract setting out the obligations of the Club reads as follows:

"1. [The] total amount of the [remuneration] is €75.100.

a) For the season 2013/2014 [the remuneration] shall be [...] €11,500.

- [the remuneration] shall be paid in 5 (five) equal instalments in the amount of €2,300 each (as of the month 01).

b) For the season 2014/2015 [the remuneration] shall be [...] €27,600.

- [the remuneration] shall be paid in 10 (ten) equal instalments in the amount of €2,760 each (as of the month 08).

c) For the season 2015/2016 [the remuneration] shall be [...] €36,000.

- [the remuneration] shall be paid in 10 (ten) equal instalments in the amount of €3,600 each (as of the month 08)."

31. Pursuant to Article 8 of the aforementioned chapter of the Contract:

"If the club has failed to pay two instalments under this agreement, the handball player shall have the status of a freelance player and until the moment of the agreement termination, the club undertakes to pay all liabilities towards the handball player."

32. Article 2 of the chapter of the Contract setting out the obligations of the Claimant provides that the Player shall:

"...take a regular part and to have the discipline on all matches and trainings."

33. The Contract is governed by Macedonian law.

D. Review of the parties' submissions

1. Main issues

34. In light of the foregoing, the Panel will address the following issues:

(i) Has the Club failed to pay two monthly instalments to the Player?

(ii) If such non-payment is established, what are the consequences thereof?

i. Has the Club failed to pay two monthly instalments to the Player?

35. In the present case, the Claimant contends that the Club failed to pay him two equal instalments between 1 August and 11 November 2014.

36. According to Article 1 of the Contract, the Club agreed to pay the Player 10 (ten) equal monthly instalments of €2,760 (two thousand, seven hundred and sixty Euros) each for the period August 2014 - May 2015.

37. Between the date of the entry into force of the Contract for the 2014/2015 season (i.e. 1 August 2014) and the date of submission of the request to terminate the Contract (i.e. 11 November 2014), the following payments were made:

- € 809 (eight hundred and nine Euros) on 8 August 2014; and
- € 4,948 (four thousand, nine hundred and forty-eight Euros) on 11 November 2014.

38. It is clear from Article 1 of the Contract that the Club had committed to pay equal instalments to the Player, a fact that is reiterated on three occasions in the wording of the aforementioned provision of the Contract.

39. Accordingly, and unlike the Registration Committee and the Arbitration Committee, the Panel cannot accept the argument that the €809 (eight hundred and nine Euros) payment made on 8 August 2014 may be deemed as an "instalment" pursuant to the Contract. It cannot be concluded that this amount is in line with the terms of Article 1 (b) of the Contract, nor that it is substantial.

40. With regard to the payment of €4,948 (four thousand nine hundred and forty-eight Euros) made by the Club on 11 November 2014, the Panel notes that, according to the documentation submitted by the Club, this payment refers to the instalments owed to the Player for August and September 2014.

41. Further, the Panel notes that the Contract does not provide any set date for the payment of such monthly instalments which may then be addressed by reference to the applicable piece of Macedonian law. In the present instance, although the Parties have not defined the nature of the Contract (i.e. employment contract or civil-law contract), the Panel observes that the Contract has all the characteristics of an employment relationship since, under the terms of the Contract, the Player performs services as an employee under the authority of the Club in exchange of which he receives payments. Accordingly, the determination of the set date of the payment shall be resolved by reference to the legislation of Macedonia governing employment relationships.

42. Pursuant to Article 71 of the Labour Relations Law of the Republic of Macedonia, instalments must be paid by no later than the 15th day of the month following which the instalment is due. After this period, the payment will be considered as overdue. It follows that the Club had until 15 September and 15 October 2014 respectively to pay the instalments owed to the Player for the months of August and September 2014.

43. As demonstrated above, the facts of the case show that between 1 August 2014 and 11 November 2014, i.e. three (3) months and ten (10) days, the Player received only a portion of one (1) instalment in the amount of €809 (eight hundred and nine Euros) where at least two instalments amounting to €2,760 (two thousand, seven hundred and sixty Euros) each should have been paid by the Club in accordance with the terms of the Contract. The mere fact that the Club eventually paid the instalments owed to the Player does not remedy the default of payment outlined above. Furthermore, the Panel notes that it is only once the Club had been informed that the Player had filed the request to terminate the Contract that such payments were made.

44. It follows from the foregoing that the Club has failed to pay two instalments to the Player and, consequently, the Player was entitled to request the termination of the Contract under Article 8 of the Contract. The Panel further notes that the Club was still in default as at the date when the Player filed the request to terminate the Contract, i.e. 11 November 2014.

ii. Has the Club failed to pay two monthly instalments to the Player?

45. In the present case, the failure by the Club to pay two instalments is sufficient to trigger Article 8 of the Contract which provides for a mechanism to calculate the compensation owed to the Player. The Panel considers this mechanism to be consistent with the general principle of contract law according to which the party in breach of a contract owes compensation for the damage caused to the other party as a consequence of this breach.

46. It follows from the aforementioned provision that should the Club fail to pay the Player two monthly equal instalments pursuant to Article 1 of the Contract, the latter is entitled to be released as a free agent and receive all payments owed until the end of the Contract, i.e. May 2016.

47. Pursuant to this provision, and as described above, the Panel determines that the starting point for the payment of the remaining instalments is the balance of monies due under the Contract from the day of the default of payment was established, i.e. 15 October 2014. At the time of the request for arbitration filed by the Player with the ECA, the amount of the overdue outstanding payments was €21,843 (twenty-one thousand, eight hundred and forty-three Euros) for the season 2014/2015 and €36,000 (thirty-six thousand Euros) for the season 2015/2016, i.e. a total amount of €57,843 (fifty seven thousand, eight hundred and forty-three Euros).

48. However, while it has been established that the Club shall be held liable for the default of payment, the Panel finds that

having due regard to the circumstances of the case, there exists other factors that should be taken into consideration when determining the consequences of the Club's default.

49. Generally speaking, the Panel is keen to stress that in any contractual relationship the main obligation of a club is to pay the player in accordance with the terms of the contract entered into. Against this background, if the club fails to perform its obligation to pay, the player may no longer be expected to continue to be bound by the contract. In such circumstances, the player is, as rule, entitled to request the early termination of the contract provided that the player has drawn the club's attention to the fact that it is not acting in accordance with the terms of the contract.

50. In the present case, the Player did not attend the Club's training sessions between 6 and 10 November 2014 and thus violated his main obligations pursuant to the Contract. The Panel refers in this respect to Article 2 of the Contract which is clear in providing that the Player shall "...take a regular part and to have the discipline on all matches and trainings". On that basis, disciplinary proceedings were initiated against the Player, who was given the opportunity to make representations, which he did not. That said, however, the Panel observes that the Player has not contested that he had been given the right to a fair trial nor that such proceedings complied with the required standards of due process.

51. Furthermore, the Panel notes that the Player did not send any letter or formal notice prior to requesting the termination of the Contract and the Panel would have expected the Player to give a warning to the Club. However, the Player never expressed any complaints regarding late payments, nor how this affected his situation to a point where he could no longer be expected to remain in a contractual relationship with the Club. Instead, the Player suddenly and unilaterally decided to cease attending training sessions.

52. On these grounds, it is difficult for the Panel to be persuaded that the Player acted diligently and in good faith. Consistent with the above, the Player's behaviour warrants the attention of the Panel.

53. Accordingly, the mere application of Article 8 of the Contract, which would result in awarding the Player the entire Contract balance without any mitigation, is excessive given the circumstances of the present case. Against this background, the Panel considers it adequate and proportionate to only grant the Player the right to receive the amount of the remaining instalments for the season 2014/2015, i.e. €21.843 (twenty-one thousand and eight hundred forty-three Euros).

2. Costs

54. Article 21 of the Procedural Rules provides the following:

"21.1 The arbitral panel shall in the award determine which party shall bear the arbitration costs.

21.2 As a general rule the unsuccessful party shall bear the costs of the arbitral proceedings. The arbitral panel may take into consideration the circumstances of the case, and in particular where each party is partly successful and partly unsuccessful, order each party to bear each own costs or apportion the costs between the parties.

[...]

21.4 In any case the decision on costs and the fixation of the amount shall be effected in terms of an award."

55. Pursuant to Article 22.3 of the Rules of Arbitration for the ECA:

"The costs of the parties shall not be refunded."

56. The arbitration proceedings costs amount to €2.670 (€1.500 registration fee/€800 arbitrators fees/€370 administrative fees). Taking into consideration the outcome of the Proceedings, the Panel finds it appropriate

to have such costs of the arbitration proceedings split into two equal parts.

57. The Claimant shall pay €1.335 (one thousand, three hundred and thirty five Euros). Since he has already paid these costs, the remaining sum of the advance fee will be refunded to him.

58. The Respondent shall pay €1.335 (one thousand, three hundred and thirty five Euros) towards the costs of these proceedings.

59. Based on the abovementioned, the arbitral panel comes to the conclusion that it does not have jurisdiction to rule on the case at hand.

V. Award

Having due regard to the circumstances of this case, the EHF Court of Arbitration rules that:

1. The claim of the Claimant is partially upheld.

2. The Respondent shall pay €21,843 (twenty-one thousand, eight hundred forty-three Euros) to the Claimant within 21 days following the notification of the present award, i.e. by 5 June 2015.

3. If the Respondent fails to make the whole payment of the amount referred to at Paragraph 2 of the Operative Part above, a 4 % interest rate shall be added to this amount as from the fifteenth (15th) day following the notification of the present award until complete execution of the payment.

4. The Respondent shall pay €1.335 (one thousand, three hundred and thirty five Euros) towards the costs of these proceedings to the EHF Court of Arbitration within two (2) months following the notification of the present award, i.e. by 15 July 2015.

5. Each party shall bear its own legal costs and all other expenses in connection with this arbitration.