SPC Guiding Case No. 201: Dragan Kokotović v. Shanghai Enwo Catering Management Co., Ltd. and Lü En (Labor Service Contract Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil litigation / labor service contract / Convention on the Recognition and Enforcement of Foreign Arbitral Awards / international single-sport organization / validity of arbitration agreement

Holding

1. A dispute-resolution decision rendered by the internal dispute-resolution body of an international single-sport organization does not constitute a foreign arbitral award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

2. Where the parties agree that any dispute arising shall be submitted to an international single-sport organization for resolution, and that if the international single-sport organization has no jurisdiction, the dispute shall be submitted to the Court of Arbitration for Sport for arbitration, if such agreement does not fall within any circumstance rendering it invalid under the governing law, the agreement shall be deemed valid. Where the international single-sport organization has actually exercised jurisdiction, and the dispute in issue does not satisfy the conditions for submitting the dispute to arbitration as agreed by the parties, the people's court shall have judicial jurisdiction over the dispute in accordance with the law.

Basic Facts

On January 23, 2017, Shanghai Juyundong Football Club Co., Ltd. (hereinafter "Juyundong Company") and the plaintiff, the Serbian coach Dragan Kokotović, entered into a Professional Coach Employment Contract, under which Dragan Kokotović was to provide coaching labor services as a professional coach for the football club under Juyundong Company. On July 1, 2017, the parties entered into a Contract Termination Agreement, agreeing that the Professional Coach Employment Contract would terminate on that date and that Juyundong Company would pay Dragan Kokotović the remaining wages and other sums. With respect to dispute resolution, Article 5.1 of the Contract Termination Agreement provided: "Any dispute or litigation related to or arising from this Contract Termination Agreement shall be subject to the jurisdiction of the FIFA Players' Status Committee (hereinafter the 'Players' Status Committee') or any other competent FIFA body." Article 5.2 provided: "If FIFA has no judicial jurisdiction over any dispute, the parties shall submit the aforesaid dispute to the Court of Arbitration for Sport, which shall accept it in accordance with the Arbitration Rules Applicable to Sports. The relevant arbitration proceedings shall be held in Lausanne, Switzerland."

Because Juyundong Company failed to pay the corresponding sums as agreed, Dragan Kokotović applied to the Players' Status Committee to resolve the dispute in issue. On June 5, 2018, the Players' Status Committee rendered a Single-Judge Decision, requiring Juyundong Company to pay Dragan Kokotović the remaining wages and other sums within 30 days from the date of receipt of the notice of the decision. The Single-Judge Decision further stated that if a party was dissatisfied with the decision, it should file an appeal with the Court of Arbitration for Sport in accordance with the prescribed procedures; otherwise, the Single-Judge Decision would become a final and binding award. Subsequently, neither party filed an appeal with the Court of Arbitration for Sport against the Single-Judge Decision.

Thereafter, Juyundong Company was changed to Shanghai Enwo Catering Management Co., Ltd. (hereinafter "Enwo Company"), and Lü En became its sole shareholder and legal representative. Because Enwo Company failed to pay the sums under the Single-Judge Decision, and because the Juyundong Football Club had been dissolved and was no longer registered with the Chinese Football Association, the aforesaid decision could not be enforced through the football industry's self-governance mechanism. Dragan Kokotović brought an action before the Shanghai Xuhui District People's Court, requesting the court to order: first, that Enwo Company pay Dragan Kokotović the remaining wages and other sums; and second, that Lü En bear joint and several liability for the aforesaid debts. During the period for submitting a statement of defense, Enwo Company and Lü En raised an objection to the people's court's acceptance of the case, arguing that under Article 5.2 of the Contract Termination Agreement, the dispute in issue should be submitted to the Court of Arbitration for Sport for arbitration and that the people's court had no jurisdiction, and requesting a ruling not to accept Dragan Kokotović's action.

Judgment

On January 21, 2020, the Shanghai Xuhui District People's Court rendered Civil Ruling (2020) Hu 0104 Min Chu No. 1814, dismissing Dragan Kokotović's action. Dragan Kokotović, dissatisfied with the first-instance ruling, filed an appeal. After trial, and after reporting for review to the Shanghai High People's Court and the Supreme People's Court in accordance with Article 8 of the Provisions of the Supreme People's Court on Relevant Issues Concerning the Reporting for Verification of Cases of Judicial Review of Arbitration, the Shanghai First Intermediate People's Court rendered Civil Ruling (2020) Hu 01 Min Zhong No. 3346 on June 29, 2022: first, revoking Civil Ruling (2020) Hu 0104 Min Chu No. 1814 of the Shanghai Xuhui District People's Court; and second, ordering the case to be tried by the Shanghai Xuhui District People's Court.

Reasoning

The court in its effective judgment held that the focal issues of the dispute in this case included two aspects: first, whether the Single-Judge Decision rendered by the Players' Status Committee constituted a foreign arbitral award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and second, whether the arbitration clause in issue could exclude the jurisdiction of the people's court.

First, the Single-Judge Decision rendered by the Players' Status Committee in this case did not constitute a foreign arbitral award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. According to the purpose, object, and provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, an arbitral award under the Convention refers to a final and binding award rendered by a permanent arbitral institution or an ad hoc arbitral tribunal on the basis of the parties' arbitration agreement in respect of a dispute submitted by the parties, and the Single-Judge Decision rendered by the Players' Status Committee did not conform to the aforesaid definition. The decision procedure of the FIFA Players' Status Committee is not an arbitration procedure, but rather an internal procedure of industry self-governance for resolving disputes. First, the Players' Status Committee is an internal self-governance dispute-resolution body of an international single-sport organization that accepts and handles disputes pursuant to internal regulations and rules, and is not an independent arbitral institution. Second, the Players' Status Committee only mediates and resolves disputes between its member units and members, and the Single-Judge Decision it renders is an internal decision of the international single-sport organization, which is mainly enforced through the industry's internal self-governance mechanism and does not have universal and strict binding force, and therefore does not conform to the essential characteristics of an arbitral award. Third, pursuant to Articles 22 and 23(4) of the FIFA Regulations on the Status and Transfer of Players, FIFA's handling of relevant disputes does not affect the right of a player or club to seek relief from a court in respect of the dispute, and the parties may also file an appeal with the Court of Arbitration for Sport against a decision rendered by the Players' Status Committee. The aforesaid provisions clarify that FIFA's decision is not final and does not exclude the parties' right to seek judicial relief. In summary, the Single-Judge Decision rendered by the Players' Status Committee did not conform to the definition of an "arbitral award" under the

Convention on the Recognition and Enforcement of Foreign Arbitral Awards and should not be deemed a foreign arbitral award.

Second, the arbitration clause in issue could not exclude the people's court from exercising jurisdiction over this case. The parties in this case agreed in Article 5 of the Contract Termination Agreement that after a dispute arises, it should first be submitted to the Players' Status Committee or other internal body of FIFA for resolution, and that if FIFA has no jurisdiction, it shall be submitted to the Court of Arbitration for Sport for arbitration. Since it has been clarified that the dispute-resolution procedure of the Players' Status Committee and other internal bodies of FIFA is not an arbitration procedure, the relevant agreement does not affect the people's court's exercise of jurisdiction over this case. However, the parties agreed that the dispute should be submitted to the Court of Arbitration for Sport for arbitration, which in essence is an agreement concerning the competent arbitral authority; therefore, it is necessary to further examine the validity of the arbitration agreement and whether it excludes the jurisdiction of the people's court.

Because the arbitration clause in the agreement in issue did not expressly stipulate the corresponding governing law, pursuant to Article 18 of the Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations, the governing law for the validity of the arbitration clause in issue should be Swiss law. During its review of the validity of the arbitration agreement in issue pursuant to Article 8 of the Provisions of the Supreme People's Court on Relevant Issues Concerning the Reporting for Verification of Cases of Judicial Review of Arbitration, the Supreme People's Court ascertained that the Swiss legal provision on the validity of arbitration agreements is Article 178 of the Swiss Federal Private International Law Act. That article provides as follows with respect to the validity of arbitration agreements: "(1) In form, an arbitration agreement shall be valid if it is made in writing, by telegram, telex, telefax, or any other means of communication that permits it to be evidenced by text. (2) In substance, an arbitration agreement shall be valid if it conforms to the conditions prescribed by the law chosen by the parties, or the law governing the subject matter of the dispute, in particular the law applicable to the main contract, or Swiss law. (3) The validity of an arbitration agreement may not be challenged on the ground that the main contract may be invalid or that the arbitration agreement concerns a dispute that has not yet arisen." Based on the facts ascertained, the agreement in Article 5.2 of the Contract Termination Agreement conformed to the aforesaid provisions of Swiss law, and therefore the arbitration clause was lawful and valid. However, under the arbitration clause, the dispute in issue could be submitted to the Court of Arbitration for Sport for arbitration only when the condition that "FIFA has no judicial jurisdiction" was satisfied. The Players' Status Committee had already accepted the dispute in issue and rendered the Single-Judge Decision, meaning that the dispute in this case had already been subject to FIFA's exercise of jurisdiction. Therefore, this case did not satisfy the condition for submitting the dispute to the Court of Arbitration for Sport for arbitration as agreed in the arbitration clause in issue, the arbitration clause did not apply to this case, and it could not exclude the first-instance court, as the people's court of the place where the defendant is domiciled, from exercising jurisdiction.

Relevant Legal Provisions

1. Article 18 of the Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations.

2. Article 1, paragraphs 1 and 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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