

中华人民共和国上海市第一中级人民法院
Shanghai No. 1 Intermediate People's Court of the
People's Republic of China

民事裁定书

Civil Ruling

(2020)沪01民终3346号

(2020) Hu 01 Min Zhong No. 3346

*(English Translation of Civil Ruling, with personal information anonymized/redacted
and formatting slightly adapted by the translator)*

Appellant (original trial plaintiff): A football Coach, national of the Republic of Serbia.
Entrusted litigation agent: Cai Guo, attorney at law, Jin Mao Law Firm.

First Respondent (original trial defendant): Shanghai Enwo Restaurant Management Co., Ltd., Rooms 201–10, No. 528 Xiaomuqiao Road, Xuhui District, Shanghai.

Statutory representative: Lyu En.

Second Respondent (original trial defendant): Lyu En, resident of Shanghai, China.

Regarding the labor contract dispute between the Appellant Coach and the Respondents Shanghai Enwo Restaurant Management Co., Ltd. (“Enwo Company”, formerly “Shanghai Sports Juju Football Club”) and Lyu En, the Appellant Coach appealed to this Court because he did not accept civil ruling (2020) Hu 0104 Min Chu No. 1814, issued by the Shanghai Xuhui District People's Court. This Court formed a judicial panel to hear the case in accordance with the law.

The Appellant Coach's prayers of relief in this appeal are following –

Revoke the original trial ruling, and the Court of first instance shall proceed to hear the merits of the case according to the law. (The Appellant Coach's appeal is based on the following) grounds:

1. Article 5 of the *Contract Termination Agreement* does not exclude the jurisdiction of the People's Court over the case. Articles 5.1 and 5.2 of the *Contract Termination Agreement* provide for two different forms of dispute resolution respectively. Arbitration is only a possible form of dispute resolution provided therein and the clause does not embody certainty and uniqueness (with respect to arbitration), so the arbitration clause in Article 5.2 of the *Contract Termination Agreement* should be considered invalid. Even if the Court found that Article 5.2 was conditionally effective, it did not enter into force because the condition that "FIFA does not assume competence over the dispute" was not established.
2. As Shanghai JuJu Sports Football Club (Now changed to "Enwo Company", the first Respondent) has been dissolved and no longer registered with the Chinese Football Association; thus, the Decision of the Single Judge of the FIFA Players' Status Committee cannot be implemented through (football) internal autonomy mechanism, and the only remedy available for the Appellant is to bring his claim to the judicial court.
3. The Court of first instance failed to serve the Respondents' Statement of Defence to the Appellant in accordance with the law, meaning that the Appellant did not have the opportunity to fully elaborate on the issue of jurisdiction, so there were procedural flaws. In conclusion, the Appellant

Coach argued that ruling by the Court of first instance to dismiss the claim is an error in determining the facts and applying the law, and the original ruling should be revoked and remanded for retrial.

The Appellant Coach filed a lawsuit to the Court of first instance: 1. requesting Enwo Company to pay him RMB 652,955.5 in full according to the *Contract Termination Agreement*; 2. requesting Lyu En to bear joint and several liability for the above claims; 3. requesting for the litigation costs of this case to be borne by Enwo Company and Lyu En. Facts and reasons (relied on by the Appellant Coach): on January 23rd, 2017, Enwo Company signed a *Professional Coach Contract* with the Appellant Coach, who provided labor services for Enwo Company as a professional coach. On July 1st, 2017, both Parties signed the *Contract Termination Agreement*, agreeing that the *Professional Coach Work Contract* would be terminated on that date. However, Enwo Company failed to pay the wages for the remaining period according to the *Agreement*, and continued to seriously breach the *Agreement* after repeated reminders. Lyu En is the Statutory representative of Enwo Company, so he should bear joint and several liability.

Facts established by the Court of First Instance are following –

On July 1st, 2017, Shanghai JuJu Sports Football Club Co., Ltd. signed the *Contract Termination Agreement* with the Appellant Coach, and both Parties agreed that "5. Dispute resolution 5.1 any dispute or lawsuit related to or arising from the termination of this contract agreement shall be subject to the competence of the FIFA Players' Status Committee or any other authority of FIFA. 5.2 In case FIFA does not have competence over any dispute, the Parties shall submit the above dispute to the Court of Arbitration for Sport in accordance with the *Code of Sports-related Arbitration*. The relevant arbitration proceedings shall be held in Lausanne, Switzerland. All arbitration shall be conducted in English and heard by a sole arbitrator appointed by the Court of

Arbitration for Sport." Subsequently, Shanghai JuJu Sports Football Club Co., Ltd. was renamed "Enwo Company".

The Civil Ruling by the Court of first instance:

The Court of first instance held that Enwo Company and the Appellant Coach had clearly excluded the jurisdiction of the People's Court over dispute resolution. Accordingly, the Civil Ruling (subject to this appeal) rejected the claim filed by the Appellant Coach.

The Legal Ruling by the Court of Appeal (Shanghai No.1 Intermediate People's Court):

This Court (Shanghai No.1 Intermediate People's Court) found that the facts established by the Court of first instance were clear and should be confirmed.

This Court also found that on June 5th, 2018, the FIFA Players' Status Committee issued a *Decision of the Single Judge* on the dispute in this case, supporting the Appellant Coach's claim for Enwo Company to pay the remaining remuneration plus interest.

This Court believes that the focus of the dispute in this case lies in whether the *Decision of the Single Judge of the FIFA Players' Status Committee* is a foreign arbitral award, and whether the arbitration clause involved in the case can exclude the jurisdiction of the People's Court. This Court holds as follows:

1. The *Decision of the Single Judge of the FIFA Players' Status Committee* is not a foreign arbitral award

As for the definition of "arbitral award" under the *Convention on the Recognition and*

Enforcement of Foreign Arbitral Awards (hereinafter referred to as the "*New York Convention*"), according to the first paragraph of Article 1 of the *New York Convention*: "This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal." The second paragraph of this article stipulates that "the term 'arbitral awards' shall include not only awards made by arbitrators appointed for each case, but also those made by permanent arbitral bodies to which the parties have submitted." Thus, according to the objective, purpose and context of the *New York Convention*, "arbitral award" refers to final and binding award made by the permanent arbitral bodies or ad hoc arbitral tribunals on disputes submitted by parties based on the arbitration agreements between those parties.

In the present case, first, the FIFA Players' Status Committee is an autonomous dispute settlement organ established within the international sport federation that accepts and handles disputes in accordance with the federation's internal regulations and rules, but not an independent arbitration institution.

Second, the FIFA Players' Status Committee only resolves disputes between FIFA members and affiliates – therefore the *Decision of the Single Judge of the FIFA Players' Status Committee* is an internal decision of the international federation which is mainly implemented through the football industry's internal autonomy mechanism, which does not have universal and strict binding force – therefore, such *Decision of the Single Judge of the FIFA Players' Status Committee* does not conform to the essential characteristics of the arbitral award.

Third, according to the provisions of Articles 22 and 23(4) of the *FIFA Regulations on the Status and Transfer of Players*, players or clubs can appeal to the Court of Arbitration for Sport or seek judicial relief from the civil court regarding the

employment-related disputes or decisions of the FIFA Players' Status Committee. The above provisions make it clear that the decision rendered by FIFA in resolving disputes is not final and does not exclude the right of the parties to seek judicial relief. In conclusion, the *Decision of the Single Judge of the FIFA Players' Status Committee* is inconsistent with the definition of "arbitral awards" under the *New York Convention*, and should not be recognized as a foreign arbitral award.

2. The arbitration clause involved in this case cannot exclude the People's Court from exercising jurisdiction over the case

In the present case, Article 5.2 of the *Contract Termination Agreement* signed between the Appellant Coach and Enwo Company stipulates, "In case FIFA does not have competence over any dispute, the parties shall submit the above dispute to the Court of Arbitration for Sport in accordance with the *Code of Sports-related Arbitration*. The relevant arbitration proceedings shall be held in Lausanne, Switzerland."

Because it is already made clear that the dispute resolution procedure of the FIFA Players' Status Committee is not an arbitration proceeding, the relevant clause does not affect exercise of jurisdiction by the People's Court's over this case. However, the Parties also agreed to submit the dispute to the Court of Arbitration for Sport for arbitration – this is, in substance, an agreement on arbitral institution. As a result, it is necessary to conduct further review on the effectiveness of this arbitration agreement and whether it is capable of excluding the jurisdiction of the People's Court.

Article 18 of the *Law of the People's Republic of China on the Choice of Law for Foreign-related Civil Relationships* stipulates that "the parties may choose the law applicable to the arbitration agreement by meeting of will. If the parties have no choice (on the law applicable to the arbitration agreement), the law of the place where the arbitration institution is located or the law of the seat of arbitration shall apply."

Accordingly, since the arbitration clause in the *Contract Termination Agreement* does not clearly choose the applicable law, the law applicable for determining the validity of the arbitration clause should be Swiss law.

In accordance with Article 8 of the *Relevant Provisions of the Supreme People's Court on Issues concerning Applications for Verification of Arbitration Cases under Judicial Review*, the present case was submitted to the Supreme People's Court for review. The Supreme People's Court verified that Article 178 of Swiss Private International Law Act stipulates, "(1) As to form, the arbitration agreement shall be valid if it is made in writing, by telegram, telex, telecopier or any other means of communication that establishes the terms of the agreement in text. (2) As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law. (3) The validity of an arbitration agreement may not be contested on the ground that the principal contract is invalid or that the arbitration agreement concerns a dispute which has not yet arisen."

Accordingly, this Court held that Article 5.2 of the *Contract Termination Agreement* was in line with Article 178 of Swiss Private International Law Act that governs the validity of the arbitration agreement, so the arbitration clause concerned should be held as legal and valid.

Pursuant to Article 5.2 of the *Contract Termination Agreement* between the Appellant Coach and Enwo Company, the dispute can be submitted to the Court of Arbitration for Sport for arbitration only when "FIFA does not have competence". Given that the FIFA Players' Status Committee accepted the dispute involved in the case and made the *Decision of the Single Judge of the FIFA Players' Status Committee*, meaning that FIFA had indeed exercised its competence over the dispute – the present case thus does not meet the conditions agreed in the clause to submit the dispute for arbitration to the

Court of Arbitration for Sport. In conclusion, the arbitration clause concerned is not applicable to this case, and therefore the People's Court of first instance as the people's court of the defendant's domicile cannot be excluded from exercising jurisdiction.

Accordingly, it is held that the People's Court of first instance ruling to dismiss the claim was improper and should be corrected. Pursuant to Article 178 of the *Civil Procedure Law of the People's Republic of China* and Article 330 of the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*, the ruling of this Court is as follows:

1. Revoke Civil Ruling (2020) Hu 0104 Min Chu No. 1814 of the Shanghai Xuhui District People's Court of the People's Republic of China;
2. The case is ordered to be tried by the Shanghai Xuhui District People's Court of the People's Republic of China.

This ruling is final.

上海市第一中级人民法院（章）

Shanghai No. 1 Intermediate People's Court (Seal)

二〇二二年六月二十九日

June 29th, 2022

本件与原本核对无异

This document is identical to the original.

Attachment: relevant legal provisions

一、《中华人民共和国民事诉讼法》

1. *Civil Procedure Law of the People's Republic of China*

第一百七十八条第二审人民法院对不服第一审人民法院裁定的上诉案件的处理，一律使用裁定。

Article 178: The People's Court of second instance shall decide, in the form of civil ruling, all cases of appeal against civil rulings made by the People's Court of first instance.

二、《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》

2. *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*

第三百三十条第二审人民法院查明第一审人民法院作出的不予受理裁定有错误的，应当在撤销原裁定的同时，指令第一审人民法院立案受理；查明第一审人民法院作出的驳回起诉裁定有错误的，应当在撤销原裁定的同时，指令第一审人民法院审理。

Article 330: Where the People's Court of second instance finds that any non-acceptance ruling made by the People's Court of first instance was erroneous, the People's Court of second instance shall, while revoking any such ruling, instruct the People's Court of first instance to accept and lodge the case on file; where the People's Court of second instance finds that any dismissal ruling made by the People's Court of first instance was erroneous, the People's Court of second instance shall, while revoking any such ruling, instruct the People's Court of first instance to hear the case in question.