

Employment Tribunal Case Number 2411709/2023

Mr B Mendy v Manchester City Football Club Limited

### Judgment Press Summary

This is a first-instance decision in a claim brought by a professional footballer, Mr Benjamin Mendy, against his former club, Manchester City. The claim is in respect of unpaid salary for the period 1 September 2021, when the Club stopped paying Mr Mendy's wages (shortly after he was charged with various sexual offences and remanded in custody) until the end of Mr Mendy's contract on 30 June 2023. In legal terms, it is a claim of unauthorised deductions from wages under s.13 Employment Rights Act 1996. Mr Mendy was ultimately acquitted of all criminal charges.

Employment Judge Joanne Dunlop found that the Club was entitled to withhold Mr Mendy's salary for the periods during which he was remanded in custody. She was satisfied that Mr Mendy found himself in custody (and therefore unable to perform his employment contract) in part due to his own actions in breaching the bail conditions he had previously been placed under. This was a culpable conduct which could be separated from the underlying criminal allegations.

During the periods when Mr Mendy was not in custody, he was also unable to fulfil his obligations under his employment contract. The Judge found this was primarily because he had been suspended by the Football Association (FA). The nature of that suspension was precautionary, rather than punitive, and there were no findings of misconduct made by the FA. The Judge concluded that the suspension was therefore an impediment to contractual performance which was "involuntary" or "unavoidable" from Mr Mendy's perspective. The Judge further concluded that the bail conditions Mr Mendy was under were influenced, at least indirectly, by the FA suspension, and were themselves an involuntary or unavoidable impediment. The Club was therefore not entitled to withhold his pay for these periods. The fact that Mr Mendy's contract contained no provision permitting the Club to withhold wages where an FA suspension and/or bail conditions prevented the player from performing his obligations was an important part of the reason for this decision.

The total amount claimed by Mr Mendy in unpaid salary was around £11 million (before tax). The result of this decision is that Mr Mendy will be entitled to receive the majority of his unpaid salary, although not all of it. He spent two periods in custody, which accounted for approximately 5 months of the 22-month period covered by the claim. The exact amounts due will be calculated by the parties, or determined at a future hearing if the parties cannot agree.