

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 12 February 2020,

in the following composition:

**Omar Ongaro (Italy)**, Deputy Chairman  
**José Luis Andrade (Portugal)**, member  
**Johan van Gaalen (South Africa)**, member

on the claim presented by the player,

**Theodore Bernard Mendy**, Senegal  
represented by Ms Selin Col

*as Claimant*

against the club,

**Afjet Afyonspor**, Turkey

*as Respondent*

regarding an employment-related dispute between the parties

## I. Facts of the case

1. On 1 August 2018, the Senegalese player, Theodore Bernard Mendy (hereinafter: *the player* or *the Claimant*) concluded an employment contract with the Turkish club, Afjet Afyonspor (hereinafter: *the club* or *the Respondent*), valid as from 1 August 2018 until 31 May 2019, according to which the player was entitled to receive a total fixed remuneration of EUR 168,000 payable as follows:
  - EUR 10,000 on 19 July 2018;
  - EUR 12,000 on 31 August 2018;
  - EUR 18,000 on 25 September 2018;
  - EUR 12,000 on 30 September 2018;
  - EUR 12,000 on 31 October 2018;
  - EUR 20,000 on 28 November 2018;
  - EUR 12,000 on 30 November 2018;
  - EUR 12,000 on 31 December 2018;
  - EUR 12,000 on 31 January 2019;
  - EUR 12,000 on 28 February 2019;
  - EUR 12,000 on 31 March 2019;
  - EUR 12,000 on 30 April 2019; and
  - EUR 12,000 on 31 May 2019.
2. In addition, the contract foresaw that *“the club shall provide an appropriate car (the discretion of choosing the car belong to the club) for the use of the player during the continuation of this contract provided that the player has a driving license which is valid in Turkey. The costs of the car shall be paid by the player. The club shall provide a furnished flat for use of the player during the continuation of this contract. The club shall provide the player 2 (two) round trip economy class tickets for the season.”*
3. Furthermore, the contract stipulated that *“the payments are to be due and payable to the player on the dates determined above. In case the club falls into a default for any payment for more than 60 (sixty) days then the player shall have the option to terminate the contract. In order to exercise this option, the player shall first send a written notification via a notary public to the club and if the club fails to pay the amount due to the player within 30 (thirty) days after the receipt by the club of the respective notification, the player shall be free to terminate the contract. In this case, the player shall be entitled to take action before FIFA bodies to settle the dispute. The gainings (sic) of the player arising from the new club(s) between the termination date and expiration shall be deducted from the indemnification to be decided by the judicial committees.”*
4. On 22 May 2019, the Claimant lodged a claim for breach of contract, maintaining he had just cause to terminate, and requested the payment of the following amounts:

- (1) EUR 94,000 as outstanding remuneration, plus 5% interest *p.a.* as from the due dates.
  - (2) EUR 29,853.93 as compensation for breach of contract, plus 5% interest *p.a.* “as from the date of the decision”, *i.e.* 2 monthly salaries of EUR 12,000 each (April and May 2019), EUR 853.93 as transportation expenses and EUR 5,000 for the flight tickets.
  - (3) The Claimant further requested the imposition of sporting sanctions against the Respondent.
5. The Claimant maintained that, by the time he had put the Respondent in default on 15 March 2019, the latter had paid him only the amount of EUR 50,000 out of the total fixed remuneration of EUR 132,000 stipulated in the contract. Consequently, given that the Respondent did not comply with its financial obligations following his default letter, he terminated the employment contract on 16 April 2019.
  6. Moreover, the Claimant pointed out that, on 14 March 2019, he received a new training program from the Respondent and he was not any longer included in the official A Team list nor eligible to play in official games and forced to train alone. Additionally, the Claimant maintained that the Respondent failed to provide him with a car and the 2 round trip tickets as per the contract. Consequently, he claimed that he incurred in EUR 853.93 as taxi expenses (see exhibit 5 to the claim) and requested EUR 5,000 as “*minimum average cost*” for the flights.
  7. The Claimant pointed out that, by the time of termination, EUR 94,000 remained outstanding. Consequently, the Claimant asked to be compensated for the early termination of the employment contract with just cause.
  8. In its reply to the claim, the Respondent, firstly rejected the Claimant’s request concerning the transportation expenses, mostly due to the fact that the Claimant was allegedly residing “*10 minutes by car*” from the training field. Secondly, the Respondent claimed that the request for the flight tickets is “*higher than it should be*”. The Respondent did not contest the rest of the claim.
  9. Upon FIFA’s request, the player indicated that he remained unemployed over the relevant period.

## II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 22 May 2019. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber

(hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

2. Subsequently, the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition January 2020), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Senegalese player and a Turkish club.
3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition January 2020), and considering that the claim was lodged on 22 May 2019, the June 2018 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand. In particular, the Chamber recalled that, in accordance with art. 6 par. 3 of Annex 3 of the Regulations, FIFA may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in the TMS.
5. Having said this, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the parties' arguments as well the documentation on file, bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.
6. First of all, the members of the Chamber acknowledged that, on 1 August 2018, the player and the club had concluded an employment contract valid as from the season 2018/2019, pursuant to which the club undertook to pay to the player the remuneration, as established in point I.1. above.
7. Furthermore, the members of the DRC took note of the fact that on 15 March 2019 the player had put the club regarding overdue remunerations of a total amount of EUR 82,000. The DRC also noted that the player declared that the club had sent him an individual training programme on 14 March 2019, according to which he was

informed that he was no longer registered with the Respondent's first team and that he would be training alone from this day onwards.

8. Moreover, the DRC took note that, according to the player, he had just cause to unilaterally terminate the employment contract on 16 March 2019, since the club failed to remedy to the default. In this regard, the player affirmed that he had no alternative but to terminate the contract and deemed that the club should be held liable for the early termination of said contract.
9. Subsequently, the members of the DRC took note that the club, for its part, only rejected the player's claim for taxi expenses and flight tickets.
10. In light of the foregoing, the DRC considered that the underlying issue in this dispute, considering the parties' position, was to determine as to whether the player had just cause to terminate the employment contract and to determine the consequences thereof.
11. In this respect, the DRC duly acknowledged that the club did not contest the allegations of the player as to the fact that the Claimant sustained that he had just cause to terminate the contract. In particular, the Chamber noted that it is uncontested that at the time of termination, the player had only received EUR 50,000 of the fixed total remuneration stipulated in the contract, and that EUR 94,000 were still due to the player.
12. At this point, the DRC considered important to emphasise that one of the player's fundamental rights under an employment contract is the right to a timely payment of his remuneration.
13. In light of the aforementioned, the DRC came to the unanimous conclusion that the player had terminated the contract with just cause on the basis of significant outstanding remuneration.
14. Having established that the Respondent is to be held liable for the early termination of the employment contract, the Chamber focused his attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the DRC established that the Claimant is entitled to receive from the Respondent compensation for breach of contract, in addition to any outstanding payments on the basis of the relevant employment contract.
15. Subsequently, prior to establishing the consequences of the termination of the employment contract with just cause by the Claimant in accordance with art. 17 par. 1 of the Regulations, the DRC held that he, in general, had to address the issue of unpaid remuneration at the moment when the contract was terminated by the Claimant.

16. Bearing in mind the above, the DRC accepted the player's claim for outstanding remuneration and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay the player the amount of EUR 106,000 as outstanding remuneration.
  
17. Furthermore, considering the player's claim for interest and also taking into account the DRC's longstanding jurisprudence, the DRC judge ruled that the Respondent must pay interest as follows:
  - a. 5% interest p.a. over the amount of EUR 2,000 as from 1 October 2018 until the date of effective payment;
  - b. 5% interest p.a. over the amount of EUR 12,000 as from 1 November 2018 until the date of effective payment;
  - c. 5% interest p.a. over the amount of EUR 20,000 as from 29 November 2018 until the date of effective payment;
  - d. 5% interest p.a. over the amount of EUR 12,000 as from 1 December 2018 until the date of effective payment;
  - e. 5% interest p.a. over the amount of EUR 12,000 as from 1 January 2019 until the date of effective payment;
  - f. 5% interest p.a. over the amount of EUR 12,000 as from 1 February 2019 until the date of effective payment;
  - g. 5% interest p.a. over the amount of EUR 12,000 as from 1 March 2019 until the date of effective payment;
  - h. 5% interest p.a. over the amount of EUR 12,000 as from 1 April 2019 until the date of effective payment;
  - i. 5% interest p.a. over the amount of EUR 12,000 as from 1 May 2019 until the date of effective payment.
  
18. In continuation, the DRC focused its attention on the calculation of the amount of compensation for breach of contract due to the Claimant by the Respondent in the case at stake. In doing so, the DRC firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
  
19. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber observed that the employment contract does not contain any such clause.

20. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the player had to be assessed in application of the parameters set out in art. 17 par. 1 of the Regulations. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract as from its termination and concluded that the player would have been entitled to receive EUR 12,000 as remuneration had the employment contract been executed until its regular expiry date, *i.e.* 31 May 2019. Consequently, the Chamber concluded that the amount of EUR 12,000 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.
21. In continuation, the Chamber assessed whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income. In this respect, the DRC deemed it necessary to refer to the first sentence of art. 17 par. 1 lit. ii) of the Regulations, according to which, in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation").
22. In respect of all the above, and in view of the fact that the player did not sign a new contract over the relevant period, the Chamber decided that the Respondent must pay the amount of EUR 12,000 as compensation for breach of contract to the player.
23. In addition, taking into account the player's request and the DRC's well-established jurisprudence, the Chamber decided that the club must pay to the player interest of 5% *p.a.* on the amounts of EUR 12,000 as of the date on which the decision was passed, *i.e.* 12 February 2020, until the date of effective payment.
24. What is more, the Chamber, in line with its consistent jurisprudence in this respect, decided to award the player CHF 606, corresponding to the average cost of a Istanbul-Dakar flight in Economy class on the basis of the information provided by FIFA Travel.
25. Therefore, the DRC decided to partially accept the player's claim and concluded its deliberations by rejecting any further claim of the player.
26. Furthermore, taking into account the consideration under number II./3. above, the Chamber referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
27. In this regard, the Chamber pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering

any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.

28. Therefore, bearing in mind the above, the DRC decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.
29. Finally, the Chamber recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.

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### III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Theodore Bernard Mendy, is partially accepted.
2. The Respondent, Afjet Afyonspor, has to pay to the Claimant outstanding remuneration in the amount of EUR 106,000, plus 5% interest *p.a.* as follows:
  - a. 5% interest *p.a.* over the amount of EUR 2,000 as from 1 October 2018 until the date of effective payment;
  - b. 5% interest *p.a.* over the amount of EUR 12,000 as from 1 November 2018 until the date of effective payment;
  - c. 5% interest *p.a.* over the amount of EUR 20,000 as from 29 November 2018 until the date of effective payment;
  - d. 5% interest *p.a.* over the amount of EUR 12,000 as from 1 December 2018 until the date of effective payment;
  - e. 5% interest *p.a.* over the amount of EUR 12,000 as from 1 January 2019 until the date of effective payment;
  - f. 5% interest *p.a.* over the amount of EUR 12,000 as from 1 February 2019 until the date of effective payment;
  - g. 5% interest *p.a.* over the amount of EUR 12,000 as from 1 March 2019 until the date of effective payment;
  - h. 5% interest *p.a.* over the amount of EUR 12,000 as from 1 April 2019 until the date of effective payment;
  - i. 5% interest *p.a.* over the amount of EUR 12,000 as from 1 May 2019 until the date of effective payment.
3. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of EUR 12,000 and the amount of CHF 606, plus 5% interest *p.a.* over the amount of EUR 12,000 as from 12 February 2020 until the date of effective payment.
4. Any further claim lodged by the Claimant is rejected.
5. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amounts mentioned under points 2 and 3 above.
6. The Respondent shall provide evidence of payment of the due amounts in accordance with points 2 and 3 above to FIFA to the e-mail address [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amounts due in accordance with points 2 and 3 above are not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from

registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

8. The ban mentioned in point 7 above will be lifted immediately and prior to its complete serving, once the due amounts are paid.
9. In the event that the aforementioned sums are still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

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**Note related to the publication:**

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

**Note relating to the motivated decision (legal remedy):**

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport (CAS)  
Avenue de Beaumont 2, CH-1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
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For the Dispute Resolution Chamber:

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