Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, 25 February 2020,

in the following composition:

Omar Ongaro (Italy), Deputy Chairman
Stéphane Burchkalter (France), member
Jérôme Perlemuter (France), member

on the claim presented by the player,

Petar Petkovski, FYR Macedonia
represented by Mr Toni Jovchevski

as *Claimant / Counter-Respondent*

against the club,

Gil Vicente, Portugal
represented by Mrs. Ana da Silva Ferreira & Mrs. Isabel Carneiro Bastos

as *Respondent / Counter-Claimant*

and the club,

FK Rabotnicki, FYR Macedonia

as *intervening party*

regarding an employment-related dispute between the parties

I. Facts of the case

1. On 15 July 2019, the North Macedonian player, Petar Petkovski (hereinafter: *the player*), and the Portuguese club, Gil Vicente (hereinafter: *the club*), signed an employment (hereinafter: *the contract*) valid as from the date of signature until *"the end of the 2020/2021 sports season"*.

2. Art. 3 of the contract provided the following: *"for such activity, the player shall receive the following remunerations:*
   "Season of 2019/2020 – The net total amount of EUR 48,000.00 corresponding to fourteen net remunerations of EUR 3,428.57, two of which correspond to holiday and Christmas allowances.
   **One-off – both parties also agree that the form of payment of the referred annual amount to be transformed into 12 monthly and equal instalments: In the amount of EUR 4,000.00 each, which includes the holiday and Christmas allowances proportionately.*
   Season 2020/2021 – The net total amount of EUR 54,000.00 corresponding to fourteen monthly net remuneration of EUR 3,857.14, two of which correspond to holiday and Christmas allows (sic)
   **One-off – Both parties also agree that the form of payment of the referred annual amount be transformed in 12 monthly and equal instalments: in the amount of EUR 4,500.00 each, which includes the holiday and Christmas allowances proportionately.*
   2. The monthly remuneration shall be paid by the fifth day of the month following the month to which it relates."

3. According to art. 4 of the contract, *"in case the club does not guarantee in Portuguese First League during the season 2020/2021, the club and the player agree that the player remain at the services of club, during the season 2020/2021, but with a reduction of 30% in the gross global remuneration of EUR 54,000.00 of the player"*.

4. Art. 12 of the contract stipulates that *"the parties agree if the player, during the contract period, does not meet the necessary conditions for the practice of football, with the exception of injuries resulting from an occupational accident, the club may unilaterally resolve this contract, without invoking just cause, no compensation is payable."*

5. Moreover, art. 25 of the contract foresees that *"in order to resolve any conflicts arising from this agreement, the parties agree to submit the respective solution to the Labor Court of the Judicial Court of Barcelos."*

6. On 15 July 2019, the club referred to the player's former club, the North Macedonian club FK Rabotnicki Skopje (hereinafter: *Rabotnicki*), and offered it to pay a fee amounting to EUR 18,000 for *"the purpose of concluding a*

Employment contract with [the player] *(…) for the training compensation claims"* according to a payment schedule.

7. On 15 August 2019, the player sent a *"notification of warning"* to the club by means of which he urged the club, setting a deadline of 15 days, to register him by no later than 30 August 2019, to pay him the outstanding half salary of July 2019 amounting to EUR 2,000, to reintegrate him immediately in the regular training process of the first team and to obtain the necessary local residence and work permission. This, prior to exercising his unilateral right to terminate the contract with just cause.

8. On 15 August 2019, the club emailed the player and offered him its *"final proposal to finalize the situation of* [the player]*"* which consisted in a payment of three monthly salaries in the amount of EUR 12,000 as well as the possible payment of travel expenses amounting to EUR 3,000.

9. On 31 August 2019, the player terminated the contract unilaterally and, on the same day, the player signed an employment contract with Rabotnicki, valid as from the date of signature until 14 June 2020.

10. On 5 September 2019, the club contacted the player requesting his bank details, which the player transferred directly in reply thereto, however to no avail.

11. On 12 September 2019, the club replied to the player's termination alleging that it had been forced by the player *"not to execute the contract, contrary to what is claimed by* [by the player]*"*. In this respect, the club referred to an alleged injury of the player, prior to the conclusion of the contract, which justified the non-registration of the player, as well as its training schedule separating him from the team and the club's inability to obtain the residence and work permission. In addition, the club deemed that it had no outstanding debts as to the salary for August 2019, that the player did not put the club properly in default and that it did not obtain the player's bank details after having asked them repeatedly. Finally, the club suspected the player to have had already another club to be registered with, that he tried to obtain illegal benefits from the club and that, in any case, FIFA would not be competent in the present matter due to the alleged competence of the local court as provided in the contract.

12. On 27 September 2019, the player lodged a claim against the club in front of FIFA, requesting it to pay him outstanding remuneration and compensation for breach of contract, as follows:
    (1) EUR 6,000 as outstanding remuneration, composed of :
    (2) EUR 2,000 as half a salary for July 2019 ;
    (3) EUR 4,000 as a salary for August 2019.

(4) EUR 94,071 as compensation for breach of contract.

13. The player further requested interest at a rate of 5% *p.a.* over the aforementioned amounts as from the due dates.

14. In his claim, the player held that by means of the letter sent to his former club, the club confirmed the existence of a valid contract with him and *"its obligation to register the player and consequently to pay the training compensation payment towards* [Rabotnicki]*".*

15. In particular, the player underlined that on 31 August 2019, the club had neither registered him with the Portuguese FA, nor provided the International Transfer Certificate (ITC) by the former Macedonian FA, which, in his opinion, proved that it decided *"not to register* [him] *in order to save money which should be paid as a training compensation to the former club"*.

16. In addition, the player held that after having played in some friendly matches, he had been excluded from the regular training process and sent to train occasionally alone with two other injured players for a period of more than 25 days. The player provided publicly available evidence in support of this particular allegation.

17. Furthermore, the player reminded that in his opinion the club *"offered the opportunity to walk away"* which is an indication that the club no longer counted on him.

18. In addition, the player held that the club did not perform any duties regarding the residence and work permission issues which, again, should prove the lack of the club's interest in him.

19. Moreover, the player underlined that the club did not pay him one and a half salary prior to termination despite his efforts to ask it to pay said amounts.

20. In continuation, the player rejected the club's response of 12 September 2019 to his termination notification entirely and, consequently, reiterated his position as previously expressed in his default notice and deemed the occurred termination to have been with just cause.

21. In its reply to the claim, the club contested FIFA's competence to adjudicate the present as to the substance.

22. According to the club, the contract provided an arbitration clause which proved that *"under the freedom of contract,* [the parties] *have chosen to submit to a civil court, while having jurisdiction, the resolution of any dispute arising from a contract of employment entered into".*

23. Referring to the Regulations, the club explained why, in its opinion, the player's arguments as to the lack of competence of the Portuguese court are inaccurate due to the fact that the player referred to FIFA's rules and requirements for NDRC's, which are not applicable to the present.

24. Moreover, the club further raised that *"In the light of the foregoing, since* [the club] *and* [the player] *have not designated the CAS as the competent jurisdiction - otherwise the parties designated the Labor Court of the Judicial Court of Barcelos in the contract of employment - Swiss law does not apply in the present case and the Player's allegations cannot be made in that regard".*

25. As to the substance and in case FIFA would be competent in the present matter, the club referred to its sayings of 12 September 2019 and underlined the content of clause 12 of the contract explaining that said clause *"is justified by internal restructuring reasons motivated by the rise of Gil Vicente FC to the 1st Portuguese Professional Football League, by administrative decision, after having remained in the 2nd Portuguese Professional Football League for more than a decade. In this context, the Club was forced to terminate and hire about fifty players in a period of about three months. As such, due to the impossibility of performing all medical examinations before the conclusion of the employment contracts, the Club agreed with the Players that they would sign an employment contract to insert a clause in the employment contracts according to which if the Player did not meet the physical conditions necessary for the practice of football, the Club could terminate the contract without invoking just cause. So in this context the player and the club have mutually agreed to firm the contract prior to the medical examinations."*

26. In this respect, the club explained that only after the conclusion of the contract, the player failed the medical exams *"by having ruptured the left knee meniscus"*, injury that the club deemed to be prior to the singing of the contract and about which he had not been informed before signing the contract.

27. In continuation, the club held that the principle of freedom should not be overlooked by the provisions of article 18 par. 4 of the FIFA RSTP.

28. Furthermore, the club deemed that it could not register the player due to the aforementioned failed medical examinations and to the regulations of the Portuguese FA which provide that "[the club] *must prove the physical fitness of* [the player]*".*

29. As a consequence, the club rejected any fault as to the non-registration of the player and referred again to the *"totally credible medical evidence that leaves no doubt about his limited physical condition"* in order to justify its inability *"to proceed in order to obtain the "Residence and Work Permission"*.

30. In continuation, the club explained that due to the fact that the player was physically compromised, its medical department understood that preventive measures should be taken in order not to further aggravate his already weakened condition, *i.e.* assign the player to a separate training, which was in the present not anyhow linked to *"economic motives or pressure on* [the player] *to renounced his right from [the contract] and leave [the club] without justifying reasons"*.

31. What is more, the club deemed that the salary of August 2019 could not be held as outstanding as it became payable on 5 September 2019, therefore *"the question doesn't even arise".* Regarding the half salary of July 2019, the club deemed that the player did not respect art. 14bis when terminating the contract as at that moment, there were not two monthly salaries outstanding on their due dates and further referred in support of its position to the national law's obligation to proceed to send a notice via registered letter.

32. Moreover, the club reminded that it even tried to solve the dispute amicably offering a settlement to the player in contrary with clause 12 of the contract, to no avail, and that it only obtained *"an attached document that was supposed to identify his bank details but which was incomprehensibly blank"* when requesting it from the player.

33. As a consequence, the club held that *"the only possible alternative for* [the player] *was to return to the previous Club that already knew of his injury since the Player was already injured in the period when he was at its service"* and suspected both to arrange a low monthly salary in order to lightly mitigate the hypothetical compensation due by it should the player's termination be considered as with just cause.

34. Therefore, beside requiring the provision of the player's contract with his new club, the club equally lodged a counterclaim against the player only, in front of FIFA, due the early termination of the contract by the player without just cause and requested the *"amount not less than the amount of compensation that would be due if the employment contract had ceased at its end"* of EUR 96,000.

35. In his *replica*, the player firstly rejected the club's arguments as to the alleged competence of the "*Labor Court of the Judicial Court of Barcelos".*

36. In this respect, the player deemed that said court is not *"an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement"* respecting the requirements of art. 22 b) of the FIFA RSTP and the FIFA Circular 1010.

37. Moreover, the player held that *"the right of any player or club to seek redress before a civil court for employment-related disputes"* is *"not compulsory for the player / club to do so"*.

38. As a consequence, in the player's opinion, FIFA is competent to deal with the present dispute and its *"absolute jurisdiction must be declared"*.

39. In addition, as to the club's allegations on Swiss law, the player deemed that *"the RSTP lay down uniform standards for these questions of law at global level (…) rather the reference to the "additionally" applicable Swiss law in Art. 57 (2) of the FIFA Statutes is to ensure the uniform interpretation of the standards of the industry"*.

40. Therefore, *"if the parties have not chosen a subsidiary applicable law, then FIFA must apply subsidiary the law that is most closely connected"*, *i.e.* Swiss law.

41. As to the substance, the player contested the club's allegations as to the application of clause 12 of the contract and underlined that the *"medical evidence"* as provided by the club in its reply to the claim is not conclusive in the sense that : *"the magnetic resonance (…) report (…) may not necessarily indicate a lesion of the left knee meniscus which is a subjective persuasion of the radiologist"* and *"the club doctor also confirms in the Medical Report (…) that there are no clinical signs of un jury to the player and he gives only pure personal predictions of what might happen in the future may be true or false"*.

42. In support of his allegations, the player provided two medical notices of January and September 2019 according to which it was proven that "[the player] *at no point of time during his stay at* [the club]*, before and after has been injured, and all the period was fully capable for training and competitions"*.

43. In addition, the player sustained that he performed with his new club as of September 2019 which proves that he was not injured.

44. Moreover, the player held that it was the club's *"duty to verify, prior to the conclusion of a labor contract, whether* [the player] *was suitable for its sporting needs"* and therefore rejected the club's allegations on said topic.

45. In continuation, the player reiterated his position as to the club's lack of will to register him, as well as to his relegation from the regular training process of the first team, and again, as to the reasons having led to termination, *i.e.* with just cause.

46. Finally, the player reiterated his previous request for relief in full and, as a consequence, rejected the club's counterclaim entirely due to the aforementioned arguments.

47. Despite having been invited to do so, the new club did not provide any comments.

48. Upon request of the FIFA administration, the player sustained that he signed an employment contract with the North Macedonian club FK Rabotnicki valid as from 31 August 2019 until 14 June 2020, entitling him to a monthly salary of Macedonian Denar (MKD) 12,500 (approx. EUR 203).

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 27 September 2019. Consequently, the 2018 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

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 DRC shall adjudicate on employment-related disputes between a club and a player that have an international dimension.

3. As a consequence, the Chamber, in principle, is competent to decide on the present litigation which involves a Macedonian player, a Portuguese club and a Macedonian club regarding an employment-related dispute.

4. However, the DRC acknowledged that the club contested the competence of FIFA's deciding bodies on the basis of art. 25 of the contract, alleging that the competent body to deal with any dispute deriving from the relevant employment contract is the "*Labor Court of the Judicial Court of Barcelos".*

5. On the other hand, the Chamber noted that the player insisted on the competence of the FIFA DRC to adjudicate on the claim he lodged against the club.

6. Taking into account all the above, the Chamber emphasised that in accordance with art. 22 of the Regulations, FIFA is competent to hear employment-related disputes between a player and a club with an international dimension,

"without prejudice to the right of any player or club to seek redress before a civil court for employment related disputes".

7. In the present matter, the DRC duly noted that the player and the club had unambiguously and exclusively decided that any dispute that would arise from the contract would be the "*Labor Court of the Judicial Court of Barcelos".*

8. The DRC recalled that parties may freely agree to give jurisdiction to a civil court, and that such choice shall always prevail. In fact, the Chamber, recalling its jurisprudence as well as CAS jurisprudence in this regard, and in particular CAS 2013/A/3278, highlighted that even if the choice of law does not specify which courts are competent (e.g. a generic reference is made to a region/city), FIFA is not competent when the parties have exclusively agreed to the jurisdiction of a civil court. In addition, the DRC emphasized that art. 22 of the Regulations provide a clear hierarchy in favor of contractual autonomy.

9. In view of all the above, the Chamber concluded that it was not competent to hear the dispute between the player and club, and consequently declared the claim of the player inadmissible.

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III. Decision of the Dispute Resolution Chamber

The claim of the Claimant / Counter-Respondent, Petar Petkovski, is inadmissible.

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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 related to the appeal procedure:

According to article 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.

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

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