

Decision of the DRC Judge

passed on 29 July 2020,

regarding an employment-related dispute concerning the player Delvin
Chanel Ndinga

BY:

Johan van Gaalen (South Africa), DRC Judge

CLAIMANT:

Delvin Chanel Ndinga, Congo DR
Represented by Mr Alexis N'Diaye

RESPONDENT:

Sivasspor Kulübü Derneği, Turkey

I. FACTS OF THE CASE

1. On 7 September 2017, the Congolese player, Delvin Chanel Ndinga (hereinafter: *Claimant*), and the Turkish club, Sivasspor Kulübü Derneği, (hereinafter: *Respondent*), concluded an employment contract (hereinafter: "*the contract*") valid until 31 May 2019.
2. According to art. 3 of the contract, as from August 2018 until May 2019, the Claimant was entitled to receive a total amount of EUR 750,000 in 10 monthly equal instalments of EUR 75,000 each, payable on the 25th of every month.
3. Art. 7 of the contract provided the following: "[The Claimant] *confirms that he has been fully informed as to the [Respondent]'s 2017-2018 Season Professional Football Regulation – a copy of which in English he is given – and undertakes in advance to sign and obey the Professional Football Disciplinary Regulation, that is presented to the [TFF] at the beginning of the season. Any fines imposed by [the Respondent] accordingly with the Disciplinary Regulation shall be deducted from the outstanding and/or upcoming receivables of any kind immediately*".
4. Moreover, art. 6 par 5 (a) of the Respondent's "2017 – 2018 FOOTBALL SEASON PROFESSIONAL FOOTBALL INTERNAL DISCIPLINARY REGULATIONS" (hereinafter: *Disciplinary Regulations*) provided the following: "*In case [the Claimant] receives caution/or expulsion except the first caution which can be received according to acts that are in line with the nature of the game and he is sent off by receiving two cautions even if it is according to the nature of the game.*"
5. Art. 9 par. 5 (a) and (b) of the Disciplinary Regulations read as follows: "*(5) Receiving Expulsion and Cautions in the Matches and Having Suspended from the Matches, Ineligibility and Money Fines Given by TFF/UEFA Committees.*
(a) In case that [the player] displays unsporting behaviour except the nature of the game or shows "unsporting behaviour" " unsporting declarations " determined in TFF or UEFA Discipline Regulation and causes "bodily harm" to others and racist declaration and deliberate action and the acts against TFF or UEFA Discipline Regulation's other provisions or "fair play" and/or gets suspended or declared as ineligible from the matches arising from statements given before or after the matches or routine press releases, [the player] will not be entitled to per game salary and bonus payment for the relevant match In addition to this, he will be fined as his cost per match.
(b) In case of two cautions received during the same match incurring a red card, [the player] will not be entitled to per match salary and bonus payment for the relevant match without considering the reasons of the yellow cards. In addition to this, he will be fined as his cost per match."
6. On 10 February 2020, the Claimant sent a default notice to the Respondent, requesting the payment of EUR 75,000 corresponding to the May 2019 salary within 10 days.

7. On 25 March 2020, the Claimant lodged a claim against the Respondent requesting the following:
 - a) EUR 75,000, corresponding to the monthly salary of May 2019;
 - b) EUR 7,500 *“for every month of delay, starting from 25 May 2019 (i.e. currently EUR 75,000, likely to evolve depending on the moment the Respondent will effectively pay)”*;
 - c) EUR 15,000 *“as penalty, corresponding to the compensation for disloyalty in a contractual relationship”*;
 - d) EUR 3,500 as *“legal fees incurred by the Claimant”*.
8. In his claim, the Claimant argued that he played with the Respondent until the expiry of the contract and that the latter failed to pay his last monthly salary amounting to EUR 75,000 due on 25 May 2019.
9. In its reply to the claim, the Respondent explained that the Claimant was sent off during the game on 19 May 2018 due to a violation of fair-play according to art. 6 par. 5 (a) of the Respondent’s *“Club disciplinary Regulations”* for the 2017-2018 football season.
10. Consequently, the Respondent held that the Claimant was fined in the amount of EUR 20,000, following a decision of its Board and in accordance with art. 7 under the *“Special provisions”* section of the contract. According to the Respondent, said decision which had been allegedly notified to the Claimant and had been accepted by the Claimant.
11. In continuation, the Respondent explained that the total receivables of the Claimant amounted to EUR 1,360,000, and held that it had paid the Claimant in Euro and Turkish Lira for a total amount of EUR 1,355,045.07, taking into account the mentioned deduction of EUR 20,000.
12. Moreover, the Respondent rejected the amounts claimed by the Claimant as penalties due to a lack of contractual basis as well as any reimbursement of legal fees.
13. As a result of the above, the Respondent deemed that on the date of claim, only EUR 4,954.93 was outstanding to the Claimant, amount which the Respondent paid on 11 May 2020.
14. As such, the Respondent requested the claim to be rejected in full.
15. Having been invited to comment on the alleged payment proofs provided by the Respondent, the Claimant amended his claim on 13 June 2020 as follows:
 - a) The provided evidence of payments in Turkish currency referred to as *“pursuant to his receivables”* do not effectively proof that such payments were salaries as per the contract, *i.e.* only payments in EUR are to be considered as salaries;
 - b) The alleged fine of EUR 20,000 has not been substantiated on how said amount has been decided, therefore the proceedings leading to said decision cannot be retained as valid;

- c) The Claimant acknowledged the payment of EUR 4,954.93 and therefore requested EUR 70,045.07 corresponding to the remaining salary for May 2019;
 - d) Based on the evidence of payment provided by the Respondent, the Claimant observed that it failed to pay him EUR 28,570 as part of the May 2018 salary. As such, the Claimant requested said payment of the remaining EUR 28,570 as well.
 - e) Finally, the Claimant requested interest of 5% interest *p.a.* over both aforementioned amounts, respectively as from 25 May 2018 and 25 May 2019.
16. With regard to the Claimant's amendment of claim, the Respondent held that said request as to an amount due on 25 May 2018 is to be considered time-barred and that actually said request *"is seen as a replacement of the excluded unsubstantiated requests of several penalties and created the impression in the eyes of the Respondent that the Claimant has an expectation on the collection of a certain amount and is aiming for maximizing the overall amount of their requests in line with this expectation."*

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER (DRC) JUDGE

17. First of all, the DRC Judge analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 25 March 2020. Taking into account the wording of art. 21 of the 2020 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.
18. Subsequently, DRC Judge referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players 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 Congolese player and a Turkish club.
19. In continuation, the DRC Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2020) and considering that the present claim was lodged on 25 March 2020, the March 2020 edition of the said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
20. The competence of the DRC Judge and the applicable regulations having been established, the DRC Judge entered into the substance of the matter. In this respect, the DRC Judge started by acknowledging all the above-mentioned facts and arguments as well as the documentation on file. However, the DRC Judge emphasised that in the

following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

21. In this respect, the DRC Judge firstly recalled that the Claimant and the Respondent signed an employment contract which expired on 31 May 2019. In continuation, the DRC Judge noted that on 25 March 2020, amended on 13 June 2020, the Claimant lodged a claim requesting, *inter alia*, EUR 28,570 as part of the May 2018 salary, as well as EUR 70,045.07 corresponding to the remaining salary for May 2019.
22. In this context, the DRC judge took particular note of the fact that, on 10 February 2020, the Claimant put the Respondent in default of payment of EUR 75,000, corresponding to the May 2019 salary, setting a 10 days' time limit in order to remedy the default.
23. Having said this, the DRC Judge took into account the Respondent's position, which argued that no amount was outstanding to the Claimant. In this regard, the DRC Judge noted that, according to the Respondent, EUR 20,000 corresponding to a disciplinary fine was to be deducted from the Claimant's receivables and that it paid the Claimant in Turkish Lira and Euro to an extent that only EUR 4,954.93 was outstanding on the contract expiry date. Finally, the DRC Judge evoked that, as per the Respondent, it paid the Claimant the amount of EUR 4,954.93 on 11 May 2020.
24. Thus, the DRC Judge established that the fundamental issue at stake is determining whether there are still outstanding salaries due at the Claimant. In addition, the DRC Judge understood that it would also have to determine whether the Respondent was correct in deducting the salary from the Claimant.
25. In this regard, the DRC Judge firstly noted that on 13 June 2020, the Claimant provided his comments with regard to the bank statements submitted by the Respondent and acknowledged having received the total amounts of EUR 4,954.93 on 11 May 2020.
26. Subsequently, the DRC Judge pointed out that the document entitled "2017 – 2018 FOOTBALL SEASON PROFESSIONAL FOOTBALL INTERNAL DISCIPLINARY REGULATIONS", submitted by the Respondent, was not signed by the Claimant. Furthermore, the DRC Judge deemed it unclear as to whether or not the Claimant was duly notified with regard to the disciplinary fine imposed on him by the Respondent. In other words, as per the DRC Judge, given that the Respondent failed to demonstrate that the Claimant was effectively made aware of said fine, it cannot be guaranteed that he had the opportunity to properly exercise his right of defence.
27. Given the above considerations, the DRC Judge decided not to take into account the EUR 20,000 corresponding to the disciplinary fine deducted by the Respondent from the Claimant receivables.
28. With regard to the alleged payments made to the Claimant, the DRC Judge considered that the documentation provided by the Respondent referred exclusively to the 2017-

2018 season. In this context, the DRC Judge wished to recall that the Claimant clearly requested the remaining May 2019 salary. As such, the DRC Judge found himself incapable of encountering a link between the proof of payments provided by the Respondent and the request for the outstanding May 2019 by the Claimant.

29. As a consequence of the above considerations, the DRC Judge followed the Claimant's request, and determined that the amount of EUR 70,045.07 corresponding to the remaining May 2019 salary, remained outstanding.
30. As regards the Claimant's request for the payment of EUR 28,570 as part of the salary of May 2018, the DRC Judge firstly took into consideration that said request was done by means of his amended claim on 13 June 2020, following the documentation provided by the Respondent.
31. Having said this, referring to art. 25 par. 5 of the Regulations on the Status and Transfer of Players, the DRC Judge concluded that the time limit of two years for the Claimant to claim outstanding remuneration related to the May 2018 salary on the basis of the contract had elapsed at the time he requested said alleged outstanding receivable front of FIFA on 13 June 2020.
32. Therefore, the DRC Judge decided that the Claimant's additional request for the payment of EUR 28,570 as part of the salary of May 2018, is barred by the statute of limitations and, consequently, inadmissible.
33. In continuation, the DRC Judge turned his attention to the Claimant's requests for EUR 7,500 *"for every month of delay, starting from 25 May 2019"*, and EUR 15,000 *"as penalty, corresponding to the compensation for disloyalty in a contractual relationship"*, respectively.
34. In this regard, the DRC Judge deemed it appropriate to point out that the requests for said payments presented by the Claimant had no legal or regulatory basis and concluded that no corroborating evidence had been submitted that demonstrated that the Claimant was entitled to said amounts.
35. Given the above considerations, the DRC Judge determined that to the Claimant's requests for EUR 7,500 *"for every month of delay, starting from 25 May 2019"*, and EUR 15,000 *"as penalty, corresponding to the compensation for disloyalty in a contractual relationship"* are to be rejected.
36. Finally, the DRC Judge recalled that, in his claim, the Claimant requested EUR 3,500 in legal fees. In this context, the DRC Judge referred to art. 18 par. 4 of the Procedural Rules as well as to its long-standing and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the DRC Judge decided to reject the Claimant's request relating to legal expenses.

37. Given all of the above considerations, the DRC Judge concluded that that the Respondent failed to remit the Claimant's remuneration in the total amount of EUR 70,045.07, corresponding to the remainder of the instalment of EUR 75,000, which fell due on 25 May 2019.
38. Consequently, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the total amount of EUR 70,045.07.
39. In addition, taking into account the Claimant's request for interests on the amount of EUR 70,045.07 by means of his amended claim of 13 June 2020, as well as the constant practice of the Dispute Resolution Chamber, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the relevant payment as of the day following the day on which the relevant payment fell due, until the date of effective payment.
40. What is more, taking into account the consideration under number II.19. above, the DRC Judge 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.
41. In this regard, the DRC Judge 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.
42. Therefore, bearing in mind the above, the DRC Judge 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.
43. Furthermore, the DRC Judge 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.
44. The DRC Judge concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER (DRC) JUDGE

1. The claim of the Claimant, Delvin Chanel Ndinga, is partially accepted insofar it is admissible.
2. The Respondent, Sivasspor Kulübü Derneği, has to pay to the Claimant, the following amount:
 - EUR 70,045.07 as outstanding remuneration plus 5% interest *p.a.* as from 26 May 2019 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.
5. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).
6. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days**, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid.
(cf. art. 24bis of the [Regulations on the Status and Transfer of Players](#)).
 2. In the event that the payable amount as per in this decision is 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 the FIFA Disciplinary Committee.

For the Dispute Resolution Chamber Judge:



Emilio García Silvero
Chief Legal & Compliance Officer

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 \(CAS\)](#) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may [publish](#) this decision. For reasons of confidentiality, 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 Procedural Rules).

CONTACT INFORMATION:

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