

## Decision of the Dispute Resolution Chamber

passed on 8 April 2021

regarding an employment-related dispute concerning the player Luan Ferreira de Oliveira

### COMPOSITION:

**Geoff Thompson (England)**, Chairman  
**Tomislav Kasalo (Croatia)**, member  
**Jerome Perlemuter (France)**, member

### CLAIMANT:

**Luan Ferreira de Oliveira, Brazil**  
Represented by Bichara & Motta Advogados

### RESPONDENT:

**Leixoes SC, Portugal**  
Represented by Ms Susana Rios Oliveira

## I. FACTS OF THE CASE

1. On 1 July 2020, the Brazilian player, Luan Ferreira de Oliveira (hereinafter: *the player* or *the Claimant*) and the Portuguese club, Leixoes SC (hereinafter: *the club* or *the Respondent*) signed an employment contract (hereinafter: *the contract*) valid for three seasons.
2. The contract established *inter alia* the following remuneration in favour of the player:
  - a. Season 2020/2021: EUR 9,000 net in 12 instalments of EUR 750 each, the first instalment to be paid in the subsequent month;
  - b. Season 2021/2022: EUR 15,240 net in 12 instalments of EUR 1,270 each, the first instalment to be paid in the subsequent month;
  - c. Season 2022/2023: EUR 15,240 net in 12 instalments of EUR 1,270 each, the first instalment to be paid in the subsequent month.
3. According to the information available in the Transfer Matching System (TMS), the season 202/2021 in Portugal started on 3 August 2020 and ends on 30 June 2021.
4. Clauses 13.2 and 13.3 of the contract respectively read as follows:

*"2. Leixões SAD is entitled to unilaterally terminate this contract with no need to invoke just cause, being immediately dissociated from the Player, both labor and sportively, provided that is sends a written communication addressed to the Player with 30 (thirty) days in advance, counted from the date the same shall operate its effects.*

*3. Upon the sending of the communication provided in the previous item, an immediate payment in the amount corresponding to the monthly remunerations that would be due to the Player in case this agreement was fully complied shall be made to the Player."*
5. On 25 August 2020, the club informed the player that he would be loaned to a third club. The club gave the player a deadline of 24h to decide if he accepted such loan, under penalty of terminating the contract.
6. The player rejected such loan.
7. On 27 August 2020, the club informed the player that he could no longer access the club's facilities and that he should leave his apartment, which had been provided by the club.
8. On the same date, the player wrote to the club and requested an official position regarding his contractual situation.
9. On 28 August 2020, the player reiterated his request.

10. On the same date, the club's president announced he had resigned from office.
11. On 1 September 2020, having received no reply, the player reiterated his requests.
12. On 2 September 2020, the club responded and argued that the contract was unknown to the previous administration of the club and that the club could not accept its existence. The club further argued that the player had been invited to try-outs only.
13. On 14 September 2020, the player unilaterally terminated the contract via a letter sent by his lawyers.
14. On 30 September 2020, the Portuguese league confirmed that the player had not been registered by the club.
15. On 13 October 2020, the club responded to the termination letter of the player, and argued that the power of attorney was not valid in Portugal. The club further stated that the termination was not valid since no contract existed.
16. On 23 September 2020, the player ratified the termination of the contract in writing.
17. The player signed an amateur contract with the club UD Santarém on 20 September 2020, valid for the 2020/2021 season. According to such contract, the player was entitled to EUR 100 for the month of September and EUR 500 monthly for the subsequent period.
18. The player explained that the contract with the new club was terminated by mutual agreement on 31 December 2020.

## **II. PROCEEDINGS BEFORE FIFA**

19. On 14 January 2021, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.
  - a. **The claim of the Claimant**
20. The Claimant claimed that the contract was a valid document as it was signed by the respective administrators of the club at the time of its execution, and that such contract contained all the essential criteria for it to be considered valid.
21. The player argued that he had just cause to terminate the contract on the grounds of art. 14 (2) of the FIFA Regulations on the Status and Transfer of Players. He explained that he was never paid by the club and, as such, requested outstanding remuneration and compensation for breach of contract, as follows:
  - a. EUR 1,500 as outstanding remuneration as salaries of July and August 2020;
  - b. EUR 37,980 as Compensation for breach of contract.

22. The player furthermore requested that no mitigation be considered since clauses 13.2 and 13.3 were considered liquidated damages clauses, and informed that he signed an amateur contract after the termination of the contract with the Respondent.
23. The player also requested to be awarded interest of 5% p.a. as from the due dates on the amounts sought.

**b. Position of the Respondent**

24. The Respondent argued that it does not recognize the validity of the contract since, under Portuguese law, contracts need to be executed "*by hand*". The club nevertheless recognized that the contract was never registered with the Portuguese league.
25. Additionally, the Respondent argued that it was undergoing a "*special revitalization process*" and thus art. 24bis should not apply to the case at hand.

### III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

**a. Competence and applicable legal framework**

26. 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 presented to FIFA on 15 January 2021 and submitted for decision on 8 April 2021. Taking into account the wording of art. 21 of the January 2021 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.
27. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and observed 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 February 2021), 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 Brazilian player and a Portuguese club.
28. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Player (edition February 2021), and considering that the present claim was lodged on 14 January 2021, the January 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

**b. Burden of proof**

29. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the DRC stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.
30. In this respect, the Chamber also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

**c. Merits of the dispute**

31. The competence of the DRC and the applicable regulations having been established, the DRC entered into the merits of the dispute. In this respect, the DRC started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC 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.
32. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties dispute the validity of the contract, and consequently whether the termination of the contract took place with or without just cause. The DRC was also observant of the argumentation of the Respondent as to the application of art. 24bis of the Regulations in the matter at hand.
33. In this context, the Chamber acknowledged that its task was to determine the following:
- a. Is the contract a valid and binding document on the parties?
  - b. Did the player have just cause to terminate the contract?
  - c. What are the consequences of the termination?
  - d. Is art. 24bis applicable to the matter at hand?
34. The DRC then proceeded to examine each matter.

**i. Is the contract a valid and binding document on the parties?**

35. The DRC started, first of all, by recalling the Chamber's well-established jurisprudence which dictates that, in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration payable by the employer to the employee.

36. The Chamber then turned to the copy of the contract provided by the Claimant, and at the members' unanimous opinion, such contains all the *essentialia negotii* in order to be considered as a valid and binding employment contract in accordance with the jurisprudence of the Chamber. In particular, the document contains the signature of both parties, provides for the duration of the employment relationship, i.e. three seasons, provides for the payable remuneration to the Claimant, and, moreover, it can be clearly inferred that said document relates to the Claimant as being employed in order to play as a footballer with the Respondent.
37. At this point, the Chamber observed the argumentation of the Respondent according to which the contract had not been registered, and also not executed "by hand", which would be invalid under Portuguese law.
38. As to the matter of the registration, the Chamber stressed that in line with the contents of article 18 par. 4 of the Regulations, as well as the jurisprudence of the DRC, the validity of an employment contract cannot be made conditional upon the execution of (administrative) formalities, such as, but not limited to, the registration procedure in connection with the international transfer of a player, which are of the sole responsibility of a club and on which a player has no influence.
39. In this regard, the DRC pointed out that it is the responsibility of the engaging club to ensure that the player is properly registered with his new club in order to be able to provide it with his services. Since the club is supposedly interested in acquiring the rights of the player and in benefiting from his services, it is also expected from it that it acts accordingly in view of obtaining, for instance, the player's ITC and his subsequent registration.
40. The DRC consequently confirmed that the registration or not of the contract is irrelevant in determining if the contract was a valid and binding document.
41. As to the matter of the execution of the contract by hand, the DRC stressed that the Respondent, who carried the burden of proof in this respect as per the cited art. 12 par. 3 of the Regulations, failed to present any evidence in support of its reasoning. More in particular, the DRC stressed that no evidence at all was advanced by the Respondent, who filed solely a power of attorney authorising its legal representative to act on its behalf in these proceedings. As a consequence, the Chamber found no reason to uphold the argumentation of the Respondent.
42. Although confident of the foregoing line of reasoning, the Chamber added, for the sake of completeness, that the longstanding jurisprudence of the DRC denotes that the FIFA regulations prevail over another national law chosen by the parties. To this end, the members of the Chamber recalled, in line with this reasoning, that the objective of the Regulations on the Status and Transfer of Players, and the FIFA regulations in general, is to create a standard regulatory framework to which all actors within the football community are subject to and can trust. The Chamber pointed out that this approach has been confirmed in multiple occasions by the Court of Arbitration for Sport, and referred, for instance, to case CAS 4471 to confirm their

assessment. The DRC furthermore established that this objective would not be achievable if the FIFA bodies had to apply the national law of a specific party to each dispute brought before it. In this regard, it was stressed that it is in the interest of football that the recognition of a contract is based on uniform criteria and not on provisions of national legislation, which may vary considerably from one country to another.

43. On account of the above, the Chamber set aside the argumentation of the Respondent and confirmed that the document of 1 July 2020 i.e. the contract is a valid employment contract concluded by the parties.

**ii. Did the player have just cause to terminate the contract?**

44. Having found that the contract was valid and binding on the parties, the DRC moved to the issue of the termination by the player. In doing so, the Chamber confirmed that the Respondent filed no objection to the arguments raised by the player in support of his reasoning that he had just cause to terminate the contract.
45. Having the above in mind and turning to the evidence on file, the DRC found that irrespective of the change of administration of the club, it was clear that the club not only defaulted the player his payments of July and August 2020, but also that it tried to force the player to be loaned.
46. Additionally, the DRC observed that the player was also threatened with eviction from his accommodation.
47. Bearing in mind the foregoing, the Chamber highlighted that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria, which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.
48. The Chamber noted that the player multiple times rejected the club's position to loan him and requested a clarification of his status with the club.
49. In consideration of the specific constellation described above as well as the contents of article 14 of the Regulations, in particular paragraph 2 of said article, the Chamber found that the club substantially breached the contract, entailing therefore that the player had just cause to terminate the contract.
50. The club shall hence bear the consequences that follow.

### iii. What are the consequences of the termination?

51. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
52. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to two salaries under the contract, i.e. July and August 2020, amounting to EUR 750 each.
53. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the player the amounts which were outstanding under the contract at the moment of the termination, i.e. EUR 1,500.
54. In addition, taking into consideration the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided to award the player interest at the rate of 5% p.a. on the outstanding amounts as from their due dates until the date of effective payment.
55. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber 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.
56. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber took in particular consideration the argumentation of the player that clauses 13.2 and 13.3 of the contract constitute the so-called liquidated damages clauses, which in his opinion would prevent the consideration of any mitigation.
57. To this end, the DRC noted that such clauses give respect to the club terminating the contract and not the player. Hence, it suffices in the Chamber's opinion that that they cannot apply to the case at hand.
58. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a

non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

59. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract until its expiry date. Consequently, the Chamber concluded that the amount of EUR 37,980 serves as the basis for the determination of the amount of compensation for breach of contract. Such amount is broken down as follows:
  - a. EUR 7,500 as the remainder of salaries (i.e. 10 months) for the season 2020/2021;
  - b. EUR 15,240 for the season 2021/2022;
  - c. EUR 15,240 for the season 2022/2023.
60. In continuation, the Chamber verified as to 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 enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
61. Indeed, the player found employment with UD Santarém between 20 September 2020 and 31 December 2020. In accordance with the pertinent employment contract, the player was entitled to EUR 1,600 for the cited period. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of EUR 1,600.
62. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason i.e. overdue payables by the club, and therefore decided that the player shall receive additional compensation.
63. In this respect, the DRC highlighted that theoretically the player would be entitled to EUR 2,250 as additional compensation. However, the Chamber recalled that as per the clear wording of article 17 of the Regulations, the amount of compensation (including any additional compensation) cannot exceed the residual value of the contract.
64. As a consequence, it was decided to award the amount of additional compensation of EUR 1,600 to the player.
65. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of EUR 37,980 to the player (i.e. EUR 37,980 minus EUR 1,600 plus EUR 1,600), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

66. Lastly, taking into consideration the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided to award the player interest on said compensation at the rate of 5% p.a. as of the date of claim until the date of effective payment.

#### iv. Compliance with monetary decisions

67. Finally, taking into account the applicable Regulations, the Chamber referred to par. 1 lit. 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.
68. In this regard, the DRC highlighted 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. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
69. At this point, the Chamber took note of the Respondent's argumentation that on the grounds of art. 24bis par. 3 of the Regulations, the consequences established under said article should be excluded on account of the alleged fact that the Respondent was undergoing a "*special revitalization process*" in Portugal.
70. Once again the Chamber noted however that there is no evidence on file regarding the club being under any kind of insolvency proceeding. Consequently, on the grounds of the club's failure to discharge its burden of proof in line with art. 12 par. 3 of the Procedural Rules, the DRC found that such line of argumentation could only be rejected. For the sake of completeness, the DRC nonetheless observed that in previous cases, Portuguese clubs undergoing the same proceeding as the one alleged (but not proven) by the Respondent have been able to make payment to creditors in compliance with art. 24bis of the Regulations.
71. The DRC thus confirmed that art. 24bis shall apply to the case at hand. Therefore, bearing in mind the above, the DRC decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24bis par. 2, 4, and 7 of the Regulations.
72. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.

73. The DRC 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. 8 of the Regulations.

**d. Costs**

74. The Chamber referred to article 18 par. 2 of the Procedural Rules, according to which *“DRC proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment related disputes between a club and a player are free of charge”*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
75. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
76. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

#### IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Luan Ferreira de Oliveira, is partially accepted.
2. The Respondent, Leixoes SC, has to pay to the Claimant, the following amount:
  - EUR 1,500 net as outstanding remuneration plus 5% interest p.a. as from 1 September 2020 until the date of effective payment;
  - EUR 37,980 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 14 January 2021 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.
5. Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid **within 45 days** of notification of this decision, the following **consequences** shall apply:
  1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.
  2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with article 24bis paragraphs 7 and 8 and article 24ter of the Regulations on the Status and Transfer of Players.
7. This decision is rendered without costs.

For the Dispute Resolution Chamber:



**Emilio García Silvero**

Chief Legal & Compliance Officer

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### **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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