

## **Decision of the Dispute Resolution Chamber**

**passed on 8 April 2021**

**regarding an employment-related dispute concerning the player David Mateos Ramajo**

### **COMPOSITION:**

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

### **CLAIMANT:**

**David Mateos Ramajo, Spain**

### **RESPONDENT:**

**Hapoel Umm Al-Fahm, Israel**

## I. Facts

1. On 15 July 2020, the Parties entered into an Employment Contract valid as from 1 August 2020 until 31 May 2021.
2. Under the contract, the player was entitled to receive a fixed monthly remuneration of NIS 19.000 (nineteen-thousand NIS) gross (cf. clause 6 A) to be paid by in ten monthly instalments, from August 2020 to May 2021.
3. Following Clause 6 lit. H of the Contract, the player was entitled to a sign-on fee of NIS 25.000 to be paid by the CLUB as follows:
  - NIS 15.000 on 20 July 2020;
  - NIS 10.000 on 30 July 2020.
4. Clause 9 of the contract stipulated the following:  
*"the team has an option to extend and/or resolve the agreement according to the Coach's decision. In this case the team will not be obligated to compensate the player."*
5. On 5 November 2020, the club sent a "release notice" to the player with the following contents:  
*"we would like to inform you that in light of a professional decision, we are exercising the option agreed between us in the employment agreement for your release for professional reasons.*  
*And all in accordance with the professional decision of the professional staff and the professional manager.*  
*We agreed and signed the clause:*  
*"the team has an option to extend and/or resolve the agreement according to the Coach's decision. In this case the team will not be obligated to compensate the player*  
*In this Case The Team will not be obligated to compensate the Plaver.*  
*Your last working day at the club is Thursday, 05/11/2020."*
6. On 5 November 2020, the club also issued a "releasing letter" stating that "unfortunately [sic], the coach decided that the player was not good enough and the contract allowed to release the player if it's connected to his bad ability."
7. On 6 November 2020, the player rejected the letter of the club, stating that the invoked letter is "of a purely potestative nature and therefore, void".
8. The player informed FIFA that he subsequently concluded an employment contract with the Bolivian club, The Strongest, valid as from 27 January 2021 until 31 December 2021.
9. Accordingly, the player was entitled to a monthly salary of USD 13,333, plus a sign-on fee of USD 30,000. Consequently, from November 2020 until May 2021, the player would have earned  $\text{USD } 123,331 = 30,000 + 13,333 \times 7$
10. On 23 November 2020, the Claimant lodged a claim against the club for breach of contract without just cause, and requested the payment of the following amounts:  
Outstanding remuneration:

NIS 38,000, corresponding to the entire salaries of September and November 2020, plus 5% interest p.a. as from the due dates.

Compensation:

NIS 133,000, corresponding to the residual value of the contract (until 31 May 2021, "plus default interest of 5% which starts running as of the day following the due date of payment"

11. In its reply to the claim, the respondent considered that the player acted without good faith as the contract was terminated by mutual agreement.
12. In addition, the Respondent requested the payment of the procedural costs.
13. In particular, the Respondent argued that the player *"his Representative Mr. Charbel Joubran Negotiated, read the contract and approved its clauses inclusive clause 9 of the signed Contract."*
14. The Respondent explained that *"the Claimant cheated in negotiations, after all, if he had not agreed to this Clause, [it] would not have signed the contract with him."*
15. As to the outstanding salaries, the Respondent explained that it paid for the months of September and October 2020.

## **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. 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.
2. Subsequently, the Dispute Resolution Chamber referred to art. 3 par. 1 of the Procedural Rules and emphasised 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, the Dispute Resolution Chamber is competent to deal with matters which concern employment-related disputes with an international dimension between players and clubs.
3. In continuation, the Dispute Resolution Chamber analysed which edition of the Regulations of the Status and Transfer of Players should be applicable to the present matter. In this respect, the Dispute Resolution Chamber confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and considering the date when the claim was lodged, the June 2020 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand.
4. With the above having been established, the Dispute Resolution Chamber entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file. However, the Dispute Resolution Chamber emphasized that in the following considerations it will refer only to facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.
5. In this respect, the Chamber first noted that entered into an Employment Contract valid as from 1 August 2020 until 31 May 2021.

6. Subsequently, the Chamber took note that the Claimant lodged a claim against the club for breach of contract without just cause, noting that the club unilaterally terminated the contract on 5 November 2020 and on the basis of clause 9 of the contract.
7. Conversely, the Chamber noted that the Respondent acknowledged that it terminated the contract in application of the aforementioned clause.
8. In view of the above, the Chamber understood that the main legal issue at stake is to determine whether the club had a just cause to terminate the contract on 5 November 2020.
9. In this respect, the Chamber was eager to emphasize 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.
10. In this respect, the Chamber observed that the termination of the contract was performed on the basis of clause 9 of the contract, according to which *"the team has an option to extend and/or resolve the agreement according to the Coach's decision. In this case the team will not be obligated to compensate the player."*
11. In analyzing the contents of said clause, the Chamber understood that they were relatively clear.
12. However, the members of the Chamber wished to highlight that, in general, potestative clauses, i.e. clauses that contain obligations which fulfilment are conditional upon an event that one party entirely controls, cannot be considered since they limit the rights of the other contractual party in an excessive manner and lead to an unjustified disadvantage of the latter towards the other. In the matter at stake, the Respondent was the only party which could decide to terminate the contract according to a unilateral decision of the coach, and without offering any compensation to the player.
13. On account of all the above, the members of the Chamber established that clause 9 of the contract is clearly of a potestative nature and is to be deemed invalid.
14. For the sake of completeness, the members of the Chamber also underlined that, following its well-established jurisprudence, an alleged poor performance of a player cannot not justify a premature termination of an employment contract by a club as the assessment of the performance of a player is a subjective perception which could not be measured on an objective scale and therefore, has to be considered as inadmissible grounds for premature termination of an employment contract.
15. In light of the above considerations, the Chamber came to the unanimous conclusion that the Respondent had no just cause to terminate the contract binding it to the Claimant and that, consequently, the Respondent is to be held liable for said early termination of the contract without just cause.
16. Bearing in mind the previous considerations, the Chamber went on to deal with the consequences of the early termination of the employment contract without just cause by the Respondent.

17. First of all, the members of the Chamber wished to refer to the amounts requested by the Claimant as outstanding remuneration. In this respect, the Chamber noted that the Claimant requested the payment of NIS 38,000, corresponding to two entire salaries (i.e. 19,000\*2). After verifying the documentation on file, the Chamber understood that said two salaries appear to correspond to the months of September and October 2020.
18. Conversely, the Chamber noted that the Respondent provided in its reply a series of documents to apparently, prove the payment of certain amounts.
19. Having analysed the documentation provided by the Respondent, the members of the Chamber refer to art. 9 lit. e) of the Procedural Rules which stipulates that all documents of relevance to the dispute shall be submitted in the original languages and, if applicable, translated into one of the official FIFA languages. Taking into account the cited provision, the Chamber concluded that it could not consider the documentation provided by the Respondent, as it was provided without a translation into one of the official FIFA languages (English, Spanish, German or French).
20. As a result, the Chamber could only assume that the player's remuneration of September and October 2020 (i.e. 19,000) remained unpaid.
21. Consequently, in strict application of the principle of *pacta sunt servanda*, the Dispute Resolution Chamber established that the Respondent has to pay to the Claimant, the total outstanding amount of NIS 38,000, as detailed above.
22. Moreover, taking into account the request of the Claimant as well as the longstanding jurisprudence in this regard, the Dispute Resolution Chamber decided to award 5% interest p.a. over said amount as from the due dates.
23. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive compensation for breach of contract from the Respondent. 22. In continuation, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of 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 Claimant 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.
24. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent contract contains 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. The members of the Chamber recalled that according to art. 9 of the contract, the player would not be entitled to compensation. However, given that said clause is to be deemed invalid due to its potestative nature, the Chamber decided to disregard it in full.
25. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant 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 nonexhaustive enumeration of criteria to be taken into consideration when

calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.

26. The members of the Chamber then turned their attention to the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, which criterion was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and the new contract, if any, in the calculation of the amount of compensation.
27. 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 the date of termination without just cause by the Respondent, i.e. 5 November 2020 until the original date of expiry, i.e. May 2021, and concluded that the Claimant would have received remuneration in the total amount of NIS 57,000 ( $19,000 \times 7$ ) had the contract been executed until its ordinary expiry date. Consequently, the Chamber concluded that the amount of NIS 57,000 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.
28. In continuation, the Chamber verified as to whether the Claimant 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, 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.
29. In this respect, the Chamber noted that the Claimant concluded an employment contract with the Bolivian club, The Strongest, valid as from 27 January 2021 until 31 December 2021. The Chamber observed that, accordingly, the player was entitled to a monthly salary of USD 13,333, plus a sign-on fee of USD 30,000. Consequently, from said contract, the player would have earned  $\text{USD } 123,331 = 30,000 + 13,333 \times 7$ . The Chamber noted that this amount is equivalent to NIS 400,000.
30. However, given that the contract with said Bolivian club was valid only as from 27 January 2021, the Chamber understood that the Claimant was unable to mitigate his damages until said date, i.e. from November 2020 until January 2021 (incl.).
31. As a result, the Chamber established that the amount of payable compensation would be equivalent to the non-mitigated period of time, i.e. from November 2020 until and including January 2021, i.e.  $19,000 \times 3$ , i.e. NIS 57,000.
32. Consequently, on account of all of the above-mentioned considerations, the Chamber decided that the Respondent must pay the amount of NIS 57,000 to the Claimant as compensation for breach of contract.
33. In addition, taking into account the Claimant's request, the Chamber decided that the Respondent must pay to the Claimant interest of 5% p.a. on the amount of compensation as of the date on which the claim was lodged, until the date of effective payment.
34. Furthermore, taking into account the previous considerations, the Dispute Resolution 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.

35. In this regard, the Dispute Resolution 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.
36. Therefore, bearing in mind the above, the Dispute Resolution Chamber 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.
37. Finally, the Dispute Resolution 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.

### III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, David Mateos Ramajo, is partially accepted.
2. The Respondent, Hapoel Umm Al-Fahm, has to pay to the Claimant, the following amounts:
  - NIS 38 000 as outstanding remuneration (salaries of September and October 2020) plus 5% interest *p.a.* as from the due dates until the date of effective payment.
  - NIS 57 000 as compensation for breach of contract without just cause, plus 5% interest *p.a.* as from 23 November 2020 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](mailto: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.
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).

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