

**Decision of the
Dispute Resolution Chamber (“DRC”) Judge**
passed on 17 August 2021

regarding an employment-related dispute concerning the player Yann Boe-Kane

BY:

Johan van Gaalen (South Africa), DRC Judge

CLAIMANT:

Yann Boe-Kane, France
Represented by Ludovic Deléchat

RESPONDENT:

AFC Astra Giurgiu, Romania

I. FACTS OF THE CASE

1. On 14 January 2021, the French player Yann Boé-Kane (hereinafter: *the Claimant*) and the Romanian club A.F.C. Astra (hereinafter: *the Respondent*) signed an employment contract (hereinafter: *the Contract*) valid until 30 June 2022.
2. According to the Contract, the Respondent committed to pay to the Claimant the following remuneration:

*“the monthly indemnity is 9.000 euros net for the period between the date of signature and June 30th 2022;(…)
EUR 5.000 – first payment, the amount will be paid January 15 2021”*
3. As per clause IV. 4 k of the Contract, the Claimant was entitled to allowance for accommodation in the amount of EUR 300 per month.
4. As per clause V. 5 of the Contract, *“the amounts calculated and due to the football player according to the present Contract will be paid by the Club on a monthly basis, on or before 15th day of the month following the month for which the payment is made”*.
5. On 1 June 2021, the Claimant sent an official default notice giving a deadline of 15 days to pay the outstanding amounts (part of February, March and April remuneration plus the full amount of the accommodation allowance), to no avail.
6. On 17 June 2021, the Claimant sent a notice of termination to the Respondent.
7. Thereafter, the Claimant signed an employment contract with the French club, U.S. Quevilly Rouen Métropole SAS, valid from 16 July 2021 until 30 June 2022.

II. PROCEEDINGS BEFORE FIFA

8. On 21 June 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**
9. According to the Claimant, the Respondent did not comply with its contractual obligations since the beginning of the employment contract, being constantly late in paying the Claimant's remuneration.
10. The Claimant further submits that the signing-fee amounting to EUR 5,000 net and the accommodation allowances amounting to EUR 300, respectively, were never paid by the

Club. In this regard, the Claimant states that the first payment of his remuneration for an amount of Romanian Lei (“RON”) of 44,472 occurred only on 2 March 2021, corresponding to the month of January.

11. The Claimant submits that at the time of termination of the Contract, i.e. on 17 June 2021, the Respondent owed the Claimant more than three (3) monthly salaries plus the accommodation allowance.
12. The Claimant deems that art. 14bis RSTP is applicable in this matter as the Claimant had given a deadline of 15 days to pay the outstanding remuneration to him within the contractual relationship on 1 June 2021.
13. The Claimant’s request for relief were:

“1. The claim of the Claimant shall be accepted in its entirety.

2. The Defendant shall be obliged to pay to the Claimant the amount of EUR 34,000 net as outstanding salaries, plus interest at a rate of 5% per year over said amount, as from the relevant due dates until the effective date of payment.

3. The Defendant shall be obliged to pay to the Claimant the amount of EUR 1,500 as outstanding accommodation allowance, plus interest at a rate of 5% per year over said amount as from the relevant due dates until the effective payment.

4. The Defendant shall be obliged to pay to the Claimant the amount of EUR 117,000 net plus EUR 3,900 (accommodation allowance) as compensation for breach of the employment contract, plus 5% interest per annum over said amount as of the date of termination of the employment contract, i.e. on 17 June 2021.

5. The Defendant shall be obliged to pay to the Claimant the amount of EUR 27,000 net in accordance with article 17 par. 1 lit. ii) FIFA Regulations on the Status and Transfer (hereinafter: RSTP),

6. Art. 24bis of the FIFA RSTP shall apply”.

b. Position of the Respondent

14. Despite being invited to provide an answer, the Respondent failed to submit its position to FIFA.

III. CONSIDERATIONS OF THE DRC JUDGE

a. Competence and applicable legal framework

15. First of all, the Dispute Resolution Chamber Judge (hereinafter also referred to as 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 presented to FIFA on 21 June 2021 and submitted for decision on 17 August 2021. Taking into account the wording of art. 21 of the February 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.
16. Subsequently, the DRC Judge 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), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a French player and a Romanian club.
17. Subsequently, 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 Player (edition February 2021), and considering that the present claim was lodged on 21 June 2021, February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

18. The DRC Judge 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 Judge stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties.
19. In this respect, the DRC Judge 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

20. The competence of the DRC and the applicable regulations having been established, the DRC Judge entered into the merits of the dispute. In this respect, the DRC Judge started by acknowledging all the above-mentioned facts as well as the arguments and 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. Furthermore, as a consequence of the aforementioned consideration, the DRC Judge emphasised that in accordance with art. 9 par. 3 of the Procedural Rules, he shall take a

decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.

i. Main legal discussion and considerations

22. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that in view of the lack of reply from the Respondent – the Claimant’s claim for outstanding remuneration and compensation for breach of contract remained uncontested.
23. In this context, the DRC Judge acknowledged that it his task was to determine whether the Claimant was indeed entitled the amounts he claimed.
24. In this respect, the DRC Judge first of all established that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. Consequently, the DRC Judge deemed that the Respondent had renounced to its right of defence and, thus, had accepted the allegations of the Claimant.
25. In accordance with the Contract, the Respondent, in addition to the sign-on fee of EUR 5,000, was also obliged to pay the Claimant a monthly salary of EUR 9,000 and a monthly accommodation allowance of EUR 300.
26. Moreover, the DRC Judge noted that at the time the contract was terminated by the Claimant, i.e. on 17 June 2021, the Respondent owed to the Claimant three monthly salaries of EUR 9,000, the signing on fee and the accommodation allowance for 5 months.
27. On account of the aforementioned, the DRC judge established that the Respondent, without any valid reason, failed to remit to the Claimant, until 17 June 2021, date on which the Claimant terminated the contract, the total amount of EUR 35,500.
28. Consequently, and considering that the Respondent had repeatedly and for a significant period of time been in breach of its contractual obligations towards the Claimant, the DRC Judge decided that the Claimant had just cause to unilaterally terminate the employment contract on 17 June 2021 and that, as a result, the Respondent is to be held liable for the early termination of the employment contact with just cause by the Claimant.
29. In continuation, having established that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant, the DRC judge focused its attention on the consequences of such termination.

ii. Consequences

30. Having stated the above, the DRC Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent during the protected period.

31. In this regard, the DRC Judge determined that the Respondent was not only to pay the amount of EUR 35,500 as outstanding remuneration to the Claimant, plus 5% interest p.a. as from the respective dates, but also to pay compensation for breach of contract in conformity with art. 17 par. 1 of the Regulations.
32. Having stated the above, the DRC Judge turned to the calculation of the amount of compensation payable to the Claimant by the Respondent in the case at stake. In doing so, the DRC judge 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.
33. In application of the relevant provision, the DRC Judge 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 DRC Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
34. As a consequence, the DRC judge 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 DRC Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
35. Bearing in mind the foregoing as well as the claim of the Claimant, the DRC Judge proceeded with the calculation of the monies payable to the Claimant under the terms of the employment contract until 30 June 2022. Consequently, the DRC Judge concluded that the amount of EUR 120,900 serves as the basis for the determination of the amount of compensation for breach of contract.
36. In continuation, the DRC Judge 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.
37. Indeed, on 16 July 2021, the Claimant found employment with the French club, U.S. Quevilly Rouen Métropole SAS. In accordance with the pertinent employment contract,

which has been made available by the Claimant, valid until 30 June 2022, the Claimant was entitled to receive a gross monthly salary of EUR 8,100 plus other non-contingent bonuses. Consequently, the DRC judge established that the value of the new employment contract – for the overlapping period between the contract concluded between the Claimant and the Respondent and the contract between the Claimant and U.S. Quevilly Rouen Métropole SAS - amounted to EUR 103,250.

38. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the DRC judge decided that the mitigated compensation the Respondent must pay to the Claimant amounts to EUR 17,650.
39. What is more, the DRC Judge turned his attention to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an additional compensation of three monthly salaries, subject to the early termination of the contract being due to overdue payables. In case of egregious circumstances, the additional compensation may be increased up to a maximum of six monthly salaries, whereby the overall compensation may never exceed the rest value of the prematurely terminated contract.
40. With the above in mind, the DRC Judge decided to award the Claimant additional compensation corresponding to three monthly salaries, i.e. EUR 27,000, in accordance with the aforementioned provision.
41. The DRC Judge considered the amount of EUR 44,650 a reasonable and justified amount of compensation for breach of contract in the present matter.
42. The DRC Judge in line with its constant jurisprudence as well as the requests of relief of the Claimant, decided to grant interest at the rate of 5% per annum on the amount as from the date of claim until the date of effective payment.

iii. Compliance with monetary decisions

43. Finally, taking into account the aforementioned considerations, the DRC Judge 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.
44. In this regard, the DRC Judge 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.
45. Therefore, bearing in mind the above, the DRC Judge 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.

46. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Registration Form, which is attached to the present decision.
47. 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. 8 of the Regulations.

d. Costs

48. The DRC Judge 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 DRC Judge decided that no procedural costs were to be imposed on the parties.
49. Likewise, and for the sake of completeness, the DRC Judge recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
50. Lastly, the DRC Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.

IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER (“DRC”) JUDGE

1. The claim of the Claimant, Yann Boe-Kane, is partially accepted.
2. The Respondent, AFC Astra Giurgiu, has to pay to the Claimant, the following amounts:
 - EUR 35,500 as outstanding remuneration plus 5% interest *p.a.* as follows:
 - o On EUR 5,000 as from 16 January 2021 until date of effective payment.
 - o On EUR 2,000 as from 16 March 2021 until date of effective payment.
 - o On EUR 9,000 as from 16 April 2021 until date of effective payment.
 - o On EUR 9,000 as from 16 May 2021 until date of effective payment.
 - o On EUR 9,000 as from 16 June 2021 until date of effective payment.
 - o On EUR 300 as from 16 February 2021 until date of effective payment.
 - o On EUR 300 as from 16 March 2021 until date of effective payment.
 - o On EUR 300 as from 16 April 2021 until date of effective payment.
 - o On EUR 300 as from 16 January 2021 until date of effective payment.
 - o On EUR 300 as from 16 January 2021 until date of effective payment.
 - EUR 44,650 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 21 June 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 indicated in the enclosed Bank Account Registration Form.
5. Pursuant to article 24 bis 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 the ban shall be 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 24 bis paragraphs 7 and 8 and article 24ter of the [Regulations on the Status and Transfer of Players](#).

For the Dispute Resolution Chamber ("DRC") 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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